

DIARY

Book 200

Countervailing Duties: Germany

January - July, 1939
(including one conference on August 1, 1939)

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January 17, 1939

MEMORANDUM TO THE PRESIDENT

This is in response to your memorandum of December 27, 1938, in which you ask me to check the figures submitted to you by the State Department on investments and current payments between the United States and Germany.

1. The figures in the memorandum, obtained from the Finance Division of the Bureau of Foreign and Domestic Commerce, are the best available and are accurately presented. More recent data on investments available to us do not substantially alter the results.

2. However, the memorandum does not appear to adequately point out the range of possible error in the data. Figures of German investments in the United States are subject to even a wider range of error than are figures of the investments of most other countries because of the incentive to avoid the foreign exchange restrictions of Germany. For instance, it has come to our attention that substantial amounts of German capital -- rumored at being more than \$50 millions -- have come to the United States in the past four months, but these funds did not show up in our figures because the nationality of the owner was effectively masked.

3. The estimates of the flow of payments between the two countries are also the compilation of the Department of Commerce and are the best figures available. It must be remembered, however, that at least 50 percent of our trade with Germany is carried on by barter. The stated value of imports from Germany on barter transactions is about 25 percent more than the amount of dollars called for to pay for the imports. Therefore the stated value of our imports from Germany in 1938 should be reduced in the balance of payments by \$10 - \$15 million.

(Sgd) H. Morgenthau, Jr.

HDW:lrs
1/17/39

FILE COPY

THE WHITE HOUSE
WASHINGTON

2

December 27, 1938.

MEMORANDUM FOR

THE SECRETARY OF THE TREASURY

Do these figures check
with yours?

F. D. R.

THE WHITE HOUSE
WASHINGTON

2

December 27, 1938.

MEMORANDUM FOR
THE SECRETARY OF THE TREASURY

Do these figures check
with yours?

F. D. R.

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THE UNDER SECRETARY OF STATE

WASHINGTON

December 23, 1938

My dear Mr. President:

Some time ago you asked Ambassador Wilson to prepare for you a memorandum showing:

(a) the amount of capital invested by Germany in the United States, as well as the amount of capital invested by the United States in Germany, and (b) an analysis of the flow of payments between the two countries.

As Mr. Wilson did not have time to prepare this himself we have had such a memorandum prepared in the office of the Adviser on International Economic Affairs here. I am enclosing herewith a copy.

Faithfully yours,

(Signed) Sumner Wells

Enclosure:
Memorandum

The President,
The White House.

DEPARTMENT OF STATE
ADVISER ON
INTERNATIONAL ECONOMIC AFFAIRS

December 12, 1938.

FIGURES ON INVESTMENTS AND CURRENT PAYMENTS
UNITED STATES - GERMANY

I. Investments

The following figures refer to later dates than any estimates heretofore published or made. The figures concerning private investments are obtained from Mr. Dickens of the Finance Division of the Bureau of Foreign and Domestic Commerce, the specialist in this field.

In brief, American investments in Germany, excluding intergovernmental debts, are estimated at \$713,000,000, taking obligations at their nominal par values; German investments in the United States are estimated at \$118,000,000, which is about 16 1/2 percent of this estimate of American investments in Germany. Taking present market value of German dollar bonds as 25 percent of par, and short term obligations as 50, the American investment would be appraised at \$140,000,000 plus whatever value is attributed to direct investments having a book value of \$234,000,000.

United

United States Investments in Germany

Private investments

1. Direct investment, about	\$234,000,000
2. Long term bonds, par value, about	380,000,000
3. Short term obligations, about	99,000,000
	<hr/>
Total, about	\$713,000,000

Intergovernmental obligations

4. German Government bonds in the United States Treasury.	
a. For costs of American Army of Occupation -	
bonds	997,500,000 Rm.
accrued unpaid interest	<u>17,505,077.36</u>
Total	1,015,005,077.36 Rm.
b. Mixed Claims awards -	
bonds	2,040,000,000 Rm.
accrued unpaid interest	<u>47,940,000</u>
Total	2,087,940,000 Rm.

(For dollar equivalent see note below)

5. Austrian Government bonds in the United States Treasury -	
bonds	\$25,980,480.66
interest	<u>25,000.33</u>
	\$28,005,480.99

German

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German investment in the United States

6. Long term investment of all kinds, about	\$100,000,000
7. Short term investment, about	<u>18,000,000</u>
Total, about	\$118,000,000

Notes and comment

1. The previously published estimate of \$228,000,000 direct investments of Americans in Germany has been raised to \$234,000,000 to include direct investments in Austria.

2. The figure of \$380,000,000 for par value of German long term bonds owned in the United States has been increased from a previous estimate of \$365,000,000 to include holdings of Austrian bonds. This estimate would mean that present American holdings of German bonds are about 50 percent of the total amount once owned by Americans and still outstanding. Some private students think that American holdings are much smaller. Dr. Brinkmann, the competent German official, in discussion with Mr. Reuben Clark last June, accepted the latter's figure of \$300,000,000, exclusive of Dawes and Young bonds on which partial interest payments are made. American holdings of the latter are about \$80,000,000. If the \$380,000,000 total be taken, the present market value of American holdings of German bonds would probably be something under \$100,000,000.

3. The estimate of \$99,000,000 of short term German obligations owed to Americans is as of September 28, 1938, and shows debt reduction of \$27,000,000 in nine months from a heretofore published figure of \$126,000,000 estimated as of December 31, 1937.

4. The German Government bonds held by the United States Treasury are expressed in Reichsmarks and there is no very good way to convert them into a dollar sum which can be entered into a tabulation

of American investment in Germany as a figure comparable with the amounts of private investment. The amount of the Reichsmark obligations was originally established by converting dollar amounts into Reichsmarks at 23.8 cents. When the Reichsmark amounts are converted back into dollars at the current exchange rate of 40.33 cents, the 1,015,005,077.36 total indebtedness for costs of the American Army of Occupation is equal to \$409,351,547.70 and the 2,087,940,000 Reichsmark indebtedness for mixed claims awards is equal to \$842,066,202, these amounts being about 69 percent greater than the dollars which would have been payable had the dollar not subsequently been devaluated. The debt agreement provides that the obligations of Germany to pay annuities on mixed claims awards "shall cease as soon as all of the payments contemplated by the Settlement of War Claims Act of 1928 have been completed and the bonds not then matured evidencing such obligations shall be canceled and returned to Germany". The balance due payment for mixed claims awards as of September 30, 1938 is only \$157,697,841.57, but the awards are interest-bearing and a few new awards may still be made so that the amount eventually payable cannot now be determined. Moreover, as the German Government bonds held by the United States Treasury are non-interest-bearing until the respective bond has become due and has been defaulted, the amount of the bonds, being a sum of annuities payable over a long period of future years, is not directly comparable to the figures for private investments. For all these reasons, although the Treasury must list among its assets Reichsmark bonds of the German Government equivalent to about \$1,250,000,000 par value at current rates of exchange, a tabulation listing this amount in the same column with \$713,000,000 of private investments would give a distorted picture.

5. The bonds of the Austrian relief debt are also non-interest-bearing annuities, the accrued unpaid interest of \$25,000.33 having been incurred only by virtue of the Hoover Moratorium arrangements.

6. —

7.

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7. The \$18,000,000 estimate of short term investment of Germans in the United States is as of September 28, 1938, and shows a reduction of such German assets by \$21,000,000 since December 29, 1937, when they were estimated at \$39,000,000, and a reduction of \$9,000,000 in the two months after June 29, 1938, when the estimate was \$27,000,000.

II. Balance of Payments

Important items of payments between the United States and Germany for 1937 may be tabulated as follows, on the basis of Department of Commerce estimates.

German

German Payments to the United States

1. Purchase of American exports	\$126,343,000
2. Interest and amortization of German bonds	5,000,000
3. Remitted earnings of American controlled corporations in Germany - no estimate available, probably very small.	
4. Expenditures of German tourists on American vessels or in the United States	7,000,000
5. Earnings of American shipping for carriage of exports to Germany	6,000,000
6. Movement of Capital.	
a. Increase in German balances in American banks	7,000,000
b. Reduction of United States balances and blocked funds in Germany	40,000,000
c. German purchases of American securities	<u>16,000,000</u>
Total	\$207,343,000

American Payments to Germany

1. Purchase of imports from Germany	\$92,468,000
2. Expenditures of American tourists in Germany	18,500,000*
3. Expenditures of American tourists for travel on German vessels	20,000,000
4. Payments to German shipping for freight	22,000,000
5. Personal remittances	5,000,000
6. Movement of Capital	
Sales of German-owned securities in the United States	<u>22,000,000</u>
Total	\$179,968,000

* Most of the \$18,500,000 expended by American tourists in Germany was blocked funds of American banks in Germany, the so-called

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In the case of shipping, it may be of interest to go beyond the figures showing the payments between Germans and Americans, and give more inclusive figures as to the total earnings of German shipping in passenger and freight traffic to and from American ports. During 1937 such earnings are estimated to have been at least \$63,000,000, itemized as follows: passenger traffic, \$20,000,000 (estimated expenditures of American passengers only); cargo inbound to the United States, \$22,000,000 (paid by Americans); cargo outbound from the United States, \$21,000,000 (about \$15,000,000 paid by Germans and about \$6,000,000 by other foreigners, not Americans, to German shipping plying to and from American ports). There would also be a few million dollars spent by alien passengers on these German lines for which no estimate is available.

The figures for investments in the first part of this memorandum have been brought down to recent dates in 1938, and notes to items 3 and 7 therein show changes in the nominal par value amount of short term capital investment between December 29, 1937 and September 28, 1938. No

estimates

called "travelmarks" established to liquidate the funds of foreign banks frozen by the Standstill Agreements. Such expenditures did not provide Germany with any current dollar exchange, but merely with the means of reducing short-term debt of Germans to Americans.

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estimates of payments from shipping, tourist expenditures, et cetera, during 1938 are available. During the first ten months of 1938 American exports to Germany were \$89,408,000 as compared with \$99,761,000 during the first ten months of 1937; imports were \$51,351,000, compared with \$77,276,000. Since May 6, 1936, our trade figures with Germany have included trade with Austrian territory. The following table gives monthly figures of trade with the combined territory of Germany and Austria from January 1937 through October 1938:

American

American Exports to and Imports from Germany
and Austria

(In thousands of dollars)

	<u>Exports</u>		<u>Imports</u>	
	<u>1937</u>	<u>1938</u>	<u>1937</u>	<u>1938</u>
January	7,562	8,984	8,043	6,079
February	9,548	8,546	6,773	4,402
March	9,749	8,653	8,525	4,664
April	12,624	9,672	8,016	4,936
May	7,445	8,170	8,022	4,911
June	9,149	6,633	8,060	4,535
July	8,103	6,438	8,765	4,393
August	11,377	10,743	9,307	5,624
September	12,090	12,150	7,873	5,794
October	<u>14,528</u>	<u>10,166</u>	<u>8,793</u>	<u>7,289</u>
10 months	<u>102,175</u>	<u>90,155</u>	<u>82,177</u>	<u>52,627</u>
November	13,034		8,640	
December	<u>14,219</u>		<u>7,408</u>	
Year	<u>129,428</u>		<u>98,245</u>	

Statistics for 1938 trade by commodities with Germany are not yet available. However, in the important case of exports of raw cotton, our exports to Germany in the first nine months of 1938 were 214,000 bales valued at \$11,392,000, compared with 435,000 bales valued at \$30,410,000 for the first nine months of 1937. For the twelve months ending September 30, 1938, the figures were 579,000 bales valued at \$31,225,000 compared with 687,000 bales valued at \$47,342,000 in the twelve months ending September 30, 1937. For the full year 1937 our cotton exports to Germany were valued at \$50,243,000.

Other important United States exports to Germany during 1937 were copper (refined copper \$9,904,000, old and scrap copper \$2,552,000); petroleum products (gasoline \$3,251,000, crude petroleum \$2,004,000, cylinder oil \$4,540,000, lubricating oil \$3,440,000). Other export items which exceeded a value of \$1,000,000 in 1937 were in the order of importance - scrap iron, scrap brass and bronze, tobacco, phosphate rock, carbon black, dried and evaporated fruits, industrial machinery, boards (including planks, and scantlings), sodium borate, and aircraft including parts.

Our principal imports from Germany in 1937 were potash, \$6,668,000; palm kernel oil, \$4,644,000; cameras, \$3,372,000;

\$3,372,000; iron pipes and tubings, \$3,118,000; wood pulp, \$2,788,000; synthetic alizarin, \$2,537,000; intermediate coal tar products, \$2,212,000; crude potassium sulphate, \$2,107,000. No other items reach the \$2,000,000 figure for the year 1937.

February 6, 1939

I gave this to the President and he kept it.

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February 6, 1939

MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

By memorandum dated November 28, 1938, I advised you that I had before me a Treasury Decision giving notice of the imposition of countervailing duties on certain imports from Germany under Section 303 of the Tariff Act of 1930.

The countervailing duties are required by reason of so-called "barter" transactions through which the importation into the United States of dutiable merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper.

Investigation of the current operation of the barter transactions has satisfied the Treasury that the German Government, by restricting imports, fixing import prices, regulating the method of paying for imports and controlling the disposition of the proceeds of payment, is bestowing a valuable privilege or grant in connection with about half the dutiable merchandise exported from Germany to the United States.

On or about November 28, 1938, you referred the matter to the Attorney General for an opinion. About December 10, 1938, I learned that an opinion had been submitted to the Attorney General for signature. I was also informed that the Attorney General desired to hand the opinion to you personally.

On January 31, 1939, I learned that the opinion had not been delivered to you but was being retained in the Department of Justice with a memorandum in the file saying that no action in the matter was required at this time. You will remember that the State Department suggested that the opinion be withheld until Mr. Hubler returned from Germany.

WJ/WH/ep 2/6/39

E.N.H.

SECRET

February 6, 1939

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HC/LHF/cp 2/6/39

C O P Y

February 6, 1939

MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

By memorandum dated November 28, 1938, I advised you that I had before me a Treasury Decision giving notice of the imposition of countervailing duties on certain imports from Germany under Section 505 of the Tariff Act of 1930.

The countervailing duties are required by reason of so-called "barter" transactions through which the importation into the United States of dutiable merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper.

Investigation of the current operation of the barter transactions has satisfied the Treasury that the German Government, by restricting imports, fixing import prices, regulating the method of paying for imports and controlling the disposition of the proceeds of payment, is bestowing a valuable privilege or grant in connection with about half the dutiable merchandise exported from Germany to the United States.

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HG/EHF/ep 2/6/39

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under Section 308, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of Customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

Treasury Department
Office of the Commissioner of Customs
Washington, D. C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of Section 308 of the Tariff Act of 1930 (U.S.C., title 19, sec. 1508).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of this decision in a weekly issue of **TREASURY DECISIONS**, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated

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to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

Commissioner of Customs

APPROVED:

Secretary of the Treasury

HC/ep 11/23/58
Rewritten 5/6/59

Replied to on 3/7/39

21

W. T. TREADWAY
OF DIST. MASSACHUSETTS

COMMITTEE ON WAYS AND MEANS

JOINT CONGRESSIONAL COMMITTEE
ON INTERNAL REVENUE TAXATION
LIBRARY COMMITTEE

House of Representatives U. S.

Washington, D. C.

March 1, 1939

Hon. Henry Morgenthau, Jr.,
Secretary of the Treasury,
Washington, D. C.

My dear Mr. Secretary:

I desire to call to your attention an article appearing in the Boston Transcript for Tuesday, February 28th, in which it is stated that the Treasury has quietly and secretly abrogated the countervailing duties which previously have been assessed under section 303 of the Tariff Act against certain subsidized German exports. The article indicates that such action was taken in December, 1936, at the instance of German interests, and that little if any publicity was given to the matter. It appears that the first notice many New England industries had of the arrangement was their discovery of German goods on the American market at exceptionally low prices.

According to my understanding of the provisions of section 303 of the Tariff Act, the Treasury has no discretion but to apply the countervailing duties whenever any country, person, partnership, association, cartel, or corporation pays or bestows, directly or indirectly, any bounty or grant upon the manufacture, production, or export of goods, and such goods are imported into the United States. If the allegations contained in the newspaper article are true, it would appear that the Treasury is not carrying out the plain mandate of the law in assessing countervailing duties against certain German exports to this country, and is thereby causing American industry and labor to be subjected to unfair competition in the domestic market.

In a separate article in the Transcript, there appears a dispatch from its Washington correspondent indicating that the Treasury was defending its action on the ground that the private-barter subsidy method involved did not come within the purview of section 303. May I say in this connection that both the articles to which I have referred point out that the German Government is directly involved in the subsidy. The latter of the two contains this statement:

"The German Government has full facilities for giving its exports to the United States a concealed Government subsidy. Several years ago the German Government forced business and industry to raise a billion mark fund for the subsidization of foreign exports. Later the Government itself contributed a part of the subsidy."

3/1/39

The first article above-mentioned quotes Mr. William H. Cliff, of the Home Market Club, as saying:

"An overseas buyer of German goods gets in practice a discount varying from 15 to 40 per cent, or even more, from the list price. When this price concession is not sufficient to obtain the business, the German exporter may be directly subsidized by an additional 10 to 15 per cent. Moreover, exporters are allowed to reduce prices abroad and remove losses through the repatriation of German bonds which are lower in the foreign market than in Berlin, and thus the German exporters make a profit on bonds which compensates them for the loss on merchandise exported. Furthermore, the German Government frequently pays bounties to exporters so as to enable such exporters to quote lower prices in the American market."

Whether the subsidy is from Government or private sources, or both, and whether it be direct or indirect, it would appear from a reading of section 303 of the Tariff Act that Congress intended that countervailing duties should be imposed. Moreover, inasmuch as such duties have previously been collected, it seems to me that it is up to the Treasury to show cause why such countervailing duties should not be continued.

You are of course familiar with the managed currency system of Germany, under which its so-called "inland marks" can only be used to buy German goods. It is my understanding from the first newspaper article above-mentioned that an indirect subsidy on German exports is being effected by paying in inland marks prices for American cotton, copper, and oil which are 33 per cent above the world market, and requiring American exporters of these products to spend the inland marks for German goods which are subsequently imported into this country and sold for far less than the fair market value, to the detriment of American producers of competitive products. Clearly such an indirect subsidy method is within the purview of the countervailing duty provisions of section 303, and certainly it at least comes within the purview of the anti-dumping act, which as you know imposes a special dumping duty on foreign goods imported into and sold in the United States at less than their fair market value.

I would appreciate it if you would give me, at your earliest convenience, a full explanation of the Treasury's action regarding this matter, and thereby obviate the necessity for my introducing a privileged resolution formally calling upon you for such information.

Very truly yours,

Allen D. Headman

Replied to on 3/10/39

24

RENCE J. CONNERY
SEVENTH DISTRICT
MASSACHUSETTS

JOHN J. CAVANASH
WILLIAM J. HAYES
SECRETARIES

THIS NO. 11915 MUST
APPEAR ON GENERAL COUNSEL
PINK SLIP SHOWING "ACTION
TAKEN

COMMITTEES:
LABOR
PRINTING
EDUCATION
PATENTS
WAR CLAIMS

Congress of the United States
House of Representatives
Washington, D. C.

25

Honorable Henry Morgenthau, Jr.
Secretary of the Treasury
Washington, D. C.

March 6, 1939

My dear Sir:

During the past week I have been bombarded with inquiries and protests from persons in my district with reference to a news story of February 28th, which news story has led them to believe that the officials of the Treasury Department of the United States have deliberately contravened the laws of the United States to expedite shipments of war munitions to Germany and to make possible the delivery into American markets of surplus German manufactured goods at total delivered costs which are not only less than our costs of production, but upon which the German Government or those acting for it have paid a bounty contrary to Section 303 of the Tariff Act of 1930.

I refused to believe that there could be any foundation for such charges and so stated to several of those who contacted me until there was delivered to me a copy of a letter under date of May 24, 1938, in which Honorable Francis B. Sayre, Assistant Secretary of State, refers specifically to this situation and states in substance that this illegal barter contrivance will be stopped only when the Treasury Department's release of December 23, 1936, with reference to countervailing duties is revoked. The full contents of the letter above-mentioned are as follows:

"I thank you for your letter of May 6, 1938, with reference to the importation into the United States of tinsel lahn from Germany under certain barter procedures which have been developed. The questions that seem to be involved are whether the terms of such barter transactions are such as to constitute subsidization within the meaning of Section 303 of the Tariff Act of 1930.

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"As I indicated in my letter to you of October 29, 1937, the administration of this section falls within the jurisdiction of the Treasury Department, and requests for the cancelation of the Treasury Department's release of December 23, 1936, or for the imposition of countervailing duties, should be addressed to that Department. In the circumstances I have taken the liberty of referring your letter to the Secretary of the Treasury for appropriate attention."

Sincerely yours,

Francis B. Sayre (signed)
Assistant Secretary

For your information I am enclosing herewith a copy of a letter received from the A. C. Lawrence Leather Company of Peabody, Massachusetts, one of the many protests I have received.

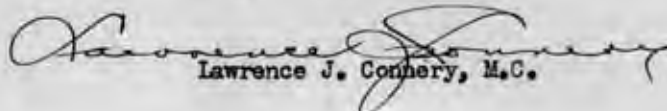
While it is true as Dr. Sayre in his letter states "the questions that seem to be involved are whether the terms of such barter transactions are such as to constitute subsidization within the meaning of Section 303 of the Tariff Act of 1930", to any person who can read English this is easily answered.

On behalf of myself and many thousands of persons in Massachusetts who have been deprived of an opportunity to provide employment for workers in that State, I most emphatically protest against your Department permitting the continuation of a practice which is not only illegal and very harmful, but which illegally and only through the connivance of Treasury Department officials deprives our Government of much-needed revenue.

I sincerely trust that the conditions complained of by so many have been corrected and if not will be immediately corrected either by Treasury Department officials or by legislation enacted by The Congress.

Trusting that I may be favored with a prompt response to this inquiry, I am,

Very truly yours,


Lawrence J. Conhery, M.C.

A. C. LAWRENCE LEATHER CO.

Peabody, Massachusetts

March 2, 1939

Honorable Lawrence J. Connery
House Office Building
Washington, D. C.

Dear Sir:

As you may suppose, we were very much astounded to read the news item by Mr. Bernard Peterson in the Boston Transcript of February 28th about the steps which have been taken in Washington, without publicity, to eliminate countervailing duties on a number of German products, including leather.

This development will have a very serious effect on the leather industry in this neighborhood. The competition of subsidized German leathers has been a very troublesome thing for us anyway, because it has taken many foreign markets which were at one time open to American leathers. About these foreign markets we are, of course, powerless to do anything, but we should at least protect ourselves at home, and no permit these subsidized leathers to take away any more business, and consequently employment.

We protest very strongly against this recent development, and think the whole matter should be given a thorough airing, and that steps should be taken as quickly as possible to restore to our industry the protection of the countervailing duties.

Very truly yours,

A. C. LAWRENCE LEATHER CO.

(signed) Harold N. Goodspeed
President

FRANCIS J. CONNERY
FIFTH DISTRICT
MASSACHUSETTS

JOHN J. CAVANAGH
WILLIAM J. HAYES
SECRETARIES

THIS NO. _____ MUST
APPEAR ON GENERAL COUNSEL
PINK SLIP SHOWING "ACTION
TAKEN

COMMITTEES:
LABOR
PENSION
EDUCATION
PATENTS
WAR CLAIMS

Congress of the United States

House of Representatives

Washington, D. C.

Honorable Henry Morgenthau, Jr.
Secretary of the Treasury
Washington, D. C.

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A. C. LAWRENCE LEATHER CO.

(signed) Harold N. Goodspeed
President

COPY

3-6-79 31

MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

I attach a copy of a letter from Representative Treadway of Massachusetts, dated March 1, 1959, requesting a statement concerning articles appearing in the Boston Transcript for February 28, charging the Treasury Department with dereliction in duty in respect of the application of countervailing duties to offset subsidies on German exports. In this connection I refer to my memorandum of February 6, 1959, with respect to the opinion of the Attorney General on this matter, which has not yet been delivered to the Treasury Department. A copy of that memorandum is attached. The State Department suggested that the opinion be withheld until Mr. Hubbs returned from Germany. Also attached is my proposed reply to Treadway.

In addition, I am attaching a proposed Treasury Decision giving notice that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of such decision, will be subject to countervailing duties equal to the net amount of any bounty or grant determined or estimated to be paid or bestowed upon its exportation from Germany. The proposed Treasury Decision was submitted to the Attorney General at the time the request for an opinion on this matter was made.

- 2 -

Pursuant to a request of Secretary Hull, I advised him by letter dated November 28, 1958, that if action under section 305 of the Tariff Act of 1950 is determined to be necessary, I perceived no objection to his suggestion that advance information be given to the German Government in order to afford that Government an opportunity to abandon the procedure in question.

Enclosures

HC:s Retyped 5/6/59

C O P Y

33

HOUSE OF REPRESENTATIVES U.S.

Washington, D. C.

March 1, 1939

Hon. Henry Morgenthau, Jr.
Secretary of the Treasury,
Washington, D. C.

My dear Mr. Secretary:

I desire to call to your attention an article appearing in the Boston Transcript for Tuesday, February 18th, in which it is stated that the Treasury has quietly and secretly abrogated the countervailing duties which previously have been assessed under section 503 of the Tariff Act against certain subsidized German exports. The article indicates that such action was taken in December, 1936, at the instance of German interests, and that little if any publicity was given to the matter. It appears that the first notice many New England industries had of the arrangement was their discovery of German goods on the American market at exceptionally low prices.

According to my understanding of the provisions of section 503 of the Tariff Act, the Treasury has no discretion but to apply the countervailing duties whenever any country, person, partnership, association, cartel, or corporation pays or bestows, directly or indirectly, any bounty or grant upon the manufacture, production, or export of goods, and such goods are imported into the United States. If the allegations contained in the newspaper article are true, it would appear that the Treasury is not carrying out the plain mandate of the law in assessing countervailing duties against certain German exports to this country, and is thereby causing American industry and labor to be subjected to unfair competition in the domestic market.

In a separate article in the Transcript, there appears a dispatch from its Washington correspondent indicating that the Treasury was defending its action on the ground that the private-barter subsidy method involved did not come within the purview of section 503. May I say in this connection that both the articles to which I have referred point out that the German Government is directly involved in the subsidy. The latter of the two contains this statement:

"The German Government has full facilities for giving its exports to the United States a concealed Government subsidy. Several years ago the German Government forced business and industry to raise a billion mark fund for the subsidization of foreign exports. Later the Government itself contributed a part of the subsidy."

COPI

Hon. Henry Morgenthau

-2-

3/1/59

The first article above-mentioned quotes Mr. William H. Cliff, of the Home Market Club, as saying:

"An overseas buyer of German goods gets in practice a discount varying from 15 to 40 per cent, or even more, from the list price. When this price concession is not sufficient to obtain the business, the German exporter may be directly subsidised by an additional 10 to 15 per cent. Moreover, exporters are allowed to reduce prices abroad and remove losses through the repatriation of German bonds which are lower in the foreign market than in Berlin, and thus the German exporters make a profit on bonds which compensates them for the loss on merchandise exported. Furthermore, the German Government frequently pays bounties to exporters so as to enable such exporters to quote lower prices in the American market."

Whether the subsidy is from Government or private sources, or both, and whether it be direct or indirect, it would appear from a reading of section 505 of the Tariff Act that Congress intended that countervailing duties should be imposed. Moreover, inasmuch as such duties have previously been collected, it seems to me that it is up to the Treasury to show cause why such countervailing duties should not be continued.

You are of course familiar with the managed currency system of Germany, under which its so-called "inland marks" can only be used to buy German goods. It is my understanding from the first newspaper article above-mentioned that an indirect subsidy on German exports is being effected by paying in inland marks prices for American cotton, copper, and oil which are 55 per cent above the world market, and requiring American exporters of these products to spend the inland marks for German goods which are subsequently imported into this country and sold for far less than the fair market value, to the detriment of American producers of competitive products. Clearly such an indirect subsidy method is within the purview of the countervailing duty provisions of section 505, and certainly it at least comes within the purview of the anti-dumping act, which as you know imposes a special dumping duty on foreign goods imported into and sold in the United States at less than their fair market value.

I would appreciate it if you would give me, at your earliest convenience, a full explanation of the Treasury's action regarding this matter, and thereby obviate the necessity for ~~me~~ introducing a privileged resolution formally calling upon you for such information.

Very truly yours,

(Signed) Allen T. Treadway

COPY

February 6, 1939

MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

By memorandum dated November 28, 1938, I advised you that I had before me a Treasury Decision giving notice of the imposition of countervailing duties on certain imports from Germany under Section 302 of the Tariff Act of 1930.

The countervailing duties are required by reason of so-called "barter" transactions through which the importation into the United States of dutiable merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper.

Investigation of the current operation of the barter transactions has satisfied the Treasury that the German Government, by restricting imports, fixing import prices, regulating the method of paying for imports and controlling the disposition of the proceeds of payment, is bestowing a valuable privilege or grant in connection with about half the dutiable merchandise exported from Germany to the United States.

On or about November 28, 1938, you referred the matter to the Attorney General for an opinion. About December 10, 1938, I learned that an opinion had been submitted to the Attorney General for signature. I was also informed that the Attorney General desired to hand the opinion to you personally.

On January 31, 1939, I learned that the opinion had not been delivered to you but was being retained in the Department of Justice with a memorandum in the file saying that no action in the matter was required at this time. You will remember that the State Department suggested that the opinion be withheld until Mr. Rublee returned from Germany.

HC/EHF/cp 2/6/39

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March 7, 1939.

Dear Mr. Treadway:

I have your letter of March 1, 1939, requesting a statement with respect to articles appearing in the Boston Transcript for February 28, 1939, regarding alleged subsidies and dumping practices affecting exports from Germany to the United States.

The Treasury Department agrees with you that it has no discretion but to apply countervailing duties under Section 303 of the Tariff Act of 1930 whenever it is satisfied that any bounty or grant is paid or bestowed directly or indirectly upon the manufacture, production, or export of goods imported into the United States which are subject to regular duties under the Tariff Act of 1930.

The articles in the Boston Transcript and your letter suggest that German exports to the United States are being subsidized in three ways:

1. By cash payments to exporters from a fund originally created by forced contributions from German business and industry and later supported by contributions from the German Government.

2. By sales of German merchandise in the United States at reduced prices with permission to offset the price reductions through the purchase of German bonds outside Germany and their sale in Germany at a profit.

3. By so-called "barter" trading in which imports into Germany are sold at prices substantially above the world-market level, and the funds derived from such sales used to purchase German goods which are sold after importation into the United States at far less than their market value.

Numerous investigations conducted in Germany by agents of the Treasury have satisfied this Department that cash subsidies from a fund built up under a German law approved June 28, 1935, were paid in connection with the exportation of German goods to certain countries, but failed to establish that such payments were made on any direct or indirect exports to the United States. Under date of December 6, 1935, the German Government gave formal assurance to the United States that such funds had not, and would not, be used to promote exports to the United States.

Bond procedures such as are described in the articles and your letter were discovered by Treasury investigations, and formed in part

the basis for the Treasury's countervailing duty order against German merchandise issued on June 4, 1936 (T.D. 48360). Under date of August 12, 1936, the German Government gave official assurance to the United States that it had "taken measures to the effect that neither the use of the scrip and bond procedure will be permitted, nor will the payment of a public or private premium or subsidy, or the use of other German currency and reichsmarks freely convertible into foreign currency or reichsmarks freely utilisable in Germany, be allowed in connection with the direct or indirect exportation of dutiable goods from Germany to the United States of America, so far as such exportation takes place or may take place on the basis of agreements which were concluded on or after August 3, 1936."

On the basis of this assurance, the Treasury Department in T.D. 48479, of August 14, 1936, instructed collectors of customs that estimated countervailing duties need not be collected on merchandise exported from Germany if the collector concerned were satisfied by documentary evidence that the contract of purchase or other agreement pursuant to which the goods were exported from Germany was entered into after August 2, 1936. Under existing instructions, countervailing duties may still be applicable to the classes of German merchandise specified in T.D. 48360 in the absence of satisfactory evidence that their export from Germany was pursuant to an agreement entered into after August 2, 1936.

Continual investigation has failed so far to establish any recent instance in which the Anti-Dumping Act, 1921, should be applied to importations from Germany. Dumping orders are now outstanding against German thumb tacks and wire fencing of certain descriptions. T.D. 46615 and T.D. 46828.

In the fall of 1936, numerous requests were received from American importers and exporters for advice as to the applicability of countervailing duties to merchandise imported from Germany pursuant to various arrangements described in the requests for advice. In view of the volume of these requests, the Treasury Department on December 23, 1936, issued a press release summarizing certain of the previously-made rulings holding that certain procedures in connection with imports from Germany would not involve the payment or bestowal of any bounty or grant within the purview of Section 505 of the Tariff Act. This press release was given wide publicity. One of the procedures not involving a bounty or grant was the payment of the purchase price of imports from Germany in whole or in part with the proceeds of the sale in Germany of merchandise exported from the United States, provided the proceeds so used were continually owned by the person for whose actual account the American merchandise was sold in Germany and the German goods were purchased in that country.

The agents of the Treasury Department stationed in Germany, as well as customs officers in this country, have been and are closely

- 3 -

scrutinizing procedures in German-American trades to keep the Department supplied with information concerning such procedures in order that it may determine whether they require the application of any special provisions of our customs laws. These, as I think you will realize, are not simple matters to determine. Even with all the facts at hand there are naturally great difficulties in attempting to fit the generalized provisions of our laws to the special circumstances surrounding trade with those countries which have adopted exchange control and other restrictions on commerce. I can only assure you that the Department is continually making earnest efforts to get all the facts and just as earnestly endeavors to apply our laws promptly and fairly to the facts of the situation as they are developed.

Sincerely,

(Signed) H. Morgenthau, Jr.

Secretary

Honorable Allen T. Treadway

House of Representatives

HC/EEF/ep 3/6'39

(T.D. _____)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under Section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of Customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

Treasury Department
Office of the Commissioner of Customs
Washington, D. C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of Section 303 of the Tariff Act of 1930 (U.S.C., title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated

- 2 -

to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

Commissioner of Customs

APPROVED:

Secretary of the Treasury

HC/cp 11/23/38
Rewritten 3/6/39

RE PROPOSED COUNTERVAILING DUTIES
AGAINST GERMANY

March 6, 1939.
4:25 p.m.

Present: Mr. Gaston
Mr. White
Mr. Foley
Mr. Cairns
Mr. Johnson

H.M.Jr: Gentlemen, I'm very much disturbed. I can't understand this thing. For four months I've been advised by the General Counsel's office and everybody else in the Treasury that there is no if, and, or but about this question of invoking countervailing duties against the Germans on their method of doing trade.

And I asked you (Johnson) yesterday at the house if there is any question and if I should go before a Congressional Committee on it. You said it was unnecessary; you left me with the impression that there wasn't even one percent doubt. Now Mr. Gaston gets the impression that you have some doubt.

Gaston: Well, Mr. Secretary, what I - the impression I got was that all of this group thought it would be desirable before we put into effect the countervailing duties, to get some additional proof from abroad, from May and from Wait.

White: You're not including me. Maybe I'm

H.M.Jr: Now, nobody's told me that. This thing has been before me with a positive recommendation for four months, and either you people know what you're doing or you don't. Now, my God, don't put me out on the end of a limb and then come around and tell someone else you need additional evidence to go before the Court of Claims.

Do you know it or don't you, and who will tell me so? Now, I want to know.

My God! - first place, you people made a bull back

-2-

there for two years. This thing went on and nobody knew it, and then suddenly after two years you find out it's been going on. Then you tell me in November that we should invoke this thing, and here it is the sixth of March and now you want additional evidence. Now, what the hell's the matter with you people?

- White: I can speak for myself. We've made a very careful examination and analysis of this, and we don't want any additional evidence. We've come to our conclusion a long time ago and have gotten it written. I don't want any more.
- H.M.Jr: I want to know, do the attorneys - do they know or don't they know?
- Foley: Are you talking now about the Attorney General's office opinion?
- H.M.Jr: I want to know, if we put in just on Treasury legal advice - are the Treasury lawyers ready to tell me, which they have told me now for four months, that I should get out a Treasury Decision putting in this countervailing duty, because they believe the Germans are dumping. They've been telling me this for four months, and I've been urging the President to do this thing. Never mind what anybody outside says. I want to know where do the Treasury lawyers - where do they stand? I'm entitled to know that. I don't want to, after I have gone to the President, be told you need additional evidence to go before the Court of Claims. Nobody told me that.
- Foley: Well, Mr. Secretary, I didn't say we needed additional evidence to go before the Court of Claims. I said that in connection with Mr. Cairns' proposed trip over there, he could get the information that we have to have in order to make this thing stand up if it is attacked before the Customs
- Gaston: Customs Court, yes.
- H.M.Jr: Now, I'm asking - let me ask Cairns. We'll take - supposing I sign that thing tonight, Cairns, and you as a lawyer - never mind anybody else - are you

-3-

satisfied that if I sign this thing as of tonight, that this will stand up in the courts? Now, just you, Cairns - please.

Cairns: No.

H.M.Jr: What?

Cairns: No.

H.M.Jr: You're not satisfied?

Cairns: I'd like to amplify that.

H.M.Jr: Please.

Cairns: I think there is enough evidence before you to justify, if not require, you to sign the T.D. The Treasury Department can act on less evidence than is necessary to win a case in court. I think we have sufficient evidence before the Department to make it your duty to sign a T.D. We want, however, to win the case in court and we would feel happier if we had more evidence.

H.M.Jr: But nobody's told me this. I mean for four months why haven't you been collecting the evidence? I'm looking at the three of you (Woley, Cairns, Johnson) why wait until we're on the point of signing? This has been going on for four months. I mean why hasn't somebody during the four months been collecting the evidence?

Cairns: We've been collecting all we could get.

H.M.Jr: But why haven't you got enough? I mean this is - this is a thing of international importance. I mean I'm going right out on the end of a limb because you fellows say if I don't do it I'm not carrying out my oath.

Now, we've settled this thing as far as Internal Revenue is concerned; we don't take cases any more up to the Board of Tax Appeals unless we're 90 percent sure we're going to win. Now, I don't want to do this thing unless I'm 90 percent sure we're going to win in the Court of Claims. I don't want to make a monkey out of on this thing. It's one of the most

-4-

delicate things I've ever been in. Why wait for four months?

In the first place, you waited for two years. This thing went on for two years. We stood there, didn't do anything. Then suddenly you make this recommendation. Four months have passed, and now you say you need additional evidence. I think you've left me in one of the worst spots I've ever been in.

Johnson: Well, Mr. Secretary, I'm the one that raised the question. As I recall, I told you yesterday that I was morally sure that there is a subsidy involved here; that the question is as between a premium and a profit, and that I was not sure that we had enough proof to establish this as a premium before the Court.

H.M.Jr: Now wait a minute. You never said that to me yesterday. You never talked about the Court. You never used the word "premium." You never discussed the Court. Now, stop and think a minute, please.

(Pause)

You never mentioned "Court," you never mentioned the word "premium." I've never heard it used before. I asked you, should I go before Congress and explain this thing, because if there were any doubts I'd like to go before a committee.

You said, quick as a flash, "Mr. Secretary, you don't have to explain this to anybody."

Johnson: I said, "This is not a matter on which it would be appropriate to go before"

H.M.Jr: Now, if I'm wrong, don't hesitate to contradict me, but I can't remember your saying anything about the Court, anything about the premium. You said that if we're going to go ahead with this that you can't go to Germany because they hate you, but if you could make the suggestion that Mr. Cairns should go, and he could go right away, you think it would be helpful. But no question of uncertainty in this matter was raised.

-5-

Gaston: The way the thing came up

H.M.Jr: Now, just a second. This is between Johnson and myself, because Johnson - I mean it's not only yesterday that nobody raised any doubt, but nobody's raised any doubts for the last four months. Now, if I'm wrong, Cairns, please talk up.

Cairns: I'd just like to make one observation.

H.M.Jr: Say anything you want.

Cairns: I don't believe this matter has been going on for two years. I think it has crystallized within a recent period. I think when the press release of December 23, 1936, was issued

H.M.Jr: Which was never referred to the Attorney General.

Cairns: ... when that was issued, this over-price appeared to be a legitimate profit. Very recently the over-price arrangement has crystallized into a system.

H.M.Jr: Well now - Harry, now listen, don't wink at me.

White: I didn't mean to wink at you deliberately.

H.M.Jr: Now you come out, if you don't agree; this is terribly important.

White: I can speak. They know my position. My position has been

H.M.Jr: Well, come on.

White: ... that the December 23

H.M.Jr: I haven't talked to Harry once on this.

White: ... that the order permitting them to engage in this barter transaction was a violation of the earlier order. I so stated it to the legal staff when it came to my attention, which was four months after it was inaugurated. And when the matter came up again we went through the whole situation, prepared a memorandum from the economic point of view. And I may say in my opinion it's 99 percent an

-6-

economic situation and not a legal. The question as to whether it's a subsidy or a bounty or grant - once the - bounty and grant having been defined as the legal division has defined it, we took the position that there is no doubt about it, and we still hold to that position that there is no doubt about it, and we're willing to be responsible for that position. and I think it was a violation of the December 1936 order from the moment it was issued. The mere fact that they increased the volume of transactions subsequent to the inauguration of the order doesn't mean it wasn't a violation when it was first started. One transaction constitutes a violation, in my opinion. It didn't get to be important enough until about a year or so later.

But that's our position in the economic staff.

- Gaston: I think in justice to Mr. Johnson and Mr. Cairns here, I should explain just how this came up this morning. It was felt that since Mr. Cairns was going over there and was going to get some material from Mr. Wait and from Mr. May, it would be desirable to defer the order, since he might get some evidence that would be very valuable in the Customs Court when it came to proving our case, and that there would be less likelihood of his getting the evidence if the order
- Foley: You tried to come in to see the Secretary before he went to the President, to tell him that.
- Gaston: That if the order had been issued before he went over, he might have some difficulty getting the evidence.
- H.M.Jr: You - Gaston told me that Cairns isn't satisfied yet, Cairns won't take the position that he's got enough evidence to win in the Court of Claims.
- White: That's the first time it's been mentioned in my hearing that there was any doubt on the part of the legal staff that that constituted - that there was some doubt about it. I may not have overheard some of the discussion when we argued this thing out by the hour. But to my knowledge, my recollection, last fall when we went over it, was never raised that
it

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there was some doubt about it. Was there, Huntington?

Cairns: I discussed it with Johnson; he first had to sell me.

White: Your objections were on a different ground, Huntington - very real, very legitimate. You were questioning the first order, on which you were quite right.

Foley: It's a question of working up the case, the evidence, the incidents, and the witnesses.

Cairns: I want you to have the maximum protection. Now

H.M.Jr: But my dear Cairns, for God's sake, what have - I don't know what the set-up is, but here's the General Counsel - what have you people been doing for four months? You knew that any day this thing would come. Why didn't somebody say, "Send somebody to Europe" in December or November if you needed additional evidence. I mean no one has said to me that there is any doubt about winning. No one has raised that question. And what has been going on for four months? Never mind the delay in the two years, but from the first time this was brought to my attention, why not build up the case if there are any doubts, why wait until Johnson comes to me? I send for Johnson Sunday to talk the thing over, and if I hadn't sent for him - I sent for him on account of the Treadway letter, but for four months what did you fellows do, just put it in a pigeonhole and forget about it?

Another thing is - I mean until I raised the question you hadn't checked up on how much the Germans are doing this thing; and with this thing pending I should think you'd keep this thing current - how much business. I mean I've got 78,000 employees and I can't keep prodding each person all the time. With this thing pending, I should think the information as to what proportion of German trade was being done this way would be current.

And furthermore, with this thing pending, if there are any doubts about evidence when it came to trial, I'd think it would be natural, with the tremendous staff you people have got - you'd be getting the evidence.

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White: The second portion is my responsibility. I don't agree that we should have done it without your direction. But it is my responsibility. We did it once to show that it was a large amount; and it took three or four men working a month.

H.M.Jr: Why not keep it current?

White: It took a lot of staff. I didn't think it would be significant enough.

H.M.Jr: Three people for a week?

White: For a month. They worked for a month. We discovered it was a half. My position was, supposing it's a quarter, a third; it still remained a violation.

H.M.Jr: I disagree with you. I think it should have been kept current while this thing was in the air.

White: O.K.

H.M.Jr: I still - here I am. I'm not going to get the President or anybody to sign this thing if you fellows are so snaky on this thing.

Cairns: We're not shaky. It's just the conservatism of a lawyer about winning a case in court. Now, in my mind - I brought it out on Saturday in conversation with Johnson; I brought up the question of proof, proving our case in the Customs Court, and in my mind was the fact that we would bring over May to testify in order to put on our case.

H.M.Jr: But what I want to know - supposing I signed this thing tonight; have you got a 90 percent chance of winning this case? Who tries them? Who tries them? Who's the man that tries them?

Cairns: Justice.

Gaston: In what court?

Cairns: Customs.

Foley: The Assistant Attorney General in New York for Customs.

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H.M.Jr: Have we a case or haven't we, gentlemen?

Cairns: I really don't see how you can refuse to sign the order, the T.D. But on the basis of the evidence....

H.M.Jr: Have we a case?

Johnson: Mr. Secretary, it's a question of that last 10 percent.

H.M.Jr: All right. I'll make it easier. Have we a 75 percent chance of winning?

Johnson: I think so.

Cairns: I'll say you have a 90 percent chance. But we just wanted to give you all the protection we possibly could.

H.M.Jr: But why wait until I stir this thing up?

Foley: Mr. Secretary, we've been trying to get that thing out of the Attorney General now for three or four months. The T.D. was over there before him with the request for an opinion

H.M.Jr: Ed, that's got nothing to do - the fact it was there, and you knew this thing was coming - the fellows could be busy getting the evidence necessary. And why do I have to stick my neck out on this thing and then you suggest that somebody go over and get additional evidence?

White: Huntington, when May was here he read those memos. He read those memos and he acquiesced.

Cairns: I got full statements from him.

White: That's right.

H.M.Jr: Well, I don't know what to do.

Gaston: Well

Foley: May I make a suggestion?

H.M.Jr: I wish you would.

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Foley: Why not let Huntington go over just as soon as possible and let him see May and let him see the fellow in Paris - what's his name?

Cairns: Wait.

Foley: Wait. And let him call us as soon as he's satisfied that he has enough evidence to present to the Customs Court, which would be within a few days after he gets in London.

H.M.Jr: What did we have May over here for?

White: We went through the whole business, etc., at that time, unless he's changed his mind, since he was thoroughly conversant with the view, with the analysis, and he was in thorough accord with the facts and the conclusion. Now, what further evidence there is I don't know.

H.M.Jr: Did you (Cairns) see May when he was here?

Cairns: I got statements from him.

H.M.Jr: What else can you get from May by going to Europe?

Foley: When was May here, how long ago?

Cairns: November.

Foley: November. A lot may have transpired since November.

H.M.Jr: Well, but can't you use the cables? What is it you want to know?

Johnson: That's the difficulty. There isn't a particular question to ask.

Cairns: Sufficiently definite to ask.

Johnson: There is no need of sending anyone over if you want to go in on a 90 percent or a 75 percent case.

H.M.Jr: That's all you ever have of winning. That's all you ever have of winning.

Johnson: We want to give you a hundred percent case.

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- White: There's no harm in sending a lengthy cable to May, asking him if there's been any change whatsoever in the situation which was discussed at length in your office. I mean you'll get your reply tomorrow as far as that particular aspect is concerned.
- H.M.Jr: Send a thousand-word cable putting down the questions that you want. I haven't got time - I'm not going to be in a position that when I've gone to the President and then he suddenly says, "Well, Henry, what's the matter with you, don't you know what your mind is from day to day?"
- White: Although I think independent of that it wouldn't be a bad idea for Huntington to go over there. But independent of that.
- Johnson: Independent of that?
- White: I mean assuming you've got a 99, a 100 percent chance of winning, I still think it would be a desirable thing for Huntington to go over, though I do think under those circumstances he definitely ought to be accompanied by one of our economists.
- H.M.Jr: (On phone) Ask somebody in Archie Lochhead's office - I want to know what fast steamers sail for Europe Thursday.
- Foley: : Manhattan's sailing Thursday.
- H.M.Jr: Sne's slow.
- Foley: He'd have to go on a United States line, with a Government order.
- Johnson: That's a six-day boat anyway.
- White: I think, in other words, if there is a court case, the fact that he has been over and he has seen whatever there is would make it a little easier. There still is absolutely no doubt in our minds about this. If that isn't a case of indirect bounty or grant, then I've never seen one.
- H.M.Jr: What about this using Mexican oil?

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Foley: Bill - Mexican oil.

Johnson: That drops right exactly into the rest of the case. The only difference at all is that they're using Mexican petroleum instead of American cotton or copper, and as I say, I do not know the prices involved. I understand they sold the oil at 90 cents; what a fair price would have been I don't know.

H.M.Jr: Who is there in your office that's drilled in this particular kind of stuff?

Johnson: Man named Corkhill has done more work than anybody else.

H.M.Jr: Corkhill?

Johnson: Corkhill, yes, sir.

H.M.Jr: Is he thoroughly familiar with this?

Johnson: Yes, sir. He's thoroughly familiar with the general question of countervailing duties, but not familiar in detail with what has been developing the last few months.

H.M.Jr: But he knows countervailing duties.

Johnson: He knows countervailing duties, yes, sir.

H.M.Jr: What I suggest you do is this. I don't know how you're (Cairns) fixed with your family. Could you sail Wednesday?

Cairns: Yes.

H.M.Jr: I suggest that Corkhill go too, and an economist.

White: There's a man Taylor Ostrander who, in my humble opinion, knows at least

H.M.Jr: Who?

White: Taylor Ostrander, who's been working - very competent - been working in that field.

H.M.Jr: I think you ought to take some fellow who's been .. - don't you think so?

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Cairns: I'll be glad to have anybody.

Foley: I think that's a good idea, Mr. Secretary. He can leave him there to work it up.

H.M.Jr: What I would do is send a cable over that this is what you fellows want, and to get it ready.

Foley: I think they ought to meet in London rather than Berlin and have the Berlin fellow and Paris fellow meet him in London when he gets there, with this information.

H.M.Jr: Why?

Foley: Well, I think it looks a little better, rather than have the meeting in Paris.

H.M.Jr: Well, Wait lives in Paris. Why not go to Paris?

Foley: How about Bullitt's situation and the relationship of France toward Germany, and all of the rest of it?

White: This is a normal Treasury operation. We've got offices there.

H.M.Jr: Our big office is in Paris. I'd let him go to Paris.

Foley: O.K.

H.M.Jr: Do you want Heath to go back with you Wednesday? Could he be any use?

White: He doesn't know much about it we don't know.

H.M.Jr: You (Cairns) and this technical lawyer.

Johnson: Yes, Corkhill.

H.M.Jr: Corkhill. And one man from your (White) office.

White: Ostrander would be the man.

H.M.Jr: You're not going into Germany?

Cairns: I imagine we'll have to go to Berlin. But I do want to talk to Wait alone in Paris before I see

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May.

- H.M.Jr: Then the three of you get off the boat, go to Paris, see Wait, then go on to Berlin.
- Johnson: I just suggest that I think the third man would be more apt to be a drag than a help on the party.
- H.M.Jr: You do think so?
- Johnson: Corkhill is a very tight old technical lawyer, heavy on his feet, with a game leg, and he'd probably do more good in the office here, I believe.
- Foley: I was thinking - I think this is what the Secretary had in mind. I don't know Corkhill and I never saw him. But if there is somebody who is familiar with countervailing duties who could develop some phase of it after Huntington comes back on the ground, it might be extremely helpful to have him present when these conferences take place.
- Cairns: It's not such a technical subject, Mr. Secretary.
- H.M.Jr: I'll let you decide. But there's the thing. You go Wednesday and spend enough time to satisfy yourself, see? Don't wait until you come back. Give me your report in a cable. It takes you a week to go over there and a week or so you're there. And try to do a little - I mean follow through on a cotton example, on a copper one, and oil.
- Johnson: And apples.
- H.M.Jr: And apples? Are they doing apples?
- Johnson: (Nods yes)
- H.M.Jr: Oh, really?
- Johnson: Talked about apples; never found a case.
- Foley: That's different.
- H.M.Jr: Now you should go, or shouldn't you?
- Gaston: We don't know whose apples they are.

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- H.M.Jr: Let me say this. The only thing that I want, the only thing I get out of this thing - I don't care whether - but this happens to be one of the most controversial and one of the most difficult situations, where I personally will be in it. I can't change: I do think that within a lapse of four months, if I had had this responsibility, I would have been digging, digging, getting evidence all the time, and not wait until we are on the eve of signing. See?
- Cairns: We have been collecting it right along.
- H.M.Jr: You ought to have enough.
- Johnson: We haven't done this.
- Cairns: We haven't gone to Europe, but we have been working here.
- White: Is there one additional possibility that is worth anything? If you could get the Attorney General's decision, that, I think, would be very desirable in clearing your hands completely.
- H.M.Jr: If you don't mind, that's in the pot just now; I think the President's going to ask for it. He told me today he would. Mr. Hull has raised his objections at five minutes of four, and we're right in the midst of this thing, and so - I mean Mr. Hull says he won't do anything one way or the other; we're right in the midst of it. Now you fellows come in with this and say, "We don't know whether we'll win the case. Isn't it terrible? We'll have to go out and get some more proof."
- Foley: I don't think it's as bad as that, Mr. Secretary. I asked these fellows in Herbert Gaston's office this morning if this should be held up until after Huntington had made a check on the ground, and they said that they didn't think that it was very important one way or the other; they preferred to have it held up until after Huntington went over there and cleared and then called back.
- Cairns: Only so that it would not interfere with my work over there. That was the only basis for holding it up.

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- Foley: But if it was desirable to sign the order today, these fellows said they didn't feel that ...
- H.M.Jr: But, Ed, you've got the whole thing; this pressure should be from you fellows, to get me to sign the order, and not from me bringing pressure to bear on you.
- Foley: Well, Mr. Secretary,
- H.M.Jr: I mean you fellows ought to be worried. Johnson should be worried - "Here this law isn't being carried out; why doesn't Morgenthau do something?" I shouldn't be in the position of prodding you.
- Foley: I brought it up - I say this merely as a plea for myself - I brought this thing up a month ago, and you said, "Bring it up again on the fifth of March, Ed," and I put it on my calendar, and today is the sixth of March.
- H.M.Jr: Yes.
- Foley: And I had the stuff with me this morning and you brought it up ahead of me.
- H.M.Jr: On account of the Treadway letter.
- Foley: On account of the Treadway letter, that's right.
- H.M.Jr: I still say that doesn't say that - what you say just makes it all the more annoying. Knowing it was coming on the sixth of March, you should be in position to say, "Mr. Morgenthau, everything is perfect, we're ready; everything is fine." Instead of that, on the sixth of March, you suddenly say, "Whoops, we better send somebody to Europe and find out whether we have got a case or not."
- Foley: That was your (Johnson) suggestion this morning: sending somebody to Europe.
- Johnson: That's what I said yesterday.
- Foley: He didn't tell that to me.
- Johnson: I didn't say "better see whether you've got a case."

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Cairns: There's no question, on the Treasury's record, that the T.D. should be signed.

Gaston: You said, "We're convinced, but we weren't sure we had proof."

H.M.Jr: My God, what's-his-name, the lawyer for Jimmy Hines, was convinced too. Who's his lawyer?

Foley: Stryker.

H.M.Jr: Stryker was convinced. He even cried, he was so convinced.

Foley: Maybe he had to cry to convince himself.

H.M.Jr: O.K. Well, I hope you have a nice trip. Wednesday is the first boat - the Manhattan. And get me word just as soon as you can, will you?

Cairns: Yes, sir.

H.M.Jr: If I don't see you again, have a nice time and give my regards to the Ambassador.

Cairns: Thank you very much.

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3-6-39

MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

I attach a copy of a letter from Representative Treadway of Massachusetts, dated March 1, 1939, requesting a statement concerning articles appearing in the Boston Transcript for February 28, charging the Treasury Department with dereliction in duty in respect of the application of countervailing duties to offset subsidies on German exports. In this connection I refer to my memorandum of February 6, 1939, with respect to the opinion of the Attorney General on this matter, which has not yet been delivered to the Treasury Department. A copy of that memorandum is attached. The State Department suggested that the opinion be withheld until Mr. Rubles returned from Germany. Also attached is my proposed reply to Treadway.

In addition, I am attaching a proposed Treasury Decision giving notice that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of such decision, will be subject to countervailing duties equal to the net amount of any bounty or grant determined or estimated to be paid or bestowed upon its exportation from Germany. The proposed Treasury Decision was submitted to the Attorney General at the time the request for an opinion on this matter was made.

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Pursuant to a request of Secretary Hull, I advised him by letter dated November 28, 1938, that if action under section 305 of the Tariff Act of 1930 is determined to be necessary, I perceived no objection to his suggestion that advance information be given to the German Government in order to afford that Government an opportunity to abandon the procedure in question.

Enclosures

C O P Y

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HOUSE OF REPRESENTATIVES U.S.

Washington, D. C.

March 1, 1939

Hon. Henry Morgenthau, Jr.
Secretary of the Treasury,
Washington, D. C.

My dear Mr. Secretary:

I desire to call to your attention an article appearing in the Boston Transcript for Tuesday, February 28th, in which it is stated that the Treasury has quietly and secretly abrogated the countervailing duties which previously have been assessed under section 303 of the Tariff Act against certain subsidized German exports. The article indicates that such action was taken in December, 1936, at the instance of German interests, and that little if any publicity was given to the matter. It appears that the first notice many New England industries had of the arrangement was their discovery of German goods on the American market at exceptionally low prices.

According to my understanding of the provisions of section 303 of the Tariff Act, the Treasury has no discretion but to apply the countervailing duties whenever any country, person, partnership, association, cartel, or corporation pays or bestows, directly or indirectly, any bounty or grant upon the manufacture, production, or export of goods, and such goods are imported into the United States. If the allegations contained in the newspaper article are true, it would appear that the Treasury is not carrying out the plain mandate of the law in assessing countervailing duties against certain German exports to this country, and is thereby causing American industry and labor to be subjected to unfair competition in the domestic market.

In a separate article in the Transcript, there appears a dispatch from its Washington correspondent indicating that the Treasury was defending its action on the ground that the private-barter subsidy method involved did not come within the purview of section 303. May I say in this connection that both the articles to which I have referred point out that the German Government is directly involved in the subsidy. The latter of the two contains this statement:

"The German Government has full facilities for giving its exports to the United States a concealed Government subsidy. Several years ago the German Government forced business and industry to raise a billion mark fund for the subsidization of foreign exports. Later the Government itself contributed a part of the subsidy."

COPY

Hon. Henry Morgenthau

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The first article above-mentioned quotes Mr. William H. Cliff, of the Home Market Club, as saying:

"An overseas buyer of German goods gets in practice a discount varying from 15 to 40 per cent, or even more, from the list price. When this price concession is not sufficient to obtain the business, the German exporter may be directly subsidized by an additional 10 to 15 per cent. Moreover, exporters are allowed to reduce prices abroad and remove losses through the repatriation of German bonds which are lower in the foreign market than in Berlin, and thus the German exporters make a profit on bonds which compensates them for the loss on merchandise exported. Furthermore, the German Government frequently pays bounties to exporters so as to enable such exporters to quote lower prices in the American market."

Whether the subsidy is from Government or private sources, or both, and whether it be direct or indirect, it would appear from a reading of section 303 of the Tariff Act that Congress intended that countervailing duties should be imposed. Moreover, inasmuch as such duties have previously been collected, it seems to me that it is up to the Treasury to show cause why such countervailing duties should not be continued.

You are of course familiar with the managed currency system of Germany, under which its so-called "inland marks" can only be used to buy German goods. It is my understanding from the first newspaper article above-mentioned that an indirect subsidy on German exports is being effected by paying in inland marks prices for American cotton, copper, and oil which are 55 per cent above the world market, and requiring American exporters of these products to spend the inland marks for German goods which are subsequently imported into this country and sold for far less than the fair market value, to the detriment of American producers of competitive products. Clearly such an indirect subsidy method is within the purview of the countervailing duty provisions of section 303, and certainly it at least comes within the purview of the anti-dumping act, which as you know imposes a special dumping duty on foreign goods imported into and sold in the United States at less than their fair market value.

I would appreciate it if you would give me, at your earliest convenience, a full explanation of the Treasury's action regarding this matter, and thereby obviate the necessity for my introducing a privileged resolution formally calling upon you for such information.

Very truly yours,

(Signed) Allen T. Treadway

COPY

February 6, 1939

MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

By memorandum dated November 28, 1938, I advised you that I had before me a Treasury Decision giving notice of the imposition of countervailing duties on certain imports from Germany under Section 303 of the Tariff Act of 1930.

The countervailing duties are required by reason of so-called "barter" transactions through which the importation into the United States of dutiable merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper.

Investigation of the current operation of the barter transactions has satisfied the Treasury that the German Government, by restricting imports, fixing import prices, regulating the method of paying for imports and controlling the disposition of the proceeds of payment, is bestowing a valuable privilege or grant in connection with about half the dutiable merchandise exported from Germany to the United States.

On or about November 28, 1938, you referred the matter to the Attorney General for an opinion. About December 10, 1938, I learned that an opinion had been submitted to the Attorney General for signature. I was also informed that the Attorney General desired to hand the opinion to you personally.

On January 31, 1939, I learned that the opinion had not been delivered to you but was being retained in the Department of Justice with a memorandum in the file saying that no action in the matter was required at this time. You will remember that the State Department suggested that the opinion be withheld until Mr. Rublee returned from Germany.

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March 7, 1939.

Dear Mr. Treadway:

I have your letter of March 1, 1939, requesting a statement with respect to articles appearing in the Boston Transcript for February 28, 1939, regarding alleged subsidies and dumping practices affecting exports from Germany to the United States.

The Treasury Department agrees with you that it has no discretion but to apply countervailing duties under Section 303 of the Tariff Act of 1930 whenever it is satisfied that any bounty or grant is paid or bestowed directly or indirectly upon the manufacture, production, or export of goods imported into the United States which are subject to regular duties under the Tariff Act of 1930.

The articles in the Boston Transcript and your letter suggest that German exports to the United States are being subsidized in three ways:

1. By cash payments to exporters from a fund originally created by forced contributions from German business and industry and later supported by contributions from the German Government.
2. By sales of German merchandise in the United States at reduced prices with permission to offset the price reductions through the purchase of German bonds outside Germany and their sale in Germany at a profit.
3. By so-called "barter" trading in which imports into Germany are sold at prices substantially above the world-market level, and the funds derived from such sales used to purchase German goods which are sold after importation into the United States at far less than their market value.

Numerous investigations conducted in Germany by agents of the Treasury have satisfied this Department that cash subsidies from a fund built up under a German law approved June 28, 1935, were paid in connection with the exportation of German goods to certain countries, but failed to establish that such payments were made on any direct or indirect exports to the United States. Under date of December 6, 1935, the German Government gave formal assurance to the United States that such funds had not, and would not, be used to promote exports to the United States.

Bond procedures such as are described in the articles and your letter were discovered by Treasury investigations, and formed in part

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the basis for the Treasury's countervailing duty order against German merchandise issued on June 4, 1936 (T.D. 48360). Under date of August 12, 1936, the German Government gave official assurance to the United States that it had "taken measures to the effect that neither the use of the scrip and bond procedure will be permitted, nor will the payment of a public or private premium or subsidy, or the use of other German currency and reichsmarks freely convertible into foreign currency or reichsmarks freely utilisable in Germany, be allowed in connection with the direct or indirect exportation of dutiable goods from Germany to the United States of America, so far as such exportation takes place or may take place on the basis of agreements which were concluded on or after August 3, 1936."

On the basis of this assurance, the Treasury Department in T.D. 48479, of August 14, 1936, instructed collectors of customs that estimated countervailing duties need not be collected on merchandise exported from Germany if the collector concerned were satisfied by documentary evidence that the contract of purchase or other agreement pursuant to which the goods were exported from Germany was entered into after August 2, 1936. Under existing instructions, countervailing duties may still be applicable to the classes of German merchandise specified in T.D. 48360 in the absence of satisfactory evidence that their export from Germany was pursuant to an agreement entered into after August 2, 1936.

Continual investigation has failed so far to establish any recent instance in which the Anti-Dumping Act, 1921, should be applied to importations from Germany. Dumping orders are now outstanding against German thumb tacks and wire fencing of certain descriptions. T.D. 46615 and T.D. 46826.

In the fall of 1936, numerous requests were received from American importers and exporters for advice as to the applicability of countervailing duties to merchandise imported from Germany pursuant to various arrangements described in the requests for advice. In view of the volume of these requests, the Treasury Department on December 23, 1936, issued a press release summarizing certain of the previously-made rulings holding that certain procedures in connection with imports from Germany would not involve the payment or bestowal of any bounty or grant within the purview of Section 303 of the Tariff Act. This press release was given wide publicity. One of the procedures not involving a bounty or grant was the payment of the purchase price of imports from Germany in whole or in part with the proceeds of the sale in Germany of merchandise exported from the United States, provided the proceeds so used were continually owned by the person for whose actual account the American merchandise was sold in Germany and the German goods were purchased in that country.

The agents of the Treasury Department stationed in Germany, as well as customs officers in this country, have been and are closely

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scrutinizing procedures in German-American trades to keep the Department supplied with information concerning such procedures in order that it may determine whether they require the application of any special provisions of our customs laws. These, as I think you will realize, are not simple matters to determine. Even with all the facts at hand there are naturally great difficulties in attempting to fit the generalized provisions of our laws to the special circumstances surrounding trade with those countries which have adopted exchange control and other restrictions on commerce. I can only assure you that the Department is continually making earnest efforts to get all the facts and just as earnestly endeavors to apply our laws promptly and fairly to the facts of the situation as they are developed.

Sincerely,

(Signed) H. Morgenthau, Jr.

Secretary

Honorable Allen T. Treadway

House of Representatives

(T.D. _____)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under Section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of Customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

Treasury Department
Office of the Commissioner of Customs
Washington, D. C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of Section 303 of the Tariff Act of 1930 (U.S.C., title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method of means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated

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to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

Commissioner of Customs

APPROVED:

Secretary of the Treasury

etc
COPY

3-6-39

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MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

I attach a copy of a letter from Representative Treadway of Massachusetts, dated March 1, 1939, requesting a statement concerning articles appearing in the Boston Transcript for February 29, charging the Treasury Department with dereliction in duty in respect of the application of countervailing duties to offset subsidies on German exports. In this connection I refer to my memorandum of February 6, 1939, with respect to the opinion of the Attorney General on this matter, which has not yet been delivered to the Treasury Department. A copy of that memorandum is attached. The State Department suggested that the opinion be withheld until Mr. Ruhlée returned from Germany. Also attached is my proposed reply to Treadway.

In addition, I am attaching a proposed Treasury Decision giving notice that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of such decision, will be subject to countervailing duties equal to the net amount of any bounty or grant determined or estimated to be paid or bestowed upon its exportation from Germany. The proposed Treasury Decision was submitted to the Attorney General at the time the request for an opinion on this matter was made.

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Pursuant to a request of Secretary Hull, I advised him by letter dated November 28, 1938, that if action under section 305 of the Tariff Act of 1930 is determined to be necessary, I perceived no objection to his suggestion that advance information be given to the German Government in order to afford that Government an opportunity to abandon the procedure in question.

Enclosures

HC:is Retyped 5/6/59

HOUSE OF REPRESENTATIVES U.S.

Washington, D. C.

March 1, 1939

Hon. Henry Morgenthau, Jr.
Secretary of the Treasury,
Washington, D. C.

My dear Mr. Secretary:

I desire to call to your attention an article appearing in the Boston Transcript for Tuesday, February 28th, in which it is stated that the Treasury has quietly and secretly abrogated the countervailing duties which previously have been assessed under section 305 of the Tariff Act against certain subsidized German exports. The article indicates that such action was taken in December, 1938, at the instance of German interests, and that little if any publicity was given to the matter. It appears that the first notice many New England industries had of the arrangement was their discovery of German goods on the American market at exceptionally low prices.

According to my understanding of the provisions of section 305 of the Tariff Act, the Treasury has no discretion but to apply the countervailing duties whenever any country, person, partnership, association, cartel, or corporation pays or bestows, directly or indirectly, any bounty or grant upon the manufacture, production, or export of goods, and such goods are imported into the United States. If the allegations contained in the newspaper article are true, it would appear that the Treasury is not carrying out the plain mandate of the law in assessing countervailing duties against certain German exports to this country, and is thereby causing American industry and labor to be subjected to unfair competition in the domestic market.

In a separate article in the Transcript, there appears a dispatch from its Washington correspondent indicating that the Treasury was defending its action on the ground that the private-barter subsidy method involved did not come within the purview of section 305. May I say in this connection that both the articles to which I have referred point out that the German Government is directly involved in the subsidy. The latter of the two contains this statement:

"The German Government has full facilities for giving its exports to the United States a concealed Government subsidy. Several years ago the German Government forced business and industry to raise a billion mark fund for the subsidization of foreign

exports. Later the Government itself contributed a part of the subsidy."

COPY

Hon. Henry Morgenthau

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5/1/39

The first article above-mentioned quotes Mr. William H. Cliff, of the Home Market Club, as saying:

"An overseas buyer of German goods gets in practice a discount varying from 15 to 40 per cent, or even more, from the list price. When this price concession is not sufficient to obtain the business, the German exporter may be directly subsidized by an additional 10 to 15 per cent. Moreover, exporters are allowed to reduce prices abroad and remove losses through the repatriation of German bonds which are lower in the foreign market than in Berlin, and thus the German exporters make a profit on bonds which compensates them for the loss on merchandise exported. Furthermore, the German Government frequently pays bounties to exporters so as to enable such exporters to quote lower prices in the American market."

Whether the subsidy is from Government or private sources, or both, and whether it be direct or indirect, it would appear from a reading of section 303 of the Tariff Act that Congress intended that countervailing duties should be imposed. Moreover, inasmuch as such duties have previously been collected, it seems to me that it is up to the Treasury to show cause why such countervailing duties should not be continued.

You are of course familiar with the managed currency system of Germany, under which its so-called "inland marks" can only be used to buy German goods. It is my understanding from the first newspaper article above-mentioned that an indirect subsidy on German exports is being effected by paying in inland marks prices for American cotton, copper, and oil which are 35 per cent above the world market, and requiring American exporters of these products to spend the inland marks for German goods which are subsequently imported into this country and sold for far less than the fair market value, to the detriment of American producers of competitive products. Clearly such an indirect subsidy method is within the purview of the countervailing duty provisions of section 303, and certainly it at least comes within the purview of the anti-dumping act, which as you know imposes a special dumping duty on foreign goods imported into and sold in the United States at less than their fair market value.

I would appreciate it if you would give me, at your earliest convenience, a full explanation of the Treasury's action regarding this matter, and thereby obviate the necessity for my introducing a privileged resolution formally calling upon you for such information.

Very truly yours,

(Signed) Allen T. Treadway

February 6, 1939

MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

By memorandum dated November 28, 1938, I advised you that I had before me a Treasury Decision giving notice of the imposition of countervailing duties on certain imports from Germany under Section 302 of the Tariff Act of 1930.

The countervailing duties are required by reason of so-called "barter" transactions through which the importation into the United States of dutiable merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper.

Investigation of the current operation of the barter transactions has satisfied the Treasury that the German Government, by restricting imports, fixing import prices, regulating the method of paying for imports and controlling the disposition of the proceeds of payment, is bestowing a valuable privilege or grant in connection with about half the dutiable merchandise exported from Germany to the United States.

On or about November 28, 1938, you referred the matter to the Attorney General for an opinion. About December 10, 1938, I learned that an opinion had been submitted to the Attorney General for signature. I was also informed that the Attorney General desired to hand the opinion to you personally.

On January 31, 1939, I learned that the opinion had not been delivered to you but was being retained in the Department of Justice with a memorandum in the file saying that no action in the matter was required at this time. You will remember that the State Department suggested that the opinion be withheld until Mr. Babler returned from Germany.

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March 7, 1939.

Dear Mr. Treadway:

I have your letter of March 1, 1939, requesting a statement with respect to articles appearing in the Boston Transcript for February 28, 1939, regarding alleged subsidies and dumping practices affecting exports from Germany to the United States.

The Treasury Department agrees with you that it has no discretion but to apply countervailing duties under Section 503 of the Tariff Act of 1930 whenever it is satisfied that any bounty or grant is paid or bestowed directly or indirectly upon the manufacture, production, or export of goods imported into the United States which are subject to regular duties under the Tariff Act of 1930.

The articles in the Boston Transcript and your letter suggest that German exports to the United States are being subsidized in three ways:

1. By cash payments to exporters from a fund originally created by forced contributions from German business and industry and later supported by contributions from the German Government.
2. By sales of German merchandise in the United States at reduced prices with permission to offset the price reductions through the purchase of German bonds outside Germany and their sale in Germany at a profit.
3. By so-called "barter" trading in which imports into Germany are sold at prices substantially above the world-market level, and the funds derived from such sales used to purchase German goods which are sold after importation into the United States at far less than their market value.

Numerous investigations conducted in Germany by agents of the Treasury have satisfied this Department that cash subsidies from a fund built up under a German law approved June 28, 1935, were paid in connection with the exportation of German goods to certain countries, but failed to establish that such payments were made on any direct or indirect exports to the United States. Under date of December 6, 1935, the German Government gave formal assurance to the United States that such funds had not, and would not, be used to promote exports to the United States.

Bond procedures such as are described in the articles and your letter were discovered by Treasury investigations, and formed in part

the basis for the Treasury's countervailing duty order against German merchandise issued on June 4, 1936 (T.D. 48360). Under date of August 12, 1936, the German Government gave official assurance to the United States that it had "taken measures to the effect that neither the use of the scrip and bond procedure will be permitted, nor will the payment of a public or private premium or subsidy, or the use of other German currency and reichsmarks freely convertible into foreign currency or reichsmarks freely utilisable in Germany, be allowed in connection with the direct or indirect exportation of dutiable goods from Germany to the United States of America, so far as such exportation takes place or may take place on the basis of agreements which were concluded on or after August 5, 1936."

On the basis of this assurance, the Treasury Department in T.D. 48479, of August 14, 1936, instructed collectors of customs that estimated countervailing duties need not be collected on merchandise exported from Germany if the collector concerned were satisfied by documentary evidence that the contract of purchase or other agreement pursuant to which the goods were exported from Germany was entered into after August 2, 1936. Under existing instructions, countervailing duties may still be applicable to the classes of German merchandise specified in T.D. 48360 in the absence of satisfactory evidence that their export from Germany was pursuant to an agreement entered into after August 2, 1936.

Continual investigation has failed so far to establish any recent instance in which the Anti-Dumping Act, 1921, should be applied to importations from Germany. Dumping orders are now outstanding against German thumb tacks and wire fencing of certain descriptions. T.D. 48815 and T.D. 48826.

In the fall of 1936, numerous requests were received from American importers and exporters for advice as to the applicability of countervailing duties to merchandise imported from Germany pursuant to various arrangements described in the requests for advice. In view of the volume of these requests, the Treasury Department on December 22, 1936, issued a press release summarizing certain of the previously-made rulings holding that certain procedures in connection with imports from Germany would not involve the payment or bestowal of any bounty or grant within the purview of Section 303 of the Tariff Act. This press release was given wide publicity. One of the procedures not involving a bounty or grant was the payment of the purchase price of imports from Germany in whole or in part with the proceeds of the sale in Germany of merchandise exported from the United States, provided the proceeds so used were continually owned by the person for whose actual account the American merchandise was sold in Germany and the German goods were purchased in that country.

The agents of the Treasury Department stationed in Germany, as well as customs officers in this country, have been and are closely

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scrutinizing procedures in German-American trades to keep the Department supplied with information concerning such procedures in order that it may determine whether they require the application of any special provisions of our customs laws. These, as I think you will realize, are not simple matters to determine. Even with all the facts at hand there are naturally great difficulties in attempting to fit the generalized provisions of our laws to the special circumstances surrounding trade with those countries which have adopted exchange control and other restrictions on commerce. I can only assure you that the Department is continually making earnest efforts to get all the facts and just as earnestly endeavors to apply our laws promptly and fairly to the facts of the situation as they are developed.

Sincerely,

(Signed) H. Morgenthau, Jr.

Secretary

Honorable Allen T. Treadway
House of Representatives

HC/YHF/cp 3/6'39

(T.D. _____)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under Section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of Customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

Treasury Department
Office of the Commissioner of Customs
Washington, D. C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of Section 303 of the Tariff Act of 1930 (U.S.C., title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated

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to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

Commissioner of Customs

APPROVED:

Secretary of the Treasury

HC/cp 11/23/38
Rewritten 3/6/39

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3-6-39

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MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

I attach a copy of a letter from Representative Treadway of Massachusetts, dated March 1, 1939, requesting a statement concerning articles appearing in the Boston Transcript for February 28, charging the Treasury Department with dereliction in duty in respect of the application of countervailing duties to offset subsidies on German exports. In this connection I refer to my memorandum of February 6, 1939, with respect to the opinion of the Attorney General on this matter, which has not yet been delivered to the Treasury Department. A copy of that memorandum is attached. The State Department suggested that the opinion be withheld until Mr. Ruhlke returned from Germany. Also attached is my proposed reply to Treadway.

In addition, I am attaching a proposed Treasury Decision giving notice that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be required by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of such decision, will be subject to countervailing duties equal to the net amount of any bounty or grant determined or estimated to be paid or bestowed upon its exportation from Germany. The proposed Treasury Decision was submitted to the Attorney General at the time the request for an opinion on this matter was made.

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Pursuant to a request of Secretary Hull, I advised him by letter dated November 28, 1958, that if action under section 305 of the Tariff Act of 1950 is determined to be necessary, I perceived no objection to his suggestion that advance information be given to the German Government in order to afford that Government an opportunity to abandon the procedure in question.

Enclosures

HC:s Retyped 2/6/59

HOUSE OF REPRESENTATIVES U.S.

Washington, D. C.

March 1, 1939

Hon. Henry Morgenthau, Jr.
Secretary of the Treasury,
Washington, D. C.

My dear Mr. Secretary:

I desire to call to your attention an article appearing in the Boston Transcript for Tuesday, February 28th, in which it is stated that the Treasury has quietly and secretly abrogated the countervailing duties which previously have been assessed under section 303 of the Tariff Act against certain subsidized German exports. The article indicates that such action was taken in December, 1936, at the instance of German interests, and that little if any publicity was given to the matter. It appears that the first notice many New England industries had of the arrangement was their discovery of German goods on the American market at exceptionally low prices.

According to my understanding of the provisions of section 303 of the Tariff Act, the Treasury has no discretion but to apply the countervailing duties whenever any country, person, partnership, association, cartel, or corporation pays or bestows, directly or indirectly, any bounty or grant upon the manufacture, production, or export of goods, and such goods are imported into the United States. If the allegations contained in the newspaper article are true, it would appear that the Treasury is not carrying out the plain mandate of the law in assessing countervailing duties against certain German exports to this country, and is thereby causing American industry and labor to be subjected to unfair competition in the domestic market.

In a separate article in the Transcript, there appears a dispatch from its Washington correspondent indicating that the Treasury was defending its action on the ground that the private-barter subsidy method involved did not come within the purview of section 303. May I say in this connection that both the articles to which I have referred point out that the German Government is directly involved in the subsidy. The latter of the two contains this statement:

"The German Government has full facilities for giving its exports to the United States a concealed Government subsidy. Several years ago the German Government forced business and industry to raise a billion mark fund for the subsidization of foreign

exports. Later the Government itself contributed a part of the subsidy."

Hon. Henry Morgenthau

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The first article above-mentioned quotes Mr. William H. Cliff, of the Home Market Club, as saying:

"An overseas buyer of German goods gets in practice a discount varying from 15 to 40 per cent, or even more, from the list price. When this price concession is not sufficient to obtain the business, the German exporter may be directly subsidized by an additional 10 to 15 per cent. Moreover, exporters are allowed to reduce prices abroad and remove losses through the repatriation of German bonds which are lower in the foreign market than in Berlin, and thus the German exporters make a profit on bonds which compensates them for the loss on merchandise exported. Furthermore, the German Government frequently pays bounties to exporters so as to enable such exporters to quote lower prices in the American market."

Whether the subsidy is from Government or private sources, or both, and whether it be direct or indirect, it would appear from a reading of section 305 of the Tariff Act that Congress intended that countervailing duties should be imposed. Moreover, inasmuch as such duties have previously been collected, it seems to me that it is up to the Treasury to show cause why such countervailing duties should not be continued.

You are of course familiar with the managed currency system of Germany, under which its so-called "inland marks" can only be used to buy German goods. It is my understanding from the first newspaper article above-mentioned that an indirect subsidy on German exports is being effected by paying in inland marks prices for American cotton, copper, and oil which are 55 per cent above the world market, and requiring American exporters of these products to spend the inland marks for German goods which are subsequently imported into this country and sold for far less than the fair market value, to the detriment of American producers of competitive products. Clearly such an indirect subsidy method is within the purview of the countervailing duty provisions of section 305, and certainly it at least comes within the purview of the anti-dumping act, which as you know imposes a special dumping duty on foreign goods imported into and sold in the United States at less than their fair market value.

I would appreciate it if you would give me, at your earliest convenience, a full explanation of the Treasury's action regarding this matter, and thereby obviate the necessity for ~~me~~ introducing a privileged resolution formally calling upon you for such information.

Very truly yours,

(Signed) Allan T. Treadway

COPY

February 6, 1939

MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

By memorandum dated November 28, 1938, I advised you that I had before me a Treasury Decision giving notice of the imposition of countervailing duties on certain imports from Germany under Section 502 of the Tariff Act of 1930.

The countervailing duties are required by reason of so-called "barter" transactions through which the importation into the United States of dutiable merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper.

Investigation of the current operation of the barter transactions has satisfied the Treasury that the German Government, by restricting imports, fixing import prices, regulating the method of paying for imports and controlling the disposition of the proceeds of payment, is bestowing a valuable privilege or grant in connection with about half the dutiable merchandise exported from Germany to the United States.

On or about November 28, 1938, you referred the matter to the Attorney General for an opinion. About December 10, 1938, I learned that an opinion had been submitted to the Attorney General for signature. I was also informed that the Attorney General desired to hand the opinion to you personally.

On January 31, 1939, I learned that the opinion had not been delivered to you but was being retained in the Department of Justice with a memorandum in the file saying that no action in the matter was required at this time. You will remember that the State Department suggested that the opinion be withheld until Mr. Rublee returned from Germany.

HC/EHF/cp 2/6/39

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March 7, 1939.

Dear Mr. Treadway:

I have your letter of March 1, 1939, requesting a statement with respect to articles appearing in the Boston Transcript for February 28, 1939, regarding alleged subsidies and dumping practices affecting exports from Germany to the United States.

The Treasury Department agrees with you that it has no discretion but to apply countervailing duties under Section 303 of the Tariff Act of 1930 whenever it is satisfied that any bounty or grant is paid or bestowed directly or indirectly upon the manufacture, production, or export of goods imported into the United States which are subject to regular duties under the Tariff Act of 1930.

The articles in the Boston Transcript and your letter suggest that German exports to the United States are being subsidized in three ways:

1. By cash payments to exporters from a fund originally created by forced contributions from German business and industry and later supported by contributions from the German Government.
2. By sale of German merchandise in the United States at reduced prices with permission to offset the price reductions through the purchase of German bonds outside Germany and their sale in Germany at a profit.
3. By so-called "barter" trading in which imports into Germany are sold at prices substantially above the world-market level, and the funds derived from such sales used to purchase German goods which are sold after importation into the United States at far less than their market value.

Numerous investigations conducted in Germany by agents of the Treasury have satisfied this Department that such subsidies from a fund built up under a German law approved June 28, 1935, were paid in connection with the exportation of German goods to certain countries, but failed to establish that such payments were made on any direct or indirect exports to the United States. Under date of December 5, 1935, the German Government gave formal assurance to the United States that such funds had not, and would not, be used to promote exports to the United States.

Bond procedures such as are described in the articles and your letter were discovered by Treasury investigations, and formed in part

the basis for the Treasury's countervailing duty order against German merchandise issued on June 4, 1936 (T.D. 48560). Under date of August 12, 1936, the German Government gave official assurance to the United States that it had "taken measures to the effect that neither the use of the scrip and bond procedure will be permitted, nor will the payment of a public or private premium or subsidy, or the use of other German currency and reichsmarks freely convertible into foreign currency or reichsmarks freely utilisable in Germany, be allowed in connection with the direct or indirect exportation of dutiable goods from Germany to the United States of America, so far as such exportation takes place or may take place on the basis of agreements which were concluded on or after August 5, 1936."

On the basis of this assurance, the Treasury Department in T.D. 48479, of August 14, 1936, instructed collectors of customs that estimated countervailing duties need not be collected on merchandise exported from Germany if the collector concerned were satisfied by documentary evidence that the contract of purchase or other agreement pursuant to which the goods were exported from Germany was entered into after August 2, 1936. Under existing instructions, countervailing duties may still be applicable to the classes of German merchandise specified in T.D. 48560 in the absence of satisfactory evidence that their export from Germany was pursuant to an agreement entered into after August 2, 1936.

Continual investigation has failed so far to establish any recent instance in which the Anti-Dumping Act, 1921, should be applied to importations from Germany. Dumping orders are now outstanding against German thumb tacks and wire fencing of certain descriptions. T.D. 48615 and T.D. 48828.

In the fall of 1936, numerous requests were received from American importers and exporters for advice as to the applicability of countervailing duties to merchandise imported from Germany pursuant to various arrangements described in the requests for advice. In view of the volume of these requests, the Treasury Department on December 25, 1936, issued a press release summarizing certain of the previously-made rulings holding that certain procedures in connection with imports from Germany would not involve the payment or bestowal of any bounty or grant within the purview of Section 503 of the Tariff Act. This press release was given wide publicity. One of the procedures not involving a bounty or grant was the payment of the purchase price of imports from Germany in whole or in part with the proceeds of the sale in Germany of merchandise exported from the United States, provided the proceeds so used were continually owned by the person for whose actual account the American merchandise was sold in Germany and the German goods were purchased in that country.

The agents of the Treasury Department stationed in Germany, as well as customs officers in this country, have been and are closely

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scrutinizing procedures in German-American trades to keep the Department supplied with information concerning such procedures in order that it may determine whether they require the application of any special provisions of our customs laws. These, as I think you will realize, are not simple matters to determine. Even with all the facts at hand there are naturally great difficulties in attempting to fit the generalized provisions of our laws to the special circumstances surrounding trade with those countries which have adopted exchange control and other restrictions on commerce. I can only assure you that the Department is continually making earnest efforts to get all the facts and just as earnestly endeavors to apply our laws promptly and fairly to the facts of the situation as they are developed.

Sincerely,

(Signed) H. Morgenthau, Jr.

Secretary

Honorable Allen T. Treadway

House of Representatives

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(T.D. _____)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under Section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of Customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

Treasury Department
Office of the Commissioner of Customs
Washington, D. C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of Section 303 of the Tariff Act of 1930 (U.S.C., title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method of means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated

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to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

Commissioner of Customs

APPROVED:

Secretary of the Treasury

HC/cp 11/23/38
Rewritten 3/6/39

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MEMORANDUM FOR THE PRESIDENT:

Countervailing Duties on German Products

I attach a copy of a letter from Representative Treadway of Massachusetts, dated March 1, 1939, requesting a statement concerning articles appearing in the Boston Transcript for February 28, charging the Treasury Department with dereliction in duty in respect of the application of countervailing duties to offset subsidies on German exports. In this connection I refer to my memorandum of February 6, 1939, with respect to the opinion of the Attorney General on this matter, which has not yet been delivered to the Treasury Department. A copy of that memorandum is attached. The State Department suggested that the opinion be withheld until Mr. Rublee returned from Germany. Also attached is my proposed reply to Treadway.

In addition, I am attaching a proposed Treasury Decision giving notice that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of such decision, will be subject to countervailing duties equal to the net amount of any bounty or grant determined or estimated to be paid or bestowed upon its exportation from Germany.

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The proposed Treasury Decision was submitted to the Attorney General at the time the request for an opinion on this matter was made.

Pursuant to a request of Secretary Hull, I advised him by letter dated November 28, 1938, that if action under Section 303 of the Tariff Act of 1930 is determined to be necessary, I perceived no objection to his suggestion that advance information be given to the German Government in order to afford that Government an opportunity to abandon the procedure in question.

Enclosures

HC:s Retyped 3/6'39

Initialed by HC EHFJr. HEG AL

MAR 7 1939

Dear Mr. Treadway:

I have your letter of March 1, 1939, requesting a statement with respect to articles appearing in the Boston Transcript for February 28, 1939, regarding alleged subsidies and dumping practices affecting exports from Germany to the United States.

The Treasury Department agrees with you that it has no discretion but to apply countervailing duties under Section 303 of the Tariff Act of 1930 whenever it is satisfied that any bounty or grant is paid or bestowed directly or indirectly upon the manufacture, production, or export of goods imported into the United States which are subject to regular duties under the Tariff Act of 1930.

The articles in the Boston Transcript and your letter suggest that German exports to the United States are being subsidized in three ways:

1. By cash payments to exporters from a fund originally created by forced contributions from German business and industry and later supported by contributions from the German Government.

2. By sales of German merchandise in the United States at reduced prices with permission to offset the price reductions through the purchase of German bonds outside Germany and their sale in Germany at a profit.

3. By so-called "barter" trading in which imports into Germany are sold at prices substantially above the world-market level, and the funds derived from such sales used to purchase German goods which are sold after importation into the United States at far less than their market value.

Numerous investigations conducted in Germany by agents of the Treasury have satisfied this Department that cash subsidies from a fund built up under a German law approved June 28, 1935, were paid in connection with the exportation of German goods to certain countries, but failed to establish that such payments were made on any direct or indirect exports to the United States. Under date of December 6, 1935, the German Government gave formal assurance to the United States that such funds had not, and would not, be used to promote exports to the United States.

Bond procedures such as are described in the articles and your letter were discovered by Treasury investigations, and formed in part

the basis for the Treasury's countervailing duty order against German merchandise issued on June 4, 1936 (T.D. 48360). Under date of August 12, 1936, the German Government gave official assurance to the United States that it had "taken measures to the effect that neither the use of the scrip and bond procedure will be permitted, nor will the payment of a public or private premium or subsidy, or the use of other German currency and reichsmarks freely convertible into foreign currency or reichsmarks freely utilizable in Germany, be allowed in connection with the direct or indirect exportation of dutiable goods from Germany to the United States of America, so far as such exportation takes place or may take place on the basis of agreements which were concluded on or after August 3, 1936."

On the basis of this assurance, the Treasury Department in T.D. 48479, of August 14, 1936, instructed collectors of customs that estimated countervailing duties need not be collected on merchandise exported from Germany if the collector concerned were satisfied by documentary evidence that the contract of purchase or other agreement pursuant to which the goods were exported from Germany was entered into after August 3, 1936. Under existing instructions, countervailing duties may still be applicable to the classes of German merchandise specified in T.D. 48360 in the absence of satisfactory evidence that their export from Germany was pursuant to an agreement entered into after August 3, 1936.

Continual investigation has failed so far to establish any recent instance in which the Anti-Dumping Act, 1921, should be applied to importations from Germany. Dumping orders are now outstanding against German thumb tacks and wire fencing of certain descriptions. T.D. 46615 and T.D. 46026.

In the fall of 1936, numerous requests were received from American importers and exporters for advice as to the applicability of countervailing duties to merchandise imported from Germany pursuant to various arrangements described in the requests for advice. In view of the volume of these requests, the Treasury Department on December 23, 1936, issued a press release summarizing certain of the previously-made rulings holding that certain procedures in connection with imports from Germany would not involve the payment or bestowal of any bounty or grant within the purview of Section 303 of the Tariff Act. This press release was given wide publicity. One of the procedures not involving a bounty or grant was the payment of the purchase price of imports from Germany in whole or in part with the proceeds of the sale in Germany of merchandise exported from the United States, provided the proceeds so used were continually owned by the person for whose actual account the American merchandise was sold in Germany and the German goods were purchased in that country.

The agents of the Treasury Department stationed in Germany, as well as customs officers in this country, have been and are closely

- 3 -

scrutinizing procedures in German-American trades to keep the Department supplied with information concerning such procedures in order that it may determine whether they require the application of any special provisions of our customs laws. These, as I think you will realize, are not simple matters to determine. Even with all the facts at hand there are naturally great difficulties in attempting to fit the generalized provisions of our laws to the special circumstances surrounding trade with those countries which have adopted exchange control and other restrictions on commerce. I can only assure you that the Department is continually making earnest efforts to get all the facts and just as earnestly endeavors to apply our laws promptly and fairly to the facts of the situation as they are developed.

Sincerely,

(Signed) H. Morgenthau, Jr.

Secretary

Honorable Allen T. Treadway

House of Representatives

HC/REK/ep 3/6/39

March 3, 1939.

My dear Mr. Treadway:

This will acknowledge your letter of March 1st, in which you quote an article appearing in the Boston Transcript for Tuesday, February 28th. I shall communicate with you shortly in further detail about this matter.

Sincerely,

(Signed) H. Morgenthau, Jr.

Honorable Allen F. Treadway,
House of Representatives,
Washington, D. C.

Incoming ltr from Congressman
Treadway given to Mr. Foley to
prepare memo for HM, Jr. to hand
to President, Lunch on Monday.
3/4/39.

GWT/dbs

By hand 10:50 am.

2/4/39

House of Representatives U. S.

Washington, D. C.

March 1, 1939

94

Hon. Henry Morgenthau, Jr.,
Secretary of the Treasury,
Washington, D. C.

My dear Mr. Secretary:

I desire to call to your attention an article appearing in the Boston Transcript for Tuesday, February 28th, in which it is stated that the Treasury has quietly and secretly abrogated the countervailing duties which previously have been assessed under section 303 of the Tariff Act against certain subsidized German exports. The article indicates that such action was taken in December, 1936, at the instance of German interests, and that little if any publicity was given to the matter. It appears that the first notice many New England industries had of the arrangement was their discovery of German goods on the American market at exceptionally low prices.

According to my understanding of the provisions of section 303 of the Tariff Act, the Treasury has no discretion but to apply the countervailing duties whenever any country, person, partnership, association, cartel, or corporation pays or bestows, directly or indirectly, any bounty or grant upon the manufacture, production, or export of goods, and such goods are imported into the United States. If the allegations contained in the newspaper article are true, it would appear that the Treasury is not carrying out the plain mandate of the law in assessing countervailing duties against certain German exports to this country, and is thereby causing American industry and labor to be subjected to unfair competition in the domestic market.

In a separate article in the Transcript, there appears a dispatch from its Washington correspondent indicating that the Treasury was defending its action on the ground that the private-barter subsidy method involved did not come within the purview of section 303. May I say in this connection that both the articles to which I have referred point out that the German Government is directly involved in the subsidy. The latter of the two contains this statement:

"The German Government has full facilities for giving its exports to the United States a concealed Government subsidy. Several years ago the German Government forced business and industry to raise a billion mark fund for the subsidization of foreign exports. Later the Government itself contributed a part of the subsidy."

3/1/39 35

The first article above-mentioned quotes Mr. William H. Cliff, of the Home Market Club, as saying:

"An overseas buyer of German goods gets in practice a discount varying from 15 to 40 per cent, or even more, from the list price. When this price concession is not sufficient to obtain the business, the German exporter may be directly subsidized by an additional 10 to 15 per cent. Moreover, exporters are allowed to reduce prices abroad and remove losses through the repatriation of German bonds which are lower in the foreign market than in Berlin, and thus the German exporters make a profit on bonds which compensates them for the loss on merchandise exported. Furthermore, the German Government frequently pays bounties to exporters so as to enable such exporters to quote lower prices in the American market."

Whether the subsidy is from Government or private sources, or both, and whether it be direct or indirect, it would appear from a reading of section 303 of the Tariff Act that Congress intended that countervailing duties should be imposed. Moreover, inasmuch as such duties have previously been collected, it seems to me that it is up to the Treasury to show cause why such countervailing duties should not be continued.

You are of course familiar with the managed currency system of Germany, under which its so-called "inland marks" can only be used to buy German goods. It is my understanding from the first newspaper article above-mentioned that an indirect subsidy on German exports is being effected by paying in inland marks prices for American cotton, copper, and oil which are 33 per cent above the world market, and requiring American exporters of these products to spend the inland marks for German goods which are subsequently imported into this country and sold for far less than the fair market value, to the detriment of American producers of competitive products. Clearly such an indirect subsidy method is within the purview of the countervailing duty provisions of section 303, and certainly it at least comes within the purview of the anti-dumping act, which as you know imposes a special dumping duty on foreign goods imported into and sold in the United States at less than their fair market value.

I would appreciate it if you would give me, at your earliest convenience, a full explanation of the Treasury's action regarding this matter, and thereby obviate the necessity for my introducing a privileged resolution formally calling upon you for such information.

Very truly yours,

Allen D. Bradley

House of Representatives U.S.

Washington, D. C.

March 1, 1939

Hon. Henry Morgenthau, Jr.,
Secretary of the Treasury,
Washington, D. C.

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3/1/39

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I would appreciate it if you would give me, at your earliest convenience, a full explanation of the Treasury's action regarding this matter, and thereby obviate the necessity for my introducing a privileged resolution formally calling upon you for such information.

Very truly yours,

Allen D. Broadway

COPY

March 7, 1939

Sir:

As explained to you over the telephone today, a situation has arisen which necessitates the immediate sending to Europe of certain officials of the Treasury Department on a mission of great importance. It is considered highly desirable that a representative of the Department of Justice accompany the representatives of the Treasury Department on this mission. It is believed that the person best qualified for the purpose is Hon. Webster J. Oliver, Assistant Attorney General in charge of Customs, New York, New York.

In view of the above it will be appreciated if Mr. Oliver may be authorized and directed to proceed at once to London, England, Berlin, Germany (by way of Holland), Paris, France, and such other points in Europe as may be necessary for the purpose of carrying out this assignment. The Treasury Department will, of course, reimburse your Department for the expenses incident to Mr. Oliver's trip.

Very truly yours,

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury.

The Honorable
The Attorney General
Department of Justice
Washington, D. C.

COPY

March 7, 1939

Sir:

At the request of the Secretary of the Treasury, the Attorney General has authorized and directed Hon. Webster J. Oliver, Assistant Attorney General in charge of Customs, New York, New York, to accompany immediately certain officials of the Treasury Department to London, England, Berlin, Germany, Paris, France, and such other points in Europe as may be necessary on urgent official business of this Department.

As Mr. Oliver is going on this mission at the request of the Treasury Department, it will be appreciated if you will cause to be issued to him a passport to travel in England, France, Germany, Belgium, and Holland. This travel is, as stated, to be upon official business of this Department.

By direction of the Secretary.

Respectfully,

(Signed) Wm. H. McReynolds

Administrative Assistant
to the Secretary.

The Honorable

The Secretary of State.

March 7, 1939

Welles came in to see the Secretary at 9:15.

Welles said that he saw the front page of the Times announcing the Secretary's poster, "Does it Contribute to Recovery" and that he liked it very much. HM,Jr suggested that he read Walter Lippmann's article.

Mr. Welles then said, "I understand that Mr. Hull spoke to you yesterday. There was some misunderstanding about his not being able to get you before noon." HM,Jr replied, "Well, that's unimportant. I did speak to him, but he simply will not take any position for or against the German countervailing duties. (Phone conversation between Secretary Hull and Secretary Morgenthau is attached.)

Continuing, HM,Jr said, "When I had lunch with the President, I asked him to get the Attorney General's ruling. I also left with him Congressman Treadway's letter. I have been told by the Bureau of Customs, four months ago, that I must invoke this law and if I do not it will be very difficult for me to explain why I have not." Mr. Welles said, "I can see your position. It is obligatory for you to do it, but it puts this country in a terrible position."

"I told the President that I had talked to you," Mr. Morgenthau said to Welles, "and I urged you and him to please let me live up to the law. I urged him to get the Attorney General to give me a ruling. I am going to ask you not to again say to the President please do not do this, but I will tell you now that if I do not get a ruling from the Attorney General until Friday, I will do nothing in the meantime."

Mr. Welles then said, "We are now working out in a satisfactory way, through the Intergovernmental Committee, the refugee problem and that will go by the board as a result of this. Also, for us to take this step now may throw a complete skid under the wheels on what England and France are trying to work out, but of course if the law is obligatory" Secretary Morgenthau interrupted to say, "I must carry out the

-2-

law. I cannot, as a Jew, stop and think 'Is this good or bad for the Jews?' I have told you this before, Sumner, that the minute I find myself doing it, I will resign. I want you to know this. It is terribly important to me, but you must remember that I have the law to obey."

At this point Mr. Welles brought up the subject of Brazil. He said, "I had a bad afternoon yesterday. Our friend Aranha is in a solemn mood. When you and I saw him the last time, here at your office, Johnnie Hanes told me that Jesse Jones had agreed to a 3.6% rate on the Export-Import Bank loan. Now his letter specifies 4% interest. Pierson would not agree to 3.6%, and, therefore, Aranha is very sour and I believe he has every reason." HM, Jr said, "As I understand it, there are three proposals (1) the \$19,000,000-plus Export-Import loan; (2) that he wants credit to buy merchandise here, and (3) the letter from Aranha to me on a Central Bank."

Mr. Welles then gave HM, Jr a revised draft of our letter to Aranha and his letter to us which had several important changes in it. The Secretary could not take the time to go over them then because he was due on the Hill at 10 o'clock. Mr. Welles said that he could have until tomorrow and the Secretary promised to go over it this afternoon and get in touch with him then. Mr. Welles did point out that if the Secretary did not agree to the changes, the whole thing would go by the board; that he really laid great stress on the changes made.

March 6, 1939.
4:00 p.m.

HMJr: Hello.
Hull's
Secretary: Secretary Morgenthau?

HMJr: Yes.
Hull's
Secretary: Just one second, please, sir.

HMJr: Well, can't you put him on?

(Pause)

HMJr: Hello.
Cordell
Hull: Henry?

HMJr: Yes.

H: Sorry to bother you, but I tried to get you in the forenoon and they poured in on me here until I couldn't.

HMJr: Yes, Cordell.

H: I don't know -- no, no -- I think -- of course, we go out of -- out of one crisis into another here in this place. (Aside to someone in his own office: Sit down, Henry, it's nothing private.) This -- I know the difficulties you've got on that Customs thing, you know, with Germany.

HMJr: Yes.

H: I was saying to one of our friends a while ago that the chances right now favor the passage of the Ludlow Resolution.

HMJr: Yeah.

H: And it's due to the efforts of the pacifists and all other types to try to exaggerate everything about our attitude towards Germany and her attitude towards us at this time. Speeches critical of each other and threats, and you may have noticed this morning, yesterday this fellow Goebbels warned the British about their disparity in goods and so on. You saw that?

HMJr: Yes, I did.

H: Then, that spirit, now, is very rife, very keen, and I don't know -- it's the worst -- what I'd like to say is that it is the worst possible time for another acute

- 2 -

thing, that they would perhaps construe as a further step on choking them down.

HMJr: Well here's the thing. You see, your department has blocked me in carrying out the law now for four months.

H: Yes, I know, we've all had our difficulties about it.

HMJr: And I've -- I don't want to be demanding or overstated, but I have taken an oath to uphold the law.

H: Yeah.

HMJr: And for four months I-- I've been not doing it.

H: Yeah.

HMJr: And now Congressman Treadway has come in with a very stiff letter demanding to know why I don't do this.

H: Who is he interested in? Who's having him to do that, do you know?

HMJr: I don't know.

H: Yeah.

HMJr: Now, it's just a question whether between Treadway and the A.F. of L., who are very active in raising this question --

H: Yeah.

HMJr: Whether I want my hands forced, and then when I go up on the Hill, what excuse am I going to give when my own department advised me four months ago to --

H: Yes, well, I -- as I said, I knew you had your difficulties --

HMJr: Well, and it's just a question of carrying out the law. Now, I've tried to be cooperative, and we've postponed this thing, and now in comes this letter from Treadway which is a -- a very direct and very forceful letter demanding an answer.

H: Yeah.

HMJr: You know who he is?

H: Oh, yes, I've served with him.

- 3 -

- HMJr: And I just don't want my hand forced on a thing like this by Treadway, or by Matthew Woll.
- H: Yeah.
- HMJr: And both of them are -- are pressing me very hard, and I have no excuse. I can't go up and say "Well, I haven't done this because the State Department asked me to postpone it." And --
- H: Yes, well, I -- I just felt that I should get that phase before you, although I haven't failed to realize your difficulties, you understand.
- HMJr: And on these German matters, I always have leaned over backwards in trying to give them more than a square deal.
- H: Yeah.
- HMJr: And -- but here's this Customs Bill and the Customs' lawyer advised me that there's no "if" or "and" and that the law is being broken.
- H: Yeah.
- HMJr: So there I am, and I've taken my oath.
- H: Yeah. Well, that's --
- HMJr: I mean, I appreciate your troubles too, but the way I feel is, if I tried to adjust myself to a good time, the longer I wait the worse it gets.
- H: Yeah, exactly. Well, you do the best you can, Henry. I know you'll do that whatever --
- HMJr: Well, here's -- here's -- I've got two things. One is, the President, I think, informally asked the Attorney General not to give me an opinion on account of the position you've taken, and if you could lift that -- that would be helpful.
- H: Yeah.
- HMJr: And then before we do get out the Treasury decision, I'll give you plenty of notice.
- H: Yeah. Well, --
- HMJr: Now, I don't know, the Treasury -- the Attorney General may not give me a favorable opinion, but at least I

- 4 -

think I'm entitled to one, and if you could tell the President that it's agreeable to -- to lift that embargo and let the Attorney General do whatever he sees fit.

H: Yeah.

HMJr: You see, that's the next move.

H: Yes, of course, if those laws enable the people to send -- our imports from Germany generally have cut down to little or nothing, you know.

HMJr: But --

H: Relatively speaking.

HMJr: But I'm just a policeman, and it's not a policy matter.

H: Well, you handle it now whatever your judgment suggests in the light of all the facts.

HMJr: Well, thank you very much.

H: Yes, and thank you.

Replied to on 3/10/39

106

MANUEL CELLER
16th District New York

MEMBER OF
COMMITTEE ON THE JUDICIARY

NEW YORK OFFICE
1490 BROADWAY
NEW YORK CITY

224 NEW HOUSE OFFICE BUILDING
WASHINGTON

Congress of the United States
House of Representatives
Washington, D. C.

107

March 7, 1939.

Honorable Henry Morgenthau, Jr.,
Secretary of the Treasury,
Washington, D. C.

My dear Mr. Secretary:

Charges were made in the Boston Evening Transcript of February 28, 1939, that the United States Treasury has disregarded and/or repudiated Section 303 of the Tariff Act of 1930. This tariff provision calls for the imposition of a countervailing duty on all importations equal to the bounties, or grants, offered by the country of origin.

Nazi Germany undoubtedly in its barter arrangements has offered all manner and kinds of inducements, bounties and grants to get its goods abroad. Germany covets American oil, cotton and copper, and will go to every extreme by way of paying bounties to get same by payment not in money, but in German products - iron and non-ferrous metal, steel and iron construction, sheet metal, optical goods, wooden ware, glass ware, ceramics, chemicals, paper, cellulose, printing, leather goods, clothing, jewelry, sporting goods, toys, and musical instruments.

Dr. Wilhelm Tannenberg, First Secretary of the German Embassy, and Dr. Horst Fricks, German Commercial Attache in Chicago, and many Consular Agents are endeavoring to make specific barter deals with farm cooperatives and mercantile establishments here in the United States, by way of offering Reich farm machinery, poultry netting and barbed wire, in exchange for American wheat, lard and cotton.

I recently drew the attention of our distinguished Secretary of State, Cordell Hull, to the fact that such barter arrangements fly in the face of his well tested, successful practices of reducing tariff barriers by reciprocity treaties. I said we should long pause before entering into any barter deals with nations like the Reich which has upon its hands the blood of thousands of men, women and children - pitiful victims of its insane hate and cruelty.

This same nation has been in continuous default upon its sovereign and corporate indebtedness to American bondholders. Such defaulting nation should not be encouraged and repaid by barter arrangements.

Honorable Henry Morgenthau, Jr.

Page two.

In response, Secretary of State Hull wrote me under date of March 3, 1939, as follows:

"My dear Mr. Celler:

I have read with much interest your letter of February 23, 1939, opposing the conclusion of any barter arrangements with Germany. You may be sure that I appreciate your support of the trade agreements program as the most promising method of enabling trade to flow more freely.

As you know, this Government has been seeking, particularly through the trade agreements program, to improve the conditions under which international trade can move. These efforts have been directed not alone at the removal of specific obstacles to particular commodities, but also toward reestablishing so far as possible the broad basis of commercial equality for all foreign suppliers of a given market. Barter transactions are, in general, direct evidence that trade is being compelled to adjust itself to another type of commercial policy and the buyers are not free to select between foreign suppliers solely on considerations of natural economic advantage.

While seeking to improve the opportunities for trade, this Government has not attempted to enter into specific trading transactions. I believe that in general this is the wisest policy for us to follow, leaving it to private interests to arrange the individual transactions which make up our total foreign trade. It goes without saying, of course, that all imports into this country, whether arranged on a free exchange basis or on some special basis, are fully subject to all existing duties and customs regulations.

Sincerely yours,

Cordell Hull"

You will note in the letter that Secretary Hull writes that "It goes without saying, of course, that all imports into this country, whether arranged on a free exchange basis or on some special basis, are fully subject to all existing duties and customs regulations."

This does not settle the question. The charges made against your Department by the Boston Evening Transcript are too important to disregard. You are apparently charged with lifting the countervailing duties on German importations into this Country, and with making it possible for American exporters of oil, cotton, copper, wheat and lard to exchange same for a very wide variety of German products which, in turn, are sold in this country at prices allegedly far below the cost of the American made goods.

Honorable Henry Morgenthau, Jr.

Page three.

Many inquiries have been directed at me asking whether you have abrogated these countervailing duties which Section 303 of the Tariff Act of 1930 requires on goods brought into this country on a subsidy basis by the country of origin.

The United States Bureau of Foreign and Domestic Commerce, I am informed, has issued a special circular giving detailed information concerning German barter regulations, and refers to a long list of German products available for export to the United States in payment by barter of cotton, wheat, lard, copper, etc.

I would appreciate, and my people in New York would appreciate, an expressed word of denial from you concerning any abrogation of lifting of the penalty provision of Section 303 of the Tariff Act of 1930.

Yours very truly,



EMANUEL CELLER.



AMIEL C. KELLEY
10th District New York

MEMBER OF
COMMITTEE ON THE JUDICIARY

NEW YORK OFFICE
1430 Broadway
New York City

1224 NEW HOUSE OFFICE BUILDING
WASHINGTON

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House of Representatives
Washington, D. C.

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Honorable Henry Morgenthau, Jr.

Page three.

Many inquiries have been directed at me asking whether you have abrogated these countervailing duties which Section 303 of the Tariff Act of 1930 requires on goods brought into this country on a subsidy basis by the country of origin.

The United States Bureau of Foreign and Domestic Commerce, I am informed, has issued a special circular giving detailed information concerning German barter regulations, and refers to a long list of German products available for export to the United States in payment by barter of cotton, wheat, lard, copper, etc.

I would appreciate, and my people in New York would appreciate, an expressed word of denial from you concerning any abrogation of lifting of the penalty provision of Section 303 of the Tariff Act of 1930.

Yours very truly,

Emanuel Celler

EMANUEL CELLER.

MANUEL CELLER
10th District New York

NEW YORK OFFICE
1429 Broadway
New York City

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MEMBER OF
COMMITTEE ON THE JUDICIARY

Congress of the United States
House of Representatives
Washington, D. C.

1225 NEW HOUSE OFFICE BUILDING
WASHINGTON

March 7, 1939.

Honorable Henry Morgenthau, Jr.,
Secretary of the Treasury,
Washington, D. C.

My dear Mr. Secretary:

Charges were made in the Boston Evening Transcript of February 28, 1939, that the United States Treasury has disregarded and/or repudiated Section 303 of the Tariff Act of 1930. This tariff provision calls for the imposition of a countervailing duty on all importations equal to the bounties, or grants, offered by the country of origin.

Nezi Germany undoubtedly in its barter arrangements has offered all manner and kinds of inducements, bounties and grants to get its goods abroad. Germany covets American oil, cotton and copper, and will go to every extreme by way of paying bounties to get same by payment not in money, but in German products - iron and non-ferrous metal, steel and iron construction, sheet metal, optical goods, wooden ware, glass ware, ceramics, chemicals, paper, cellulose, printing, leather goods, clothing, jewelry, sporting goods, toys, and musical instruments.

Dr. Wilhelm Tannenberg, First Secretary of the German Embassy, and Dr. Horst Fricks, German Commercial Attache in Chicago, and many Consular Agents are endeavoring to make specific barter deals with farm cooperatives and mercantile establishments here in the United States, by way of offering Reich farm machinery, poultry netting and barbed wire, in exchange for American wheat, lard and cotton.

I recently drew the attention of our distinguished Secretary of State, Cordell Hull, to the fact that such barter arrangements fly in the face of his well tested, successful practices of reducing tariff barriers by reciprocity treaties. I said we should long pause before entering into any barter deals with nations like the Reich which has upon its hands the blood of thousands of men, women and children -- pitiful victims of its insane hate and cruelty.

This same nation has been in continuous default upon its sovereign and corporate indebtedness to American bondholders. Such defaulting nation should not be encouraged and repaid by barter arrangements.

Honorable Henry Morgenthau, Jr.

Page two.

In response, Secretary of State Hull wrote me under date of March 3, 1939, as follows:

"My dear Mr. Celler:

I have read with much interest your letter of February 23, 1939, opposing the conclusion of any barter arrangements with Germany. You may be sure that I appreciate your support of the trade agreements program as the most promising method of enabling trade to flow more freely.

As you know, this Government has been seeking, particularly through the trade agreements program, to improve the conditions under which international trade can move. These efforts have been directed not alone at the removal of specific obstacles to particular commodities, but also toward reestablishing so far as possible the broad basis of commercial equality for all foreign suppliers of a given market. Barter transactions are, in general, direct evidence that trade is being compelled to adjust itself to another type of commercial policy and the buyers are not free to select between foreign suppliers solely on considerations of natural economic advantage.

While seeking to improve the opportunities for trade, this Government has not attempted to enter into specific trading transactions. I believe that in general this is the wisest policy for us to follow, leaving it to private interests to arrange the individual transactions which make up our total foreign trade. It goes without saying, of course, that all imports into this country, whether arranged on a free exchange basis or on some special basis, are fully subject to all existing duties and customs regulations.

Sincerely yours,

Cordell Hull"

You will note in the letter that Secretary Hull writes that "It goes without saying, of course, that all imports into this country, whether arranged on a free exchange basis or on some special basis, are fully subject to all existing duties and customs regulations."

This does not settle the question. The charges made against your Department by the Boston Evening Transcript are too important to disregard. You are apparently charged with lifting the countervailing duties on German importations into this Country, and with making it possible for American exporters of oil, cotton, copper, wheat and lard to exchange same for a very wide variety of German products which, in turn, are sold in this country at prices allegedly far below the cost of the American made goods.

Honorable Henry Morgenthau, Jr.

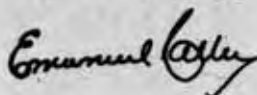
Page three.

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Yours very truly,



EMANUEL CELLER.

116
116
Treasury Department
Division of Monetary Research

Date 3/10/39 1938

To: Miss Chauncey

Regarding the attached letter
from Senator Treadway:

It probably does not require
an answer, but I am not certain.

*Joe White photos
Foley*

MR. WHITE
Branch 2058 - Room 208

ALLEN T. TREADWAY
1ST DIST. MASSACHUSETTS

COMMITTEE ON WAYS AND MEANS
JOINT CONGRESSIONAL COMMITTEE
ON INTERNAL REVENUE TAXATION
LIBRARY COMMITTEE

House of Representatives U. S.
Washington, D. C.

117

March 9, 1939

*H.M. called
Easy treadway
march 13/39*

Hon. Henry Morgenthau, Jr.,
Secretary of the Treasury,
Washington, D.C.

My dear Mr. Secretary:

I thank you for your prompt and detailed reply to my letter of March 1st, relative to the articles appearing in the Boston Transcript regarding subsidies on German exports to the United States.

It appears from your letter that the Treasury Department has waived the collection of countervailing duties on the assurance of the German Government that certain subsidy practices would be discontinued. Of course there always remains the question of whether this agreement is being adhered to both in letter and spirit, and I realize that opinions may differ as to whether certain practices are in violation thereof.

I ^{shall rely upon} am glad to have your assurance that your Department is continually scrutinizing German-American trading and is earnestly endeavoring to apply the law as laid down by the Congress.

Sincerely yours,

Allen T. Treadway

IN RE: CONNERY AND CELLER LETTERS

March 10, 1939.
10:00 A. M.

(Secretary's Office)

PRESENT: Secretary Morgenthau
Mr. Hanes
Mr. Gaston
Mr. Gibbons
Mr. White
Mr. Foley
Mrs. Klotz.

H.M.Jr: Come on now, what have you got?

Foley: Here is a reply to Connery which is patterned after the Treadway letter and here is one to Celler.

H.M.Jr: Where is the Connery letter?

Foley: In the back.

H.M.Jr: What I want for the present is the Connery letter. I will sign that one. You say it is about the same as the Treadway letter.

Foley: Yes.

(Secretary reading letter)

H.M.Jr: And is Connery a Republican or a Democrat?

Foley: He is a Democrat. He is the brother of the Connery who was in Congress and whose name was on the Wage and Hour Bill.

H.M.Jr: How many more have you?

Foley: Here is the Celler letter.

H.M.Jr: Does Celler want us to do it or doesn't he?

Foley: He is the same as Connery. He quotes a letter from Hull there which is dated the 3rd of March of this year. (The Secretary reading letter).

- 2 -

H.M.Jr: Where is the Treadway letter?

Foley: I do not have it; I can get it.

Mrs. Klotz: I have it.

H.M.Jr: You hold on to those two for Cabinet please.
(addressing Mrs. Klotz)

Mrs. Klotz, will you get together for me, a copy of my letter to the President at Warm Springs. That is No. 1. I want a copy of that. I wrote him in November and just about a month ago, I gave him another memorandum. I brought it to his attention again this month. I wrote him in November -

Foley: And in February.

H.M.Jr: I wrote him early in February and I contacted him this month, the 5th of March. Will you have that plus this. The main thing that I want to be able to say when Welles goes after me, is, "All right, I have waited four months; I'm not going to wait any longer", but I want to show the President I brought it to his attention back in November. I am doing this all to keep Steve out of jail.

Gibbons: This fellow was a lobbyist for the American Federation of Labor.

Gaston: He is the man that stirred the thing up originally.

H.M.Jr: And you.

White: The imports show that the transactions, under the barter terms, apparently are larger, but that is just a preliminary.

H.M.Jr: More than sixty per cent.

White: Yes, it looks like it but that is preliminary.

H.M.Jr: You go on.

Gaston: You want me to go on?

H.M.Jr: Definitely. The understanding is for you to go.

White: Did you know that Aranha had refused to sign any papers at first until they promised him this loan. You may know that.

H.M.Jr: No, I did not know that.

White: Before Hull came here or before Welles came here they had a very long session and he refused to sign any papers.

H.M.Jr: Before Welles came where.

White: Here Friday morning.

H.M.Jr: The morning Welles said he had such a bad night that he could not sleep.

White: I suppose so. The whole thing was thrown overboard and Aranha was going back without anything.

Mrs. Klotz: Smart boy.

Hanes: Did you find out whether the rate was finally changed?

H.M.Jr: I don't know.

Hanes: Did you hear, Harry?

White: The remark was dropped inadvertently by Callado, who said they had a terrible time with him - he refused to sign anything.

H.M.Jr: You say he refused to sign.

White: The remark was made to me under the impression that we knew all about it.

H.M.Jr: One thing that tickled me when we were over there talking, Aranha said one thing - it did not quite check with some of the gossip, he wanted a certain thing and he said it in front of the State Department, and Welles said, "Well, we are so anxious to have it go through that we will pay him out of our contingency fund and hire a plane to send him down."

(The Secretary engaged in telephone conversation with Attorney General Frank Murphy)

H.M.Jr: What does that mean?

Foley: He does not know anything about it.

Gibbons: Probably has never seen it.

Foley: He does not know what you are talking about.

H.M.Jr: Who wrote the thing? Was it Bell?

Foley: Written in his department. Written by a fellow
by the name of Townsend.

H.M.Jr: Why don't you call up this fellow, his so-called
legal adviser Kemp and tell him the story and
say you want to be helpful and that I said to you
to give him the back history on this thing. Call
up Kemp and say "I want you to know about this
because when this thing breaks it is going to be
bad" and I think the chances are nine out of ten
I will sign it myself but there is one chance I
might want you to sign it. I think the way we
will do it is just the way we did last time. We
will let it come out of the Commissioner of
Customs' office and not come out of this office
at all. Just let it come out of the office of
the Commissioner of Customs.

Foley: After you get the Attorney General's opinion -
after you get a release on the T. D., would you
hold it before you publish it.

H.M.Jr: Yes.

Foley: Because I think if we publish it, it is going to
make it much more difficult. He will not be able
to get the information he would otherwise get.

H.M.Jr: Sumner Welles says the British and French are
going to do something between the 10th and 25th
of March. All right, I will take it at face
value and I will give you until the 25th of March,
but I want you to tell me that you now say as of
the 25th of March, you would like to see this
thing go. I will say to Sumner Welles, "I will
wait until the 25th of March", which gives these
fellows fifteen days. Is that O. K?

Foley: All right.

H.M.Jr: They will be over there in six or seven days. I will give them until the 1st of April.

Foley: We will hear from them within a week.

H.M.Jr: "All right, Sumner, I will go you five days better; I will do it on the 1st of April".

Foley: That is fine. We will probably get some other - some more correspondence.

H.M.Jr: But he is going to make the plea - and what we might do is begin writing letters from now on, and then we can say, "In view of these letters". We will say to these people, "Now, very, very confidentially, for we don't want to put it in writing, but we want you to know there are people on the way over to check on it; if they find what we think they are going to find between now and the first of April, we will do this thing, but this is for you and nobody else".

White: You will tell them that.

H.M.Jr: Verbally.

White: Including these three. I think these three should be - this letter may not satisfy them.

Foley: That is right, but that is the next thing - the next time we hear from them.

H.M.Jr: If this does not satisfy them -

White: I should be inclined to think before we move again -

H.M.Jr: I can not afford a leak. I don't want the Germans to know this stuff. I am going to ask Steve Gibbons to go and see these people personally, but I would wait a little bit longer because I want to give these fellows all of the chance I can. The President said if we did not catch as many as one out of ten German spies, that were here before the World War, we are not doing any better now. He said, "There is every reason to believe they are spending just as much money and there are just as many here now as there were before, but

we are not catching any of them."

White: This letter is being answered very quickly. Couldn't we give the usual answer to this letter: "That you are investigating and so on", and then delay this letter about a week or ten days.

H.M.Jr: I would answer them and if they come back, then Steve Gibbons can go up there and see these people and say, "Just lay off the rest of the month and we will promise you something."

Gibbons: Yes, we can get them to do that.

H.M.Jr: O. K, gentlemen.

(Meeting concluded)

MAR 10 1939

My dear Mr. Connery:

I have your letter of March 6, 1939, enclosing a letter from the A. C. Lawrence Leather Co. to you concerning alleged subsidies and dumping practices affecting exports from Germany to the United States which were the subject of a news story appearing in the Boston Transcript for February 28, 1939.

The Treasury Department has taken the position that it has no discretion but to apply countervailing duties under Section 303 of the Tariff Act of 1930 whenever it is satisfied that any bounty or grant is paid or bestowed directly or indirectly upon the manufacture, production, or export of goods imported into the United States which are subject to regular duties under the Tariff Act of 1930.

The article in the Boston Transcript and your letter suggest that German exports to the United States are being subsidized in three ways:

1. By cash payments to exporters from a fund originally created by forced contributions from German business and industry and later supported by contributions from the German Government.
2. By sales of German merchandise in the United States at reduced prices with permission to offset the price reductions through the purchase of German bonds outside Germany and their sale in Germany at a profit.
3. By so-called "barter" trading in which imports into Germany are sold at prices substantially above the world-market level, and the funds derived from such sales used to purchase German goods which are sold after importation into the United States at far less than their market value.

Numerous investigations conducted in Germany by agents of the Treasury have satisfied this Department that cash subsidies from a fund built up under a German law approved June 28, 1935, were paid in connection with the exportation of German goods to certain countries, but failed to establish that such payments were made on any direct or indirect exports to the United States. Under date of December 6, 1935, the German Government gave formal assurance to the United States that such funds had not, and would not, be used to promote exports to the United States.

- 2 -

Bond procedures such as are described in the articles and your letter were discovered by Treasury investigations, and formed in part the basis for the Treasury's countervailing duty order against German merchandise issued on June 4, 1936 (T.D. 48360). Under date of August 12, 1936, the German Government gave official assurance to the United States that it had "taken measures to the effect that neither the use of the scrip and bond procedure will be permitted, nor will the payment of a public or private premium or subsidy, or the use of other German currency and reichsmarks freely convertible into foreign currency or reichsmarks freely utilisable in Germany, be allowed in connection with the direct or indirect exportation of dutiable goods from Germany to the United States of America, so far as such exportation takes place or may take place on the basis of agreements which were concluded on or after August 3, 1936."

On the basis of this assurance, the Treasury Department in T.D. 48479, of August 14, 1936, instructed collectors of customs that estimated countervailing duties need not be collected on merchandise exported from Germany if the collector concerned were satisfied by documentary evidence that the contract of purchase or other agreement pursuant to which the goods were exported from Germany was entered into after August 2, 1936. Under existing instructions, countervailing duties may still be applicable to the classes of German merchandise specified in T.D. 48360 in the absence of satisfactory evidence that their export from Germany was pursuant to an agreement entered into after August 2, 1936.

Continual investigation has failed so far to establish any recent instance in which the Anti-Dumping Act, 1921, should be applied to importations from Germany. Dumping orders are now outstanding against German thumb tacks and wire fencing of certain descriptions. T.D. 46615 and T.D. 46826.

In the fall of 1936, numerous requests were received from American importers and exporters for advice as to the applicability of countervailing duties to merchandise imported from Germany pursuant to various arrangements described in the requests for advice. In view of the volume of these requests, the Treasury Department on December 23, 1936, issued a press release summarizing certain of the previously made rulings holding that certain procedures in connection with imports from Germany would not involve the payment or bestowal of any bounty or grant within the purview of Section 303 of the Tariff Act. This press release was given wide publicity. One of the procedures not involving a bounty or grant was the payment of the purchase price of imports from Germany in whole or in part with the proceeds of the sale in Germany of merchandise exported from the United States, provided the proceeds so used were continually owned by the person for whose actual account the American merchandise was sold in Germany and the German goods were purchased in that country.

- 3 -

The agents of the Treasury Department stationed in Germany, as well as customs officers in this country, have been and are closely scrutinizing procedures in German-American trades to keep the Department supplied with information concerning such procedures in order that it may determine whether they require the application of any special provisions of our customs laws. These, as I think you will realize, are not simple matters to determine. Even with all the facts at hand there are naturally great difficulties in attempting to fit the generalized provisions of our laws to the special circumstances surrounding trade with those countries which have adopted exchange control and other restrictions on commerce. I can only assure you that the Department is continually making earnest efforts to get all the facts and just as earnestly endeavors to apply our laws promptly and fairly to the facts of the situation as they are developed.

Very truly yours,

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury.

Hon. Lawrence J. Connery,
House of Representatives.

MAR 10 1939

My dear Mr. Cellers:

I have your letter of March 7, 1939, concerning alleged subsidies and dumping practices affecting exports from Germany to the United States which were the subject of a news story appearing in the Boston Evening Transcript for February 28, 1939.

The Treasury Department has taken the position that it has no discretion but to apply countervailing duties under Section 303 of the Tariff Act of 1930 whenever it is satisfied that any bounty or grant is paid or bestowed directly or indirectly upon the manufacture, production, or export of goods imported into the United States which are subject to regular duties under the Tariff Act of 1930.

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Very truly yours,

(Signed) H. Morgenthau, Jr.

Secretary

Hon. Emanuel Celler

House of Representatives

EHF:is Typed 3/9/39

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IMPOSITION OF GERMAN
COUNTERVAILING DUTIES

March 10, 1939.

TREASURY DEPARTMENT

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INTER OFFICE COMMUNICATION

DATE MAR 10 1939

TO Secretary Morgenthau
FROM E. H. Foley, Jr.

Re: Imposition of German Countervailing Duties

I am attaching material relative to the proposal for the imposition of countervailing duties on German merchandise procured through barter arrangements, as follows:

1. Summary statement setting forth the history of the German countervailing duty matter;
2. Memorandum explaining the present subsidy system in Germany;
3. Proposed T. D. announcing that countervailing duties will be imposed; and
4. Memorandum explaining procedure for exacting countervailing duties after proposed T. D. is issued and discussing the probable procedure for attacking the order in the courts.

E. H. Foley

Attachments

1 - Summary Statement Setting Forth the History of the German Countervailing Duty Matter

Section 303 of the Tariff Act of 1930 provides for the imposition of countervailing duties whenever there is paid or bestowed directly or indirectly any bounty or grant upon the manufacture or production or export of any dutiable article or merchandise manufactured or produced in a foreign country.

Order of June 4, 1936

On June 4, 1936, the Treasury issued an order announcing the application of countervailing duties to certain German products. This order was based upon information in possession of the Department disclosing that exports from Germany to the United States of particular commodities were being aided by the following three devices:

- (1) Payments of direct cash bounties by German industrial associations.
- (2) Scrip and bond procedures.
- (3) Currency manipulations.

The first device requires no comment.

The second procedures involved the use of certain foreign-owned German bond coupons and securities. The foreign creditor received substantially less than par in foreign exchange; the German debtor paid his full obligation in marks into a German bank; and the difference was used to aid exports. These procedures appeared to the Treasury to amount to the bestowal of a bounty or grant.

In the case of the third device, controlled marks were used in payment for goods exported from Germany. These marks were purchased by American exporters at substantial discounts. It was the Treasury's view that a bounty or grant was bestowed in the amount of the discount.

The views of the Treasury were submitted to the State Department in the Spring of 1936, and on April 2, 1936, the Secretary of State advised the Treasury that, in his opinion, there was considerable doubt with respect to the soundness of the Treasury's legal position. On April 15, 1936, the General Counsel of the Treasury concluded in a formal opinion that a bounty or grant was bestowed within the meaning of the statute in all three cases mentioned above.

On April 16, 1936, the Secretary laid the matter before the President, together with the letter from Secretary Hull, dated April 2, 1936. The matter was referred by the President to the Attorney General, who advised the Secretary on June 2, 1936, that the Treasury Decision subsequently issued on June 4, 1936, was within the requirements of section 303.

Thereafter, during the summer of 1936, a German mission was in this country to protest the order of June 4. The German Government later acquiesced in the order by agreeing to discontinue the three procedures dealt with therein. The mission sought from the Bureau suggestions of methods of handling their exports which would be within the law. These were consistently refused.

Thereafter, the Bureau received numerous inquiries from American importing, exporting and banking interests asking whether various hypothetical procedures tying up German imports to this country with

the export of American products and involving old holdings of marks would be within the law.

Press Release of December 23, 1936

On December 23, 1936, the Treasury Department issued a press release holding that certain procedures in connection with imports from Germany did not involve the payment or bestowal of any bounty or grant within the purview of section 303. For present purposes, the principal import procedure approved involved the payment of the purchase price in whole or in part with the proceeds of the sale in Germany of merchandise exported from the United States, provided that the proceeds so used were continuously owned by the person for whose actual account the American merchandise was sold in Germany and the German goods were purchased in that country.

December 23, 1936, to Present Time

It now appears that the picture has radically changed since the issuance of the press release of December 23, 1936. The principal import procedure above described has become a standard device for financing imports from Germany at reduced costs. On July 15, 1938, the United States Department of Commerce published Special Circular No. 426, outlining the procedure for the information of American traders and giving an English translation of the controlling German regulations. This publication, recent indications of the surprising volume of trade carried on under the procedure, and new information from our Treasury Attache at Berlin have led us to reexamine the matter in the light of the current situation. This reexamination indicates that what seemed in December, 1936, to be only an opportunity, in a limited class of

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cases, to utilize commercial profits to offset high German prices has been developed into a systematic device which is operated to subsidize exports to the United States.

A regulated over-price is paid on the two American articles now extensively used in the procedure. On cotton the over-price is uniformly 33-1/3%, and on copper it ranges from 50 to 70%. Thus the selected commodities perform the function of a special medium of exchange; in reality, they amount to a form of money and are utilized as such in addition to dollars and marks. This over-price furthers exports by permitting a reduction in the cost of the purchasing mark. In essence it is a substitution for a selective or discriminatory devaluation of the mark.

Possible Future Action

Before any action is taken, we should secure a more detailed description of present practices and additional evidence of their use. Special inquiry along these lines has been made of Erwin G. May, Treasury Attache at Berlin, who happens to be in this country at this time.

If and when it is proposed to make any of the present practices the basis of Treasury action imposing countervailing duties, the procedure followed before the issuance of the order of June 4, 1936 might well be used again. Thus a letter would go to the State Department indicating the Treasury's views, and, when its response was received, the Treasury would advise the President that, under all the circumstances, he might want to secure the opinion of the Attorney General before final action was taken.

2 - Memorandum Explaining the Present Subsidy System in Germany

Under current regulations of German governmental authorities, the importation of substantial amounts of many German products into the United States has come to be financed through the medium of so-called "barter" arrangements. The essential features of all these arrangements as set forth in Special Circular No. 426, issued by the United States Department of Commerce on July 15, 1936, and other reliable information before the Treasury Department, are:

(1) the prospective American importer of German goods "buys" one of a limited number of kinds of merchandise (cotton or copper in most, if not all, cases) for dollars at the world price. The kind of merchandise to be admitted into Germany for the purpose of the "barter" must be approved by the German import control authorities, and such approval is strictly limited to a very few kinds of goods.

(2) The merchandise is shipped into Germany, having therefore been sold to a German purchaser for free marks (which, as appears below, are immediately blocked) at a price substantially higher than the mark equivalent of the total cost to the vendor, if such cost is calculated at the current official rate of exchange. This spread or "uberpreis" (over-price) is uniformly 33-1/3% in the case of cotton. It has been less uniform but usually greater in amount in the case of copper. In every case the price to be paid by the German vendee must receive

prior approval by the German import control authorities.

(3) The marks paid by the German vendee are required to be paid into special accounts in German banks, where, as mentioned above, they are held as "blocked" or controlled funds for the account of the prospective American importer mentioned above.

(4) Whatever the formal limitations upon the use of such controlled funds by their American owner may be, their only practical use is in payment for German goods to be shipped to the United States. The kinds of goods for which such payment may be made are restricted to those set forth in detail in a list published by the German exchange control authorities on July 19, 1938. Excluded from this list are, in general:

(a) Articles and commodities in which Germany has a virtual international monopoly to such extent that their export at the current high German prices requires no assistance.

(b) Goods of which there is a shortage in Germany so that their export is not favored by the German Government.

(c) Goods composed of foreign materials to such a large extent that their export is objectionable to the German Government because of the drain on

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Germany's foreign balances which would result from the purchase of the materials used in their manufacture.

The net result of the above described system would seem to be that, to those who avail themselves of it, the grant of a valuable privilege is being bestowed by the German Government in connection with the exportation from Germany to the United States of the selected kinds of merchandise enumerated in the above mentioned list. It appears that, by restricting imports, fixing import prices, regulating the method of paying for imports, and controlling the disposition of the proceeds of payment, the regulatory system of the German Government has provided a means whereby commodities (cotton and copper) suitable for the purpose may be used as a special medium of exchange for converting dollars into marks on the basis of an assured premium of marks, on condition that the total marks received, including the premium, be used for the purchase of the listed goods to be exported from Germany to the United States.

The purposes and underlying causes of the regulatory system appear to be immaterial. If the result of the system is to benefit exports in an amount which may be determined or estimated and in such manner that the goods may be sold to the United States for less than would otherwise be possible, it seems clear that there is a bounty or grant within the meaning of our countervailing duty law. The features of the system which give to the American importer certainty as to the

- 4 -

premium rate at which his dollars will be converted into marks by the use of cotton or copper as an intermediate and special medium of exchange, and those features which restrict the use of the enhanced mark proceeds of the exchange transaction, would seem to preclude a conclusion that the premium created in the form of marks to be used for promoting exports is a profit on the sale of the cotton or copper in Germany by the American importer, rather than a subsidy on the export of German goods.

Since the usual and ordinary result of the system in its current operation seems to be the payment or bestowal of a bounty or grant upon the export of German merchandise in the form of an assured sum in marks for the German exporter in addition to the equivalent of the investment made by the American importer in transactions directed solely to payment for the German goods, it would seem clear that such goods which are dutiable under the Tariff Act of 1930 are subject to countervailing duties under section 303 of that Act (U.S.C. title 19, sec. 1303) in the amount of the premium. Downs v. United States, (1903) 187 U.S. 496; Nicholas v. United States, (1919) 249 U.S. 34; (1936) 38 Op. Atty. Gen. 489.

3 - Proposed T.D. Announcing that Countervailing Duties will be Imposed

(T.D. _____)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under Section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of Customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

Treasury Department
Office of the Commissioner of Customs
Washington, D.C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of Section 303 of the Tariff Act of 1930 (U.S.C., title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other goods on a premium basis (regardless of the character of such other goods or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or

- 2 -

estimated to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

Commissioner of Customs

APPROVED:

Secretary of the Treasury

4 - Memorandum Explaining Procedure for Exacting Countervailing Duties After Proposed T.D. is Issued and Discussing the Probable Procedure for Attacking the Order in the Courts.

When the proposed countervailing duty order has been signed by the Commissioner of Customs and approved by the Secretary, it will be filed for publication in the Federal Register and published in the next issue of the weekly TREASURY DECISIONS. From 4 to 10 days must elapse between the date of approval and the date of publication in TREASURY DECISIONS because that pamphlet is published each Thursday and matter to be included therein must be forwarded to the printer not later than the preceding Monday morning. The order will become effective on the 31st day after the date of publication in TREASURY DECISIONS.

Beginning on the effective date of the order, all collectors of customs will collect, in addition to regular estimated duties, estimated countervailing duties equal to 25 per cent of the invoice value of each shipment of merchandise from Germany which is subject to regular duties under the Tariff Act of 1930 and which is entered for consumption or withdrawn from warehouse for consumption. An investigation will then be made in respect of each such shipment to determine whether it was or is to be paid for through a "barter" transaction and, if such is the case, the Secretary of the Treasury will then make a declaration of the amount of subsidy, which will equal the dollar equivalent at 40 cents per mark of the difference between the German premium price and the world market price for the goods sold in Germany by the American importer engaging in the "barter" transaction. This declaration will be forwarded to the collector of customs concerned,

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who will act thereon by making a formal assessment of the declared amount as countervailing duties in his final computation of the total duties due on the importation. When this computation is made, any excess duties collected will be refunded and the importer will be called upon to pay any deficiency.

An importer who objects to the assessment of countervailing duties may, within 60 days after the final computation of duties by the collector, file a written protest stating his reasons for the objection. In the absence of such protest within the 60-day period, the assessment of the countervailing duties will become final and conclusive upon all persons. If a protest is filed, the collector is required to review his action within the succeeding 90 days and upon affirming his computation he must transmit the protest and all the accompanying papers to the United States Customs Court, where the matter will be tried before a division of three judges. The United States will be represented by the office of the Assistant Attorney General in charge of customs litigation. The customs court has jurisdiction to determine the legality of the countervailing duty order, but it has been decided in Franklin Sugar Refining Co. v. United States, (1911) 1 Ct. Cust. Appls. 242, that the court may not determine the correctness of the amount of countervailing duties payable. It may only decide whether the system upon which the countervailing duty order is based involves the payment or bestowal of a bounty or grant.

An appeal lies from the customs court to the United States Court of Customs and Patent Appeals and in rare instances a case may go from the latter court to the United States Supreme Court.

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It is usual for a year or more to elapse between the date a protest is received by the customs court and the date of trial and 3 to 6 months usually elapses between the date of trial and the date of decision. It is possible, however, for a case to be tried and decided within 3 or 4 weeks after the protest is received by the court.

It is possible that litigation of the countervailing duty order might be initiated within a day or two after its effective date by a protest against a refusal of the collector to deliver merchandise without deposit of the estimated countervailing duties and that a decision might be reached at a very early date by that procedure. This procedure is rarely followed. In view of the complexity of the law and facts to be tried it seems unlikely that a judicial decision in respect of the countervailing duty order can be expected until a year or more after its promulgation.

THE UNDER SECRETARY OF STATE
WASHINGTON

March 11, 1939

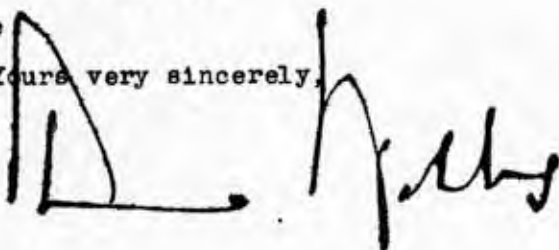
Personal and
Confidential

Dear Henry:

I deeply appreciate what you were good enough to say at Cabinet meeting yesterday. I am sending you these few lines to let you know that I am most grateful.

Believe me

Yours very sincerely,

A handwritten signature in black ink, appearing to be "R. H. H. H.", written in a cursive style.

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

GERMAN COUNTERVAILING DUTIES

EXCERPT FROM 9:30 GROUP MEETING

MARCH 13, 1939

Foley: * * * Feis called up Saturday morning and said they were going to talk with the German Embassy early this week about the scheme, the barter scheme and tell them unless they stopped it that countervailing duties were going to be imposed.

H.M.Jr: That is right. What happened in Cabinet was this: The President himself brought it up and used the memorandum which I gave him last Monday. Using that, he brought it up and he took the entire blame for holding it up, on himself and said that the State Department had asked him to hold it up for various reasons, and that he had concurred. But that now, he was going to ask the Attorney General to give him a ruling. The Attorney General said, "I can give you one tomorrow that will be favorable", and he said, "No, I don't want it until two weeks from Monday". I said, "And suppose the State Department continues to object". He said, "We will give them two weeks from Monday". And I said, "I think I am entitled to an Attorney General's opinion", and Frank Murphy said, "You will get it". So the President said, "No, I don't want it until two weeks from Monday". Then the President said, "You can tell the young man up at the German Embassy this is coming; if they want to change their ways it is all right, but it is in the hands of the Attorney General", and he said "Henry has been worrying about going to jail, and now we will let Frank Murphy worry", and Frank said, "I will give it to you tomorrow", and he said, "No, not tomorrow."

I did not say a word about our boys being on the water. I thought it better to let it ride.

Foley: I think that is right. I did not tell Feis when I talked to him.

- H.M.Jr: Well, I have not said anything. So everything broke but the President took the initiative. He took the entire blame on himself that the thing was held up and also told us that Homer Cummings had it, and had it, he thought, since last fall. But I corrected that. So he said, "Tell the German Embassy it is now in the hands of the Attorney General".
- Foley: Well, the conversation took a funny turn. Feis said he wanted a memorandum from us giving all the details so that they could be fortified when he talked to the German Embassy, and I said, "What more do you want than the four-page memorandum we gave you last fall".
- H.M.Jr: October 31st.
- Foley: Yes. He said, "Just a minute", and he turned to his associate and came back and he said, "Well, we want something nasty"- he wants something that will distinguish the facts that you gave us last fall from the explanation the German Embassy gave us two years ago, but he said, "I don't think that is necessary because the decision has been made that we are going to go ahead and all we need to do is tell them that". So he said, "I don't think that background is necessary". And I said, "Well, we want to give you all we have so you will be fortified when you talk to these fellows". And he said, "Well, let me have so and so - get in touch with your men". So I suggested that he come over and talk with Bill Johnson today or tomorrow.
- H.M.Jr: I would let it be between the State Department and Johnson. They have got all of the facts.
- Gibbons: Hasn't the State Department put you on the spot? Connery says he has this letter on the State Department.
- H.M.Jr: I know. That is all right. I told the State Department please not to write any more letters. The President told eleven people there it was his responsibility. But this is all right - we are all right now.
- Gaston: They have been throwing it back in our lap.

H.M.Jr:

I told them that at the Cabinet. It is all right. The President has decided we go ahead. He said, "Two weeks from today we will get the ruling", and he used my memorandum which I gave him last week. He just started the Cabinet right off with this thing. That is what he started Cabinet off with, George.

TREASURY DEPARTMENT

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Washington

FOR IMMEDIATE RELEASE,
Friday, March 17, 1939.

Press Service
No. 16-79

James H. Moyle, Commissioner of Customs, today sent the following telegram to all United States Collectors of Customs:

"TO ALL COLLECTORS OF CUSTOMS

The State Department having today advised Treasury Department that in view of the recent military occupation of the Provinces of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and the assumption of control over these areas by German authorities, the State Department, while not recognizing any legal basis for the assumption of so-called protection over this territory, is constrained by force of the foregoing circumstances to regard the above-mentioned Provinces as now being under the de facto administration of the German authorities, products of areas mentioned exported from any country on or after March 18, 1939, shall be regarded as products of Germany for the purposes of the marking provisions of the Tariff Act of 1930 and for determining applicable rates of duty. Give importers all possible notice. Apply provisions article 822(c) Customs Regulations 1937 in determining dates of exportation.

JAMES H. MOYLE
Commissioner of Customs."

The letter of the Acting Secretary of State, to which reference is made in the above telegram, is as follows:

"March 17, 1939.

My dear Mr. Secretary:

In view of the recent military occupation of the Provinces of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and the assumption of control over these areas by German authorities, the Department, while not recognizing any legal basis for the assumption of so-called 'protection' over this territory, is constrained by force of the foregoing circumstances to regard the above-mentioned Provinces as now being under the de facto administration of the German authorities. The Department of State, therefore, perceives no objection to the Treasury, under such regulations as it may issue, regarding as German for customs purposes, including the application of rates of duties, goods coming from the Provinces of Bohemia, Moravia and Slovakia. You will later be advised as to the Province of Carpatho-Ukraine or Ruthenia.

Sincerely yours,
SUMNER WELLES
Acting Secretary.

The Honorable,
Henry Morgenthau, Jr.,
Secretary of the Treasury."

--000--

March 17, 1939.
10:18 a.m.

HMJr: Hello.

Operator: Mr. Welles. Go ahead.

HMJr: Hello.

Sumner
Welles: Hello.

HMJr: I have people here, but I thought that you wanted to talk to me right away.

W: Yes, thank you, Henry. I've just been talking to the President --

HMJr: Yes.

W: At my press conference at twelve-thirty today I've got to make a statement, which is of a political character.

HMJr: Yes.

W: And I want to be authorized by you --

HMJr: Yes.

W: To say immediately thereafter when the question comes up again as to our trade and financial complications, that I am informed that the Treasury Department will make an announcement to cover that subject in the immediate future.

HMJr: Well, what -- what are we going to say?

W: Well, whatever you say could be said tomorrow.

HMJr: Oh!

W: What I had in mind was the statement that Feis discussed with you yesterday regarding the status of the Czechoslovak Agreement.

HMJr: O.K.

W: And the President, at Cabinet this afternoon is going to ask Murphy to send him today that ruling on the countervailing duties.

HMJr: I get you.

W: So that the two things can "click" immediately after the statement that I'm going to make today.

HMJr: You don't expect us to say anything today.

W: Not today.

HMJr: What I mean -- we have until tomorrow morning?

W: Yes indeed.

HMJr: Well now, as I understand it, since Herbert Feis left here last night we've had no communication -- (Aside: Have we had any communication?) Oh, Harry White's here; he said, "Yes," he had heard from Herbert Feis. I didn't know that.

W: Dr. Feis is here with me now.

HMJr: Well, I didn't know. He -- he has talked with White.

W: I want to -- I want to make sure what our own thoughts are and what the President agreed in principle to.

HMJr: Please.

W: Our feeling was that we should not take any step which would infer recognition of the acquisition of Czechoslovakia.

HMJr: Yes.

W: And that the Treasury Department should make it clear that in view of the military occupation of Czechoslovakia, the taking over of control in that country by Germany --

HMJr: Yeah.

W: That after a certain date -- whatever the time that you feel is the minimum --

HMJr: Yeah.

W: Goods coming from that area will be regarded and classified as German goods and subject to German treatment.

HMJr: I see.

W: That as soon as we can hear with regard to the other countries that have paid benefits under the generalization provisions, we would announce that we were negotiating supplementary agreements with them.

HMJr: They wouldn't be affected.

W: Yes. So that they would be taken care of.

HMJr: Oh, grand! That's grand!

W: Does that seem to you all right?

HMJr: Well I -- yes -- I thought that it would seem most unfair to -- Belgium should be penalized because we canceled this treaty this Czecho.

W: Well, I'm a hundred per cent in accord, and if we do announce that we cancel it, of course, that implies recognition of the conquest.

HMJr: Well now, do I understand that Feis has told our people on what basis they want us to work?

W: (Aside: Have you had an opportunity of telling them on what basis you want them to work?) Not as yet.

HMJr: Well --

W: But he will get in touch with your people immediately after he leaves me.

HMJr: Yes, and if he would -- he's not -- I think if he would -- tell him to call up -- I've got White in here with me.

W: Yes.

HMJr: But if he would call Ed Foley.

W: Foley?

HMJr: Yeah.

W: All right, Henry.

HMJr: See?

W: All right.

HMLJr: He call Ed Foley.

W: All right.

HMLJr: Let me understand -- you're going to make this statement at noon?

W: Yes.

HMLJr: Don't expect us to follow it up with anything before tomorrow.

W: That's right.

HMLJr: Is that right?

W: That's absolutely right.

HMLJr: And --

W: I'm calling in Thompson tonight to tell him that the imposition of the countervailing duties is going to be announced immediately -- in the immediate future.

HMLJr: Did you see Thompson last night?

W: No, I put it off until I knew exactly what the President would approve.

HMLJr: Right.

W: So I'm seeing him tonight.

HMLJr: Well now, whatever we do we'll have a chance to check it again with you -- with your people.

W: That's right.

HMLJr: See?

W: Yes indeed.

HMLJr: Well, I mean, we'll have a chance to work it out and then submit it to the State for your approval.

W: Fine, Henry.

HMLJr: O. K?

W: Thank you very much.

HMLJr: Thank you.

W: Good bye.

March 17, 1939

1:40 p. m.

Present:

Mr. Lochhead
Mr. Foley
Dr. White
Mr. Johnson
Mrs. Klotz

HM,Jr: How do I address you (Johnson)? How are you, Mr. Administrator?

Mr. Johnson: My name is mud!

HM,Jr: Do the lawyers talk to you?

Mr. Johnson: The lawyers are all renouncing their titles.

Mr. Foley: The memorandum is "coming up".

HM,Jr: "Sunny side up"?

Mr. Foley: This is the letter -- proposed letter that State will send to you, which will be the basis for the action by Customs.

HM,Jr: I could kill that fellow, Celler. He gave out my letter today in which Morgenthau says there is nothing to this German dumping.

Mr. Lochhead: I was just complimenting these gentlemen that this crew you sent over on the other side has handled it so quickly. They arrived yesterday and today we have this.

HM,Jr: They give my letter out. It's all right. I mean the Celler letter.

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HM, Jr: Now, listen. This is a very nice letter, with one very important exception -- "The Department of State, therefore, perceives no objection to the Treasury," etc. Why give me a double negative?

Mr. Foley: After all, the Customs is under the Treasury Department and they can't recommend any action that you should take as to matters under your jurisdiction. It's merely comity between the two Departments.

HM, Jr: Comedy?

Mr. Foley: C-o-m-i-t-y.

Mr. Johnson: I may say the last sentence is about all they wanted to give us.

HM, Jr: Can't you get this worded a little differently?

Mr. Foley: They don't want formally to recognize as German this new territory. On the other hand, we have to have as much as we can get from them in order to base our action.

HM, Jr: You people satisfied with this?

Dr. White: That one phrase troubled me, but there is no way out. The phrase -- they don't object -- is kind of cold.

Mr. Johnson: That's what they said in the Sudeten case, too.

Mr. Foley: I think anything more than that would be dictation by the State Department and something you might resent.

HM, Jr: Could you put it this way: The Department of State, therefore, advises the Treasury.

Dr. White: No. They are giving you instructions.

HM, Jr: Well, if you gents are satisfied, it's all right with me.

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Mr. Foley: I think we got more out of them than I was expecting.

HM,Jr: Then, when do we move? Tomorrow morning?

Mr. Foley: Tomorrow.

Mr. Johnson: That date will be the 18th instead of the 17th.

Mr. Foley: This is the proposed notice that the Commissioner sends to the different Collectors.

HM,Jr: Let me ask you a question. If this is here (letter from State Department) why don't we do it tonight?

Dr. White: The only reason why, I understand, it is not being done tonight is they wanted first to inform the German attache. Otherwise there is no reason.

HM,Jr: What they are informing the German attache is something entirely different.

Mr. Foley: But they thought the thing should be announced simultaneously, but that's entirely up to you, Sir, and we would prefer to put that on the wire tonight, wouldn't we?

Mr. Johnson: Yes.

HM,Jr: In the first place, it seems to me, two things: this goes out tonight. The other thing -- they have nothing to do with each other.

Mr. Foley: No; they are entirely independent of each other.

HM,Jr: What do you think, Mr. Administrator?

Mr. Johnson: I told Ed I could not see why this was being deferred. It should be separated rather than joint.

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Mr. Lochhead: That's right, and this should come first.

Dr. White: This letter, you haven't decided, if it is approved whether it is to be released. That letter you merely receive personally. The instructions go out today -- cabled today -- whether you want to make that letter public.

HM, Jr: Yes, I think so. This ought to go out tonight for tomorrow's papers. The other thing, we can do it tomorrow; give it out here at noon tomorrow.

Dr. White: In view of the Celler letter, I would give it out tomorrow.

HM, Jr: The point I am getting at, I think it's bad public relations to do the two together.

Dr. White: It's much more effective.

HM, Jr: Much more effective.

Mr. Foley: In view of what Celler did this morning, the sooner we get this out, the better.

HM, Jr: It annoys me -- what Celler did. What I will do is this: I will bring this to Cabinet. If I get a clearance I will come back and call you on the phone just on this; say it's all right and get it on the wires.

Mr. Johnson: In the meantime, we can check with Hackworth on the possibility of getting it dated today and everything.

HM, Jr: I told the State Department or the President that this is going to be handled just like Sudetenland.

Mr. Johnson: This is mechanically the same as Sudetenland. There is one error in the memorandum. We say the 17th and if this is released, it will be the 18th.

cOo-cOo

MEMORANDUM TO SECRETARY MORGENTHAU:

We have three problems which we are working on/^{con}currently with the State Department.

I
Treatment of Imports from Czechoslovakia

We have cleared with the State Department, subject to approval by you and Mr. Welles, a draft of a proposed letter (copy attached) announcing the changed status of Czechoslovakia. If this letter is signed substantially in this form it will serve as the basis for instructions from the Commissioner of Customs to all Customs officers that products of the areas involved (all areas in Czechoslovakia except Ruthenia), effective as to goods exported on or after March 19, 1939 will be

- (a) Required to be marked to indicate German origin;
- (b) Subject to higher rates of duty applicable to German goods;
- (c) Subject to custom valuation as German goods.

A proposed draft of Commissioner's instructions which has been tentatively cleared with the State Department is attached.

Unlike the Austrian case, but like the Sudeten case, the only grace period will be that given to goods in transit.

The State Department agrees with us that the proposed action will not disturb the application of reduced rates of duty established pursuant to the Czechoslovakian trade agreement to goods from third countries such as Belgium.

It is proposed that the letter of notification of change in respect of Czechoslovakia will be dated tomorrow. Immediately upon receipt of this letter the Commissioner of Customs will release his instructions.

II

German Countervailing Duties

It is our understanding that the opinion of the Attorney General approving the proposed T. D. announcing countervailing duties on dutiable imports from Germany financed through "barter" transactions will be received tomorrow morning. Upon receipt of this opinion, the Treasury Decision (copy attached) will be signed by the Commissioner of Customs and approved by you. The new duties will apply to goods entered or withdrawn after the expiration of 30 days after the order is published in TREASURY DECISIONS. The date of publication will be Thursday, March 25, if it is sent to the printer Monday morning.

It is our understanding that announcement to the press of the proposed countervailing duty action will be made by you simultaneously with your announcement of the action in respect of the changed customs status of goods from the Czechoslovakian areas.

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III

Czechoslovakian Balances in This Country

Following up your request, the Federal Reserve Bank has informally asked the leading New York banks to withhold important clearances involving Czechoslovakian accounts until Monday, March 20. In the meantime, we are considering the action which the Government may take to protect its interests and the interests of the American citizens. One suggestion is that banks, brokerage houses, etc. should be required to file detailed reports of balances, securities, etc. which they are holding for Czechoslovakia's account and continue to hold such property until further notice. There are other possible methods of dealing with the situation which are under consideration, such as the imposition of general foreign exchange control which will permit us to deal not only with the Czechoslovakian situation but with any other related situation which might arise; or imposition of foreign exchange control limited to Czechoslovakian assets in this country.

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DRAFT

March 17, 1939.

My dear Mr. Secretary:

In view of the recent military occupation of the Province of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and the assumption of control over these areas by German authorities, the Department, while not recognizing any legal basis for the assumption of so-called protection over this territory, is constrained by force of the foregoing circumstances to regard the abovementioned Provinces as now being under the ^{de facto*} administration of the German authorities. The Department of State, therefore, perceives no objection to the Treasury, under such regulation as it may issue, regarding as German for customs purposes, including the application of rates of duties, goods coming from the Provinces of Bohemia, Moravia and Slovakia. You will later be advised as to the Province of Carpatho-Ukraine or Ruthenia.

Sincerely yours,

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

*Change suggested by President at Cabinet Meeting 5/17/39.

TO ALL COLLECTORS OF CUSTOMS

The State Department having today advised Treasury Department that in view of the recent military occupation of the Province of Bohemia, Moravia and Slovakia of Czecho-slovakia by German armed forces and the assumption of control over these areas by German authorities, the State Department, while not recognizing any legal basis for the assumption of so-called protection over this territory, is constrained by force of the foregoing circumstances to regard the abovementioned Provinces as now being under the administration of the German authorities, products of areas mentioned exported from any country on or after March 18, 1939, shall be regarded as products of Germany for the purposes of the marking provisions of the Tariff Act of 1930 and for determining applicable rates of duty. Give importers all possible notice. Apply provisions article 822(e) Customs Regulations 1937 in determining dates of exportation.

HW:s Typed 3/17/39

GOPI

(T.D. _____)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under Section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of Customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

Treasury Department
Office of the Commissioner of Customs
Washington, D. C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of Section 303 of the Tariff Act of 1930 (U.S.C., title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated.

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to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

Commissioner of Customs

APPROVED:

Secretary of the Treasury

HC/ep 11/23/38
Rewritten 2/6/39

(T. D.)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

TREASURY DEPARTMENT
OFFICE OF THE COMMISSIONER OF CUSTOMS
Washington, D. C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (U.S.C. title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other goods on a premium basis (regardless of the character of such other goods or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the

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payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice, of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

Commissioner of Customs.

APPROVED:

Secretary of the Treasury.

For Publication,
Federal Register, Series No.

HCG/hfp 3-17-39

Handwritten: FD C.W. - F.H. S.B.

RE CHANGES IN DUTIES AFFECTING IMPORTS March 17, 1939.
FROM OCCUPIED CZECHOSLOVAKIAN PROVINCES 4:30 p.m.

Present: Mr. Gaston
Mr. Foley
Mr. White
Mrs Klotz

H.M.Jr: Now, I got Welles to sign this, after he got a memorandum from somebody over in the Trade Section telling him not to do it, to hold it off for another week - some fellow over there.

White: Hawkins.

H.M.Jr: "hat?

White: Hawkins.

H.M.Jr: Hawkins wrote him a memorandum not to do it.

White: Not to do this?

H.M.Jr: Not to do this for another week - something in regard to shoes.

Klotz: Shoes.

Gaston: He's got some shoes coming.

White: Is this going to be held up for a week?

H.M.Jr: It's going out tonight.

White: It's been considered.

H.M.Jr: We decided it. It's finished, it's done. That's it right there.

White: You've got it.

H.M.Jr: If I hadn't had it come over the way I did, they would have held it up for a week. Now, will you keep all of this, and then when it's through give it back to Mrs. Klotz, with a little explanatory note for my diary. Please.

Foley: Yes, sir.

White: Well then, it's all done.

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H.M.Jr: Yes, but now I've - but I've got to initial things, etc., etc. And the Attorney General will have the other thing over here at nine tomorrow morning.

White: Well - I mean on what basis are you ignoring the request for a week from Welles?

Boley: He's not; Welles ignored it.

White: I see; I didn't understand it.

H.M.Jr: Look, with this letter came a memorandum from Hawkins, which Welles showed me, asking this be postponed for a week. And he let the President see it and the President said, "No, go ahead, sign it." But the beauty of it was having it then and there. I don't know what Welles would have done; but Hawkins asked for a week's postponement.

And I told Welles that his letter would be released with ours. He said, "O.K."

Gaston: Do you want to see it?

H.M.Jr: Yes, very much. Sit down, people, and be easy.

(Begins to read press release, attached hereto)

Do you have

Gaston: We have to check this letter against the actual text.

H.M.Jr: That's what I was thinking.

Is this for morning newspapers?

Gaston: No. Get it out for immediate release. Doesn't make any particular difference now, except they can announce it on the radio.

H.M.Jr: What do you think is the best way?

Gaston: Better make it immediate, I think. That takes off all restrictions on its becoming known to importers as soon as possible.

H.M.Jr: I want to just tell you how interesting this is. Now, for instance, I told the President - had a

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second - this morning what we've done with the banks; and the President starts out at Cabinet - he said, "You'll be interested to know what I told the banks; that is, what the Secretary of the Treasury told the banks." And he went on to explain.

And then he said, "Now, I understand we're going to give them thirty days' notice on this question of ..." - whatever you call it, sovereignty, something like that. So I said, "Well, I'm sorry, Mr. President..." Oh, before the meeting I had two minutes with Welles; I said, "Welles, here's the letter; take a look at it and see if it's all right." He said, "Well, I haven't seen it before and I appreciate your showing it to me..." - so forth.

So when the President got on this thing he got right off on the wrong foot right away on the thirty days' notice. I said, "If you don't mind, Mr. President, let's take it in the order in which it would come. Mr. Welles has a letter before him which I think he's going to send me. Maybe he'd like to read it."

So Welles said, "Yes, thanks to Mr. Morgenthau I just got the letter; I wouldn't have otherwise had it." He reads it, and I read from the memorandum. In other words, I had myself all down pat. It worked just like clock-work and I had the explanation and was able to read the thing. I mean because of my calling you people to have it, I had the stuff. Welles didn't know what it was because he'd been on something else. And the stuff being in good order just flowed - you people getting it to me at two - the whole thing flowed, and I was able to get the very complicated thing through just as smoothly as possible. I mean it all worked out beautifully.

You fellows did a nice job. But Welles - his people hadn't given him a thing; he hadn't even seen this letter. So when I came out to call you, I wrote Welles a little memorandum and said, "I've taken the liberty of asking your office to send this over to you." He said, "That's fine." Then he stayed behind and read it.

But the whole thing, you see, putting you people on

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notice, then having the memorandum for me
And the President didn't have the technical explanation, Welles didn't have it; I had it, fortunately.

- White: And we didn't have a single minute to lose; just got it under the wire, and we were working right through.
- Foley: They insisted we go over there this morning, which took up some time.
- H.M.Jr: Well, the difference is that our stuff was ready, it was in nice shape, and I really was proud of my organization; and everybody else fumbled around.
- Alotz: They worked this morning.
- White: You say the President made an error with respect to thirty days' notice?
- H.M.Jr: He thought in this order we gave them thirty days' notice.
- White: Did he mind that we didn't?
- H.M.Jr: No, when he knew what it was and I explained it to him. I just read from my memorandum, that's all. I had explained to him once before. That's why, when you tried to catch me up - I had already explained to him that the thing was a question of being in transit or a consular invoice, and I had said that we gave no notice this time; but he for some reason or other thought we gave them thirty days' notice.
- White: Well, Bill Johnson just got a letter from the Exporters' Association urging notice, and so forth. Probably be many more letters like it.
- H.M.Jr: Well, this goes now. Any reason why this shouldn't go, Herbert?
- Gaston: No, no reason. The only thing is that we have it signed "Acting Secretary of State" in this and in the letter it's just signed "Acting Secretary."

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H.M.Jr: He signs it - how is it signed?

Foley: It's not how he signs it. It's the designation underneath.

Gaston: He signs it "Sumner Welles, Acting Secretary," and we have it "Sumner Welles, Acting Secretary of State."

H.M.Jr: Well, cross it out.

White: Except this is on the Department of State stationery, and it would be necessary there where it isn't here.

Gaston: I don't think it's necessary.

Foley: It's only a press release anyhow. They use as much as they want of it.

H.M.Jr: I think it's more timely to let her blow. The only thing I think I would do is this: I would send over a package of these fifteen minutes in advance to the Press Section of the State Department.

Gaston: Press Section of State.

H.M.Jr: I mean I'd give them here, then send a package over to State; we're giving it to our boys, but I'd send some to Commerce and some to State.

Foley: "e want to be sure, too, that Johnson has got Moyle ...

H.M.Jr: well, from now on I'm out of it. I'll leave it to you fellows. But this is nice work. And the other thing will be over at nine tomorrow morning.

Foley: We'll have that ready.

H.M.Jr: "ell, tomorrow's cables roll, don't they?

Foley: That's right. But he's gone - Johnson said, "I'll send it." I said, "No, you don't; you go out to his apartment."

H.M.Jr: Did he?

Foley: Yes.

H.M.Jr: Did somebody have to hold his hand?

Foley: I'm not sure.

H.M.Jr: Be sure he doesn't die until after he signs it.

TREASURY DEPARTMENT

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Washington

FOR IMMEDIATE RELEASE,
Friday, March 17, 1939.

Press Service
No. 16-79

James H. Moyle, Commissioner of Customs, today sent the following telegram to all United States Collectors of Customs:

"TO ALL COLLECTORS OF CUSTOMS

The State Department having today advised Treasury Department that in view of the recent military occupation of the Provinces of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and the assumption of control over these areas by German authorities, the State Department, while not recognizing any legal basis for the assumption of so-called protection over this territory, is constrained by force of the foregoing circumstances to regard the above-mentioned Provinces as now being under the de facto administration of the German authorities, products of areas mentioned exported from any country on or after March 18, 1939, shall be regarded as products of Germany for the purposes of the marking provisions of the Tariff Act of 1930 and for determining applicable rates of duty. Give importers all possible notice. Apply provisions article 822(e) Customs Regulations 1937 in determining dates of exportation.

JAMES H. MOYLE
Commissioner of Customs."

The letter of the Acting Secretary of State, to which reference is made in the above telegram, is as follows:

"March 17, 1939.

My dear Mr. Secretary:

In view of the recent military occupation of the Provinces of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and the assumption of control over these areas by German authorities, the Department, while not recognizing any legal basis for the assumption of so-called protection over this territory, is constrained by force of the foregoing circumstances to regard the above-mentioned Provinces as now being under the de facto administration of the German authorities. The Department of State, therefore, perceives no objection to the Treasury, under such regulation as it may issue, regarding as German for customs purposes, including the application of rates of duties, goods coming from the Provinces of Bohemia, Moravia and Slovakia. You will later be advised as to the Province of Carpatho-Ukraine or Ruthenia.

Sincerely yours,

SUMNER WELLES

Acting Secretary of State.

The Honorable,
Henry Morgenthau, Jr.,
Secretary of the Treasury."

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DEPARTMENT OF STATE
WASHINGTON

In reply refer to
Le

March 17, 1939.

My dear Mr. Secretary:

In view of the recent military occupation of the Provinces of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and the assumption of control over these areas by German authorities, the Department, while not recognizing any legal basis for the assumption of so-called "protection" over this territory, is constrained by force of the foregoing circumstances to regard the above-mentioned Provinces as now being under the de facto administration of the German authorities. The Department of State, therefore, perceives no objection to the Treasury, under such regulations as it may issue, regarding as German for customs purposes, including the application of rates of duties, goods coming from the Provinces of Bohemia, Moravia and Slovakia.

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

Slovakia. You will later be advised as to the Provinces of Carpatho-Ukraine or Ruthenia.

Sincerely yours,


Acting Secretary.

TREASURY DEPARTMENT

Washington

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FOR IMMEDIATE RELEASE,
Saturday, March 18, 1939.

Press Service
No. 16-80

The following Treasury Decision to be published in the March 23 issue of
TREASURY DECISIONS was issued today by the Commissioner of Customs:

(T. D. 49821)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

TREASURY DEPARTMENT
OFFICE OF THE COMMISSIONER OF CUSTOMS
Washington, D.C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (U.S.C. title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other goods on a premium basis (regardless of the character of such other goods or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the

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expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice, of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

JAMES H. MOYLE
Commissioner of Customs.

APPROVED: March 18, 1939

HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

The opinion of the Attorney General with respect to the above Treasury Decision follows:

March 18, 1939.

The Honorable,

The Secretary of the Treasury.

My dear Mr. Secretary:

Reference is made to your memorandum to the President, dated November 28, 1938, in which you outline certain practices now prevailing in Germany, and to your recent informal request for my opinion as to whether those practices require the imposition by the Treasury Department of countervailing duties under section 303 of the Tariff Act of 1930.

You state in your memorandum that the following practices now prevail in Germany:

"(1) The prospective American importer of German goods 'buys' one of a limited number of kinds of merchandise (cotton or copper in most, if not all, cases) for dollars at the world price. The kind of merchandise to be admitted into Germany for the purpose of the 'barter' must be approved by the German import control authorities, and such approval is strictly limited to a very few kinds of goods.

"(2) The merchandise is shipped into Germany, having theretofore been sold to a German purchaser for free marks (which, as appears below, are immediately blocked) at a price substantially higher than the mark equivalent of the total cost to the vender, if such cost is calculated at

the current official rate of exchange. This spread or 'überpreis' (over-price) is uniformly 33-1/3% in the case of cotton. It has been less uniform but usually greater in amount in the case of copper. In every case the price to be paid by the German vendee must receive prior approval by the German import control authorities.

"(3) The marks paid by the German vendee are required to be paid into special accounts in German banks, where, as mentioned above, they are held as 'blocked' or controlled funds for the account of the prospective American importer mentioned above.

"(4) Whatever the formal limitations upon the use of such controlled funds by their American owner may be, their only practical use is in payment for German goods to be shipped to the United States. The kinds of goods for which such payment may be made are restricted to those set forth in detail in a list published by the German exchange control authorities on July 19, 1938. Excluded from this list are, in general:

"(a) Articles and commodities in which Germany has a virtual international monopoly to such extent that their export at the current high German prices requires no assistance.

"(b) Goods of which there is a shortage in Germany so that their export is not favored by the German Government.

"(c) Goods composed of foreign materials to such a large extent that their export is objectionable to the German Government because of the drain on Germany's foreign balances which would result from the purchase of the materials used in their manufacture."

From a subsequent memorandum, dated January 20, 1939, it appears that the following example will serve to illustrate how the present German practices operate:

An American importer desires to import into the United States from Germany certain German cameras. Before this can be done approval of the transaction must be obtained from the German exchange control

authorities, without whose approval nothing can be exported from Germany. This approval is obtained, and under an arrangement approved by the German import control authorities, without whose approval nothing can be imported into Germany, a German agent acting for the American importer buys American cotton at the world price for \$1,000 and sells it in Germany for 2,500 Reichsmarks (the world price at the prevailing rate of exchange of 40 cents), plus a premium of 33-1/3%, making a total sales price of 3,333 Reichsmarks, the equivalent of \$1,333. This sales price has been fixed in advance by the German import control authorities, and the German purchaser of the cotton is required to pay it into a special account in a German bank in free German marks, which immediately become blocked and frozen and thereafter, for all practical purposes, are usable only by the American importer in the purchase of cameras which the German exchange control authorities have authorized to be exported from Germany. The American importer thereupon buys cameras for \$1,333 (3,333 Reichsmarks) and imports them into the United States. Thus, for cameras which cost the American importer \$1,000 the German exporter is paid \$1,333; with the result that the German exporter is enabled to compete unfairly with, and probably to undersell, American camera manufacturers, while the exportation to Germany of American cotton is correspondingly restricted or curtailed.

Section 303 of the Tariff Act of 1930 (46 Stat. 687; U.S.C., Supp. VII, title 19, sec. 1303) reads:

"Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government,

and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of such additional duties."

In an opinion, dated June 2, 1936 (38 Op. 489), the Attorney General had occasion to consider certain practices then prevailing in Germany, including that of currency manipulations by the German Government through "controlled", "frozen", or "blocked" mark accounts known as "Aski mark accounts" and "Barter mark accounts", and held them to constitute "the payment or bestowal, directly or indirectly, of bounties or grants upon German exports" within the meaning of the above-quoted section of the Tariff Act of 1930, "calling for the imposition by the Treasury Department of countervailing duties" under that statute.

Comparison of the present German practices and those considered in the above-mentioned opinion of the Attorney General shows that they are identical in purpose and effect. Adopting the language of that opinion (pp. 497-498), the present practices, like the former, "are * * * for the benefit of German exporters and enable them to export their goods so as to be in a position to compete with our domestic products * * *"; under them, "Export transactions are completely

controlled by the German government which permits only such exports as it deems to be in the German interest, and the devices described are means by which the German government enables the German exporters to export without incurring loss"; "the German authorities also completely control imports into Germany, permitting only those which are deemed for the benefit of that country"; and, manifestly, "The whole policy indicates a desire to encourage exports from and discourage imports into Germany."

The same opinion, after discussing the facts there involved, continued in part:

"I have no doubt that the script and bond practices and also the currency manipulations constitute the payment or bestowal, directly or indirectly, of bounties and grants upon German exports calling for the imposition by the Treasury Department of countervailing duties. * * *

" * * * the whole aim seems to be to vest in the German government absolute control over exports; the determination of whether the particular export is to the best interests of Germany, the determination of how much depreciated currency is required by the exporter in order to enable him to place his goods in this country in competition with similar goods here, and the necessary manipulation to accomplish the end desired. * * * The intent of the practices is to assist German exporters and the results carry out that intent. 'However the same be paid or bestowed' it is plain that there is a bounty or grant paid or bestowed 'directly or indirectly' by the German government which has established the machinery for the benefit of the German exporter and which assists him in the operation of it."

Since the German practices now prevailing are identical in purpose and effect with those discussed in the above-mentioned opinion of the Attorney General, it follows that they likewise call for the imposition by the Treasury Department of countervailing duties.

From other data available, it appears that in December 1936 the German Government was advised, with your approval, that certain practices then proposed by the German authorities to govern the exchange of proceeds of American goods sold to Germans for German goods sold to Americans would not call for countervailing duties. An examination of those practices, however, shows a fundamental difference between them and the practices now under consideration. The former contemplated that both the sale of the American goods and the purchase of the German goods concerned were to be upon an uncontrolled market "at the current fair German open-market prices for such goods", while the latter involves a controlled market for both American and German goods and, as to American goods, prices arbitrarily fixed by the German Government. The practical effect of the present practices is the same as that which would flow from the imposition and collection by the German Government of a special duty or impost upon American goods and the subsequent use of the funds thus derived to subsidize German exports to America in order to enable German exporters successfully to compete in the markets of this country. In so far as they involve imports into Germany of American goods, such imports are restricted to essential raw materials which Germany does not produce in quantities sufficient to supply its needs and which, therefore, must be imported. Instead of permitting these raw materials to be purchased at world prices and paid for in foreign exchange, as is customary in international trade, the German Government requires them to be purchased and paid for under the practices outlined. Thus burdensome

import restrictions are imposed upon American goods and at the same time substantial subsidies are bestowed upon German goods exported to this country.

It is my opinion, therefore, that it is the duty of the Secretary of the Treasury to impose countervailing duties under section 303 of the Tariff Act of 1930 upon such goods imported into this country from Germany as are affected by the practices outlined in the above-mentioned memorandum of November 28, 1938, and that the proposed Treasury Decision, copy of which accompanied the memorandum, is appropriate in form to carry out that purpose.

Respectfully,

FRANK MURPHY
Attorney General.

RE COUNTERVAILING DUTIES AGAINST
GERMANY

March 18, 1939.
11:20 a.m.

Present: Mr. Gaston
Mr. Foley
Mr. White
Mr. Johnson
Mr. Gibbons
Mrs Klotz

H.M.Jr: He hasn't initialled it?

Foley: No.

H.M.Jr: well, I want to read the Attorney General's opinion ...

Foley: Yes, sir.

H.M.Jr: ... before I do this, please.

Foley: That's the carbon. The original is being photostated.

Want me to read it aloud?

H.M.Jr: Oh, I can read it.

"Reference is made to your memorandum to the President..." - so forth and so forth.

"You state in your memorandum....." Where is it?

"From a subsequent memorandum, dated January 20, 1939, it appears that the following example will serve to illustrate how the present German practices operate:

"An American importer desires to import into the United States from Germany certain German cameras. ..."

Is this from our memorandum?

White: A good deal, most of it is from a

H.M.Jr: And so forth. Well, that's ...

Well now, let's see. "Section 303 of the Tariff Act of 1930 reads: 'Whenever any country, dependency,

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colony, province, or other political..." - well, that's not

"In an opinion, dated June 2, 1936, the Attorney General had occasion to consider certain practices then prevailing in Germany, including that of currency manipulations by the German Government through 'controlled,' 'frozen,' or 'blocked' mark accounts known as 'Aski mark accounts' and 'Barter mark accounts,' and held them to constitute 'the payment or bestowal, directly or indirectly, of bounties or grants upon German exports' within the meaning of the above-quoted section of the Tariff Act of 1930, 'calling for the imposition by the Treasury-Department of countervailing duties' under that statute.

"Comparison of the present German practices and those considered in the above-mentioned opinion of the Attorney General shows that they are identical in purpose and effect."

Now he's getting down to business.

"Adopting the language of that opinion, the present practices, like the former, 'are for the benefit of German exporters and enable them to export their goods so as to be in a position to compete with our domestic products'; under them, 'export transactions are completely controlled by the German government, which permits only such exports as it deems to be in the German interest, and the devices described are means by which the German government enables the German exporters to export without incurring loss'; 'the German authorities also completely control imports into Germany, permitting only those which are deemed for the benefit of that country'; and, manifestly, 'the whole policy indicates a desire to encourage exports from and discourage imports into Germany.'"

(Gibbons comes in)

Sit down, Steve. I'm reading from the Attorney General's opinion; it just came in at 10 o'clock.

"From other data available, it appears that in December 1936 the German Government was advised,

-3-

with your approval, that certain practices then proposed by the German authorities to govern the exchange of proceeds of American goods sold to Germans for German goods sold to Americans would not call for countervailing duties. An examination of those practices, however, shows a fundamental difference between them and the practices now under consideration. The former contemplated that both the sale of the American goods and the purchase of the German goods concerned were to be upon an uncontrolled market 'at the current fair German open-market prices for such goods,' while the latter involves a controlled market for both American and German goods and, as to American goods, prices arbitrarily fixed by the German Government. The practical effect of the present practices is the same as that which would flow from the imposition and collection by the German Government of a special duty or impost upon American goods and the subsequent use of the funds thus derived to subsidize German exports to America in order to enable German exporters successfully to compete in the markets of this country."

This is a good opinion.

Wiley:

It's a good opinion.

H.M.Jr.:

"In so far as they involve imports into Germany of American goods, such imports are restricted to essential raw materials which Germany does not produce in quantities sufficient to supply its needs and which, therefore, must be imported. Instead of permitting these raw materials to be purchased at world prices and paid for in foreign exchange, as is customary in international trade, the German Government requires them to be purchased and paid for under the practices outlined. Thus burdensome import restrictions are imposed upon American goods and at the same time substantial subsidies are bestowed upon German goods exported to this country.

"It is my opinion, therefore, that it is the duty of the Secretary of the Treasury to impose countervailing duties under section 303 of the Tariff Act of 1930 upon such goods imported into this country

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from Germany as are affected by the practices outlined in the above-mentioned memorandum of November 28, 1938...." - that's our memorandum, the memorandum of November 28, 1938.

Foley: That's the memorandum to the President.

H.M.Jr: "... and that the proposed Treasury Decision, copy of which accompanied the memorandum, is appropriate in form to carry out that purpose."

Then they'll say, "And why did he wait so long?"

Foley: But look at the date of the Attorney General's opinion.

Gaston: They'll say, "Why did the Attorney General wait so long?"

Foley: Yes, not "Why did Secretary Morgenthau wait?"

H.M.Jr: Lock it in the safe.

Foley: The only thing is this "to your recent informal request." He put that in there, I suppose, to save himself, because of all the delay.

H.M.Jr: I didn't make any - I didn't ask him for anything. I asked the President.

Gibbons: Well, this man has only been in there a short time.

Gaston: All that seems to me to indicate is that you called him up and said, "What about that opinion?"

Foley: Started in November; then in January you have a memorandum - a recent request.

Gibbons: Just quote Al Smith, say, "Let's look at the record."

H.M.Jr: We can't.

Gibbons: I know.

Foley: He called me a few minutes ago. I asked him if he had any objection to our releasing it. He said no. But you were entitled to that protection.

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H.M.Jr: Now, has Mr. Gibbons initialled it?

Foley: No, he hasn't seen it.

Gibbons: Well, ...

Foley: That exact T.D. was before the Attorney General, referred to in that opinion. Said it's in form to carry out this purpose.

H.M.Jr: You (Johnson) initialled it?

Johnson: Wh yes. First initial.

H.M.Jr: That's the important one, the first one.

Johnson: That's the one that says it's right.

White: You mean none of the others are necessary.

H.M.Jr: Want the pen when I sign this?

Klotz: Yes.

White: Better mail it to Hitler.

Klotz: What did he say?

Gibbons: Mail it over to Hitler.

Klotz: I'd mail something else to him.

White: Apparently there's been a change of opinion somewhere, because the State Department has sent over a draft of revocation of the treaty - are you familiar with it? -

H.M.Jr: No.

White: - ... Czechoslovakian treaty, which would

Foley: Where do you want to put the date?

Johnson: Right after the word "approved."

Foley: March 18.

H.M.Jr: Do you need a time? Johnson?

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Johnson: Time? No, sir.

H.M.Jr: Time not necessary.

Johnson: No, sir.

H.M.Jr: Well, I don't ...

White: This would prevent goods from Belgium from getting in at the lower duty that we first thought. I don't know why they're doing this, but there may be some reason for it. We had decided not to do this yesterday. I mean the consensus there was that they were not going to do this.

H.M.Jr: This will make it apply - for instance, the articles which were in the Czechoslovakian trade treaty will now be applicable, you say, to Belgium?

White: That is, the higher rates will be applicable, even though the goods come from Belgium; that's my understanding.

H.M.Jr: That's just what they weren't going to do? "No? Did we have anything to do with it?"

White: We haven't been asked. I don't see where you have anything to do with it except so far as you are represented on the Trade Agreements.

H.M.Jr: Well, they're not going to do that today, are they?

Johnson: I don't see how they could do it today. One of the younger men from State Department brought this over and talked to me about it.

H.M.Jr: Mr. Welles just called me. He had evidently heard a rumor I wasn't going to do this countervailing duty thing until Monday; he wanted to know when I was going to do it. I said I was going to do it between 12 and 1 today. He said, "That's just what I wanted." He said, "Something came up - I heard you weren't going to do it until Monday."

"No," I said, "it'll be done between 12 and 1."

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he said, "That's fine.

- Foley: I think it's important to pour it on right now just as hard as we can. I think if there are any other things we can do, Mr. Secretary, we should do them immediately. How about considering cancelling the mail contract with the North German Lloyd Line? You said that came up at Cabinet yesterday.
- H.M.Jr: No - hold up the boat.
- Foley: Well, they could sail, deliver those mail bags at Havre; if they don't deliver them, cancel them.
- H.M.Jr: Why should they cancel them?
- Foley: Why should we subsidize the German steamship line?
- H.M.Jr: On what theory?
- Foley: On the theory they don't cooperate; we asked them to surrender the mail bags, they don't surrender them up - not giving cooperation.
- H.M.Jr: They changed that. The President told them to send all the mail bags to the American Embassy in Paris, hold them four days, go through the mail. Evidently they're not going to do the ones on the Manhattan and Washington; only going to take accumulative mail now in New York. It's what they call international post office.
- Gaston: International Postal Union.
- H.M.Jr: And I don't know on what grounds. But I tell you what you might do: ask Mac who is the fellow who handles International Postal Union in the Post Office.
- Foley: I talked to Vincent Miles, the solicitor; he's a good friend of mine.
- Gaston: It would react on the American lines; of course, I suppose the American lines haul the mail from Germany to the United States; then they would immediately cancel the contract.

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- Foley: And LaGuardia - he's very interested in this thing. I wonder if LaGuardia's considered cancelling the pier leases to the North German Lloyd Line.
- H.M.Jr: Well, I don't - the President isn't thinking of that. I mean in the first place - Harry, he wanted us to look up, give him an estimate - the President - of all the German and Czechoslovakian balances and securities in this country, if possible.
- Walte: It's nothing we can get from statistical information, but we can see what we can find out through other channels.
- H.M.Jr: Yes, and this thing that you're (Foley) mentioning, if you don't mind - it's all - keep on throwing suggestions at me -
- Foley: I was just throwing them.
- H.M.Jr: That's all right; he's thinking in terms not of cancelling those contracts, but of - so that you be thinking about it - he says he has the power under an old law in a national emergency, as it applies to Germany - now wait, just please let me finish - which would give him the authority to put in escrow or what you call it, all German securities in the United States. Now, it was the Vice President that brought that up; he said, "You can't get a dollar out if you've got American money in Germany. Why should we let them take it out?"
- The President said this question of alien property - only as it applies to property. You (Foley) might be studying that. That goes so much further - I mean what you suggested would be a pin prick compared to this - plus tying up all their steamers.
- Foley: Yes.
- H.M.Jr: He said to Leahy, who was Acting Secretary, "Supposing you got an order to hold up the Bremen as she was going down by Sandy Hook and she didn't stop. What would you do?"
- Admiral Leahy says, "Sink her, sir."
- So that's how much you know in terms of how he's

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thinking. So you can just chew that very carefully and confidentially in your own room. But he's thinking in terms of taking all German property.

White: That includes bank balances?

H.M.Jr: Everything.

White: We have your permission to find out from the various banks ?

H.M.Jr: Yes, but be very careful not to tell anybody ...

White: I'll only ask Archie ...

H.M.Jr: I mean, Steve, be careful it doesn't get out of the Treasury.

Wibbons: That's a good suggestion for LaGuardia.

White: And that also means German property, inventories, everything that Germans have title to.

H.M.Jr: Right. He thinks there is some statute under which he can declare an emergency just as applies to Germany.

Gaston: Making faces. Punch them in the nose if you want to, but don't make faces.

H.M.Jr: I don't want to say - but I'm glad you brought it up, because it gives me a chance to show how the President is thinking.

White: Mr. Secretary, I suspect it may be better not to make any inquiries.

H.M.Jr: I'll tell you something. If you ask Miss McGuire, you'll find the work's been all done.

Foley: The A.G. just called me and said the President has asked him to investigate these emergency powers and to look at the Neutrality Act and the Trading with the Enemy Act and all the rest of it, and he asked me if I would talk to you and see what

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ideas you had and if I would work with him on the thing and help him out.

- H.M.Jr: I told him yesterday at Cabinet that - said who should he talk to? Now, another person who knows all about this is Wanny Bell. I mean going back to war times. I mean he's just a fund of information. See?
- Foley: Un-huh.
- White: That's all worked out and in a portfolio with regard to Japan; so just change the name from Japan to Germany and it applies.
- I suspect if you reconsider this ...
- H.M.Jr: As I say, I think you'll find it's all been done.
- Foley: We're in good shape; we've got memos.
- H.M.Jr: But this thing that we're talking about is taking over all German property in the United States.
- White: I wonder if you think that any inquiries of this kind will very quickly get around to somebody. Be so many bankers that have to know, and bank balances are so liquid and securities so
- H.M.Jr: Personally - the President has asked me to do this every six months - I don't lay great stress on it. The stuff we're doing here - if there's anything, do it within the Treasury and with the attorney General, but not outside.
- White: We couldn't get anything except desultory information, unless we went to banks.
- H.M.Jr: Get it within the Treasury only.
- White: You might frighten it away.
- Gaston: About the Treasury decision: just simply a line at the top - start with a line at the top which says that "The following Treasury decision was issued today by the Commissioner of Customs"; and

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then after setting out the Treasury decision we say, "The opinion of the Attorney General with respect to the above Decision is as follows." That's all there is to it.

H.M.Jr: Between 12 and 1.

Johnson: Don't forget, discriminatory duties

H.M.Jr: And Johnson better be around to help answer any questions.

Johnson: Countervailing duties do not hit free goods, discriminatory duties do.

Gibbons: We've got to be super-careful not to let anything leak.

H.M.Jr: Oh yes.

Gibbons: It's a terrible - looking for these bank balances I think would be a dangerous

H.M.Jr: I think you're right. It doesn't

White: They could go out over-night.

H.M.Jr: Yes, it's not so good.

White: Not only that, but a lot of this German stuff that's here is German refugee stuff, or prospective refugees; although they do say that Goering has a lot of foreign balances here.

TREASURY DEPARTMENT

Washington

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FOR IMMEDIATE RELEASE,
Saturday, March 18, 1939.

Press Service
No. 16-80

The following Treasury Decision to be published in the March 23 issue of
TREASURY DECISIONS was issued today by the Commissioner of Customs:

(T. D. 49821)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

TREASURY DEPARTMENT
OFFICE OF THE COMMISSIONER OF CUSTOMS
Washington, D.C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (U.S.C. title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other goods on a premium basis (regardless of the character of such other goods or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the

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expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice, of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

JAMES H. MOYLE
Commissioner of Customs.

APPROVED: March 18, 1939

HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

The opinion of the Attorney General with respect to the above Treasury Decision follows:

March 18, 1939.

The Honorable,

The Secretary of the Treasury.

My dear Mr. Secretary:

Reference is made to your memorandum to the President, dated November 28, 1938, in which you outline certain practices now prevailing in Germany, and to your recent informal request for my opinion as to whether those practices require the imposition by the Treasury Department of countervailing duties under section 303 of the Tariff Act of 1930.

You state in your memorandum that the following practices now prevail in Germany:

"(1) The prospective American importer of German goods 'buys' one of a limited number of kinds of merchandise (cotton or copper in most, if not all, cases) for dollars at the world price. The kind of merchandise to be admitted into Germany for the purpose of the 'barter' must be approved by the German import control authorities, and such approval is strictly limited to a very few kinds of goods.

"(2) The merchandise is shipped into Germany, having theretofore been sold to a German purchaser for free marks (which, as appears below, are immediately blocked) at a price substantially higher than the mark equivalent of the total cost to the vender, if such cost is calculated at

the current official rate of exchange. This spread or 'überpreis' (over-price) is uniformly 33-1/3% in the case of cotton. It has been less uniform but usually greater in amount in the case of copper. In every case the price to be paid by the German vendee must receive prior approval by the German import control authorities.

"(3) The marks paid by the German vendee are required to be paid into special accounts in German banks, where, as mentioned above, they are held as 'blocked' or controlled funds for the account of the prospective American importer mentioned above.

"(4) Whatever the formal limitations upon the use of such controlled funds by their American owner may be, their only practical use is in payment for German goods to be shipped to the United States. The kinds of goods for which such payment may be made are restricted to those set forth in detail in a list published by the German exchange control authorities on July 19, 1938. Excluded from this list are, in general:

"(a) Articles and commodities in which Germany has a virtual international monopoly to such extent that their export at the current high German prices requires no assistance.

"(b) Goods of which there is a shortage in Germany so that their export is not favored by the German Government.

"(c) Goods composed of foreign materials to such a large extent that their export is objectionable to the German Government because of the drain on Germany's foreign balances which would result from the purchase of the materials used in their manufacture."

From a subsequent memorandum, dated January 20, 1939, it appears that the following example will serve to illustrate how the present German practices operate:

An American importer desires to import into the United States from Germany certain German cameras. Before this can be done approval of the transaction must be obtained from the German exchange control

authorities, without whose approval nothing can be exported from Germany. This approval is obtained, and under an arrangement approved by the German import control authorities, without whose approval nothing can be imported into Germany, a German agent acting for the American importer buys American cotton at the world price for \$1,000 and sells it in Germany for 2,500 Reichsmarks (the world price at the prevailing rate of exchange of 40 cents), plus a premium of 33-1/3%, making a total sales price of 3,333 Reichsmarks, the equivalent of \$1,333. This sales price has been fixed in advance by the German import control authorities, and the German purchaser of the cotton is required to pay it into a special account in a German bank in free German marks, which immediately become blocked and frozen and thereafter, for all practical purposes, are usable only by the American importer in the purchase of cameras which the German exchange control authorities have authorized to be exported from Germany. The American importer thereupon buys cameras for \$1,333 (3,333 Reichsmarks) and imports them into the United States. Thus, for cameras which cost the American importer \$1,000 the German exporter is paid \$1,333; with the result that the German exporter is enabled to compete unfairly with, and probably to undersell, American camera manufacturers, while the exportation to Germany of American cotton is correspondingly restricted or curtailed.

Section 303 of the Tariff Act of 1930 (46 Stat. 687; U.S.C.,

Supp. VII, title 19, sec. 1303) reads:

"Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government,

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and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of such additional duties."

In an opinion, dated June 2, 1936 (38 Op. 489), the Attorney General had occasion to consider certain practices then prevailing in Germany, including that of currency manipulations by the German Government through "controlled", "frozen", or "blocked" mark accounts known as "Aski mark accounts" and "Barter mark accounts", and hold them to constitute "the payment or bestowal, directly or indirectly, of bounties or grants upon German exports" within the meaning of the above-quoted section of the Tariff Act of 1930, "calling for the imposition by the Treasury Department of countervailing duties" under that statute.

Comparison of the present German practices and those considered in the above-mentioned opinion of the Attorney General shows that they are identical in purpose and effect. Adopting the language of that opinion (pp. 497-498), the present practices, like the former, "are * * * for the benefit of German exporters and enable them to export their goods so as to be in a position to compete with our domestic products * * *"; under them, "Export transactions are completely

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controlled by the German government which permits only such exports as it deems to be in the German interest, and the devices described are means by which the German government enables the German exporters to export without incurring loss"; "the German authorities also completely control imports into Germany, permitting only those which are deemed for the benefit of that country"; and, manifestly, "The whole policy indicates a desire to encourage exports from and discourage imports into Germany."

The same opinion, after discussing the facts there involved, continued in part:

"I have no doubt that the script and bond practices and also the currency manipulations constitute the payment or bestowal, directly or indirectly, of bounties and grants upon German exports calling for the imposition by the Treasury Department of countervailing duties. * * *

" * * * the whole aim seems to be to vest in the German government absolute control over exports; the determination of whether the particular export is to the best interests of Germany, the determination of how much depreciated currency is required by the exporter in order to enable him to place his goods in this country in competition with similar goods here, and the necessary manipulation to accomplish the end desired. * * * The intent of the practices is to assist German exporters and the results carry out that intent. 'However the same be paid or bestowed' it is plain that there is a bounty or grant paid or bestowed 'directly or indirectly' by the German government which has established the machinery for the benefit of the German exporter and which assists him in the operation of it."

Since the German practices now prevailing are identical in purpose and effect with those discussed in the above-mentioned opinion of the Attorney General, it follows that they likewise call for the imposition by the Treasury Department of countervailing duties.

From other data available, it appears that in December 1936 the German Government was advised, with your approval, that certain practices then proposed by the German authorities to govern the exchange of proceeds of American goods sold to Germans for German goods sold to Americans would not call for countervailing duties. An examination of those practices, however, shows a fundamental difference between them and the practices now under consideration. The former contemplated that both the sale of the American goods and the purchase of the German goods concerned were to be upon an uncontrolled market "at the current fair German open-market prices for such goods", while the latter involves a controlled market for both American and German goods and, as to American goods, prices arbitrarily fixed by the German Government. The practical effect of the present practices is the same as that which would flow from the imposition and collection by the German Government of a special duty or impost upon American goods and the subsequent use of the funds thus derived to subsidize German exports to America in order to enable German exporters successfully to compete in the markets of this country. In so far as they involve imports into Germany of American goods, such imports are restricted to essential raw materials which Germany does not produce in quantities sufficient to supply its needs and which, therefore, must be imported. Instead of permitting these raw materials to be purchased at world prices and paid for in foreign exchange, as is customary in international trade, the German Government requires them to be purchased and paid for under the practices outlined. Thus burdensome

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import restrictions are imposed upon American goods and at the same time substantial subsidies are bestowed upon German goods exported to this country.

It is my opinion, therefore, that it is the duty of the Secretary of the Treasury to impose countervailing duties under section 303 of the Tariff Act of 1930 upon such goods imported into this country from Germany as are affected by the practices outlined in the above-mentioned memorandum of November 28, 1938, and that the proposed Treasury Decision, copy of which accompanied the memorandum, is appropriate in form to carry out that purpose.

Respectfully,

FRANK MURPHY
Attorney General.

March 18, 1939

The Attorney General's secretary, Miss Bumgardner, came over and gave the Secretary the Attorney General's opinion bearing the date of March 14th.

Since the Secretary wanted to release it with his statement to the press announcing the imposition of countervailing duties, The Secretary wanted the date on the Attorney General's opinion changed to today's date, otherwise it would look as though we held it for four days and did not take any action. He wanted to show we were waiting upon the Attorney General and as soon as he got his opinion that it was all fixed.

Miss Bumgardner came into Mrs. Klotz' office and changed the date on the opinion to agree with the Treasury's press release, viz: March 18, 1939.



Office of the Attorney General
Washington, D.C.

March 18, 1939.

The Honorable,

The Secretary of the Treasury.

My dear Mr. Secretary:

If you approve, I should like to have published, in accordance with U. S. C., title 5, sec. 305, my opinion to you of March 14, 1939, transmitted herewith, concerning the question whether certain practices now prevailing in Germany require the imposition by the Treasury Department of countervailing duties under section 303 of the Tariff Act of 1930.

Please let me know whether you have any objection to its publication.

Respectfully,

A handwritten signature in cursive script, appearing to read "J. W. [unclear]".

Attorney General.



Office of the Attorney General
Washington, D.C.

March 18, 1939.

The Honorable,

The Secretary of the Treasury.

My dear Mr. Secretary:

Reference is made to your memorandum to the President, dated November 28, 1938, in which you outline certain practices now prevailing in Germany, and to your recent informal request for my opinion as to whether those practices require the imposition by the Treasury Department of countervailing duties under section 303 of the Tariff Act of 1930.

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"(2) The merchandise is shipped into Germany, having theretofore been sold to a German purchaser for free marks (which, as appears below, are immediately blocked) at a price substantially higher than the mark equivalent of the total cost to the vendor, if such cost is calculated at

the current official rate of exchange. This spread or 'überpreis' (over-price) is uniformly 33-1/3% in the case of cotton. It has been less uniform but usually greater in amount in the case of copper. In every case the price to be paid by the German vendee must receive prior approval by the German import control authorities.

"(3) The marks paid by the German vendee are required to be paid into special accounts in German banks, where, as mentioned above, they are held as 'blocked' or controlled funds for the account of the prospective American importer mentioned above.

"(4) Whatever the formal limitations upon the use of such controlled funds by their American owner may be, their only practical use is in payment for German goods to be shipped to the United States. The kinds of goods for which such payment may be made are restricted to those set forth in detail in a list published by the German exchange control authorities on July 19, 1938. Excluded from this list are, in general:

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From a subsequent memorandum, dated January 20, 1939, it appears that the following example will serve to illustrate how the present German practices operate:

An American importer desires to import into the United States from Germany certain German cameras. Before this can be done approval of the transaction must be obtained from the German exchange control au-

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and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of such additional duties."

In an opinion, dated June 2, 1936 (38 Op. 489), the Attorney General had occasion to consider certain practices then prevailing in Germany, including that of currency manipulations by the German Government through "controlled", "frozen", or "blocked" mark accounts known as "Aski mark accounts" and "Barter mark accounts", and held them to constitute "the payment or bestowal, directly or indirectly, of bounties or grants upon German exports" within the meaning of the above-quoted section of the Tariff Act of 1930, "calling for the imposition by the Treasury Department of countervailing duties" under that statute.

Comparison of the present German practices and those considered in the above-mentioned opinion of the Attorney General shows that they are identical in purpose and effect. Adopting the language of that opinion (pp. 497-498), the present practices, like the former, "are * * * for the benefit of German exporters and enable them to export their goods so as to be in a position to compete with our domestic products * * *"; under them, "Export transactions are completely

authorities, without whose approval nothing can be exported from Germany. This approval is obtained, and under an arrangement approved by the German import control authorities, without whose approval nothing can be imported into Germany, a German agent acting for the American importer buys American cotton at the world price for \$1,000 and sells it in Germany for 2,500 Reichsmarks (the world price at the prevailing rate of exchange of 40 cents), plus a premium of 33-1/3%, making a total sales price of 3,333 Reichsmarks, the equivalent of \$1,333. This sales price has been fixed in advance by the German import control authorities, and the German purchaser of the cotton is required to pay it into a special account in a German bank in free German marks, which immediately become blocked and frozen and thereafter, for all practical purposes, are usable only by the American importer in the purchase of cameras which the German exchange control authorities have authorized to be exported from Germany. The American importer thereupon buys cameras for \$1,333 (3,333 Reichsmarks) and imports them into the United States. Thus, for cameras which cost the American importer \$1,000 the German exporter is paid \$1,333; with the result that the German exporter is enabled to compete unfairly with, and probably to undersell, American camera manufacturers, while the exportation to Germany of American cotton is correspondingly restricted or curtailed.

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controlled by the German government which permits only such exports as it deems to be in the German interest, and the devices described are means by which the German government enables the German exporters to export without incurring loss"; "the German authorities also completely control imports into Germany, permitting only those which are deemed for the benefit of that country"; and, manifestly, "The whole policy indicates a desire to encourage exports from and discourage imports into Germany."

The same opinion, after discussing the facts there involved, continued in part:

"I have no doubt that the script and bond practices and also the currency manipulations constitute the payment or bestowal, directly or indirectly, of bounties and grants upon German exports calling for the imposition by the Treasury Department of countervailing duties. * * *

" * * * the whole aim seems to be to vest in the German government absolute control over exports; the determination of whether the particular export is to the best interests of Germany, the determination of how much depreciated currency is required by the exporter in order to enable him to place his goods in this country in competition with similar goods here, and the necessary manipulation to accomplish the end desired. * * * The intent of the practices is to assist German exporters and the results carry out that intent. 'However the same be paid or bestowed' it is plain that there is a bounty or grant paid or bestowed 'directly or indirectly' by the German government which has established the machinery for the benefit of the German exporter and which assists him in the operation of it."

Since the German practices now prevailing are identical in purpose and effect with those discussed in the above-mentioned opinion of the Attorney General, it follows that they likewise call for the imposition by the Treasury Department of countervailing duties.

- 6 -

From other data available, it appears that in December 1936 the German Government was advised, with your approval, that certain practices then proposed by the German authorities to govern the exchange of proceeds of American goods sold to Germans for German goods sold to Americans would not call for countervailing duties. An examination of those practices, however, shows a fundamental difference between them and the practices now under consideration. The former contemplated that both the sale of the American goods and the purchase of the German goods concerned were to be upon an uncontrolled market "at the current fair German open-market prices for such goods", while the latter involves a controlled market for both American and German goods and, as to American goods, prices arbitrarily fixed by the German Government. The practical effect of the present practices is the same as that which would flow from the imposition and collection by the German Government of a special duty or impost upon American goods and the subsequent use of the funds thus derived to subsidize German exports to America in order to enable German exporters successfully to compete in the markets of this country. In so far as they involve imports into Germany of American goods, such imports are restricted to essential raw materials which Germany does not produce in quantities sufficient to supply its needs and which, therefore, must be imported. Instead of permitting these raw materials to be purchased at world prices and paid for in foreign exchange, as is customary in international trade, the German Government requires them to be purchased and paid for under the practices outlined. Thus burdensome

import restrictions are imposed upon American goods and at the same time substantial subsidies are bestowed upon German goods exported to this country.

It is my opinion, therefore, that it is the duty of the Secretary of the Treasury to impose countervailing duties under section 303 of the Tariff Act of 1930 upon such goods imported into this country from Germany as are affected by the practices outlined in the above-mentioned memorandum of November 28, 1938, and that the proposed Treasury Decision, copy of which accompanied the memorandum, is appropriate in form to carry out that purpose.

Respectfully,


Attorney General.



Office of the Attorney General
Washington, D.C.

March 18, 1939.

The Honorable,


The Secretary of the Treasury.

My dear Mr. Secretary:

If you approve, I should like to have published, in accordance with U. S. C., title 5, sec. 305, my opinion to you of March 14, 1939, transmitted herewith, concerning the question whether certain practices now prevailing in Germany require the imposition by the Treasury Department of countervailing duties under section 303 of the Tariff Act of 1930.

Please let me know whether you have any objection to its publication.

Respectfully,


Attorney General.



Office of the Attorney General
Washington, D.C.

March 18, 1939.

The Honorable,

The Secretary of the Treasury.

My dear Mr. Secretary:

Reference is made to your memorandum to the President, dated November 28, 1938, in which you outline certain practices now prevailing in Germany, and to your recent informal request for my opinion as to whether those practices require the imposition by the Treasury Department of countervailing duties under section 303 of the Tariff Act of 1930.

You state in your memorandum that the following practices now prevail in Germany:

"(1) The prospective American importer of German goods 'buys' one of a limited number of kinds of merchandise (cotton or copper in most, if not all, cases) for dollars at the world price. The kind of merchandise to be admitted into Germany for the purpose of the 'barter' must be approved by the German import control authorities, and such approval is strictly limited to a very few kinds of goods.

"(2) The merchandise is shipped into Germany, having heretofore been sold to a German purchaser for free marks which, as appears below, are immediately blocked) at a price substantially higher than the mark equivalent of the total cost to the vendor, if such cost is calculated at

the current official rate of exchange. This spread or 'überpreis' (over-price) is uniformly 33-1/3% in the case of cotton. It has been less uniform but usually greater in amount in the case of copper. In every case the price to be paid by the German vendee must receive prior approval by the German import control authorities.

"(3) The marks paid by the German vendee are required to be paid into special accounts in German banks, where, as mentioned above, they are held as 'blocked' or controlled funds for the account of the prospective American importer mentioned above.

"(4) Whatever the formal limitations upon the use of such controlled funds by their American owner may be, their only practical use is in payment for German goods to be shipped to the United States. The kinds of goods for which such payment may be made are restricted to those set forth in detail in a list published by the German exchange control authorities on July 19, 1938. Excluded from this list are, in general:

"(a) Articles and commodities in which Germany has a virtual international monopoly to such extent that their export at the current high German prices requires no assistance.

"(b) Goods of which there is a shortage in Germany so that their export is not favored by the German Government.

"(c) Goods composed of foreign materials to such a large extent that their export is objectionable to the German Government because of the drain on Germany's foreign balances which would result from the purchase of the materials used in their manufacture."

From a subsequent memorandum, dated January 20, 1939, it appears that the following example will serve to illustrate how the present German practices operate:

An American importer desires to import into the United States from Germany certain German cameras. Before this can be done approval of the transaction must be obtained from the German exchange control au-

the same, without whose approval nothing can be exported from Germany. This approval is obtained, and under an arrangement approved by the German import control authorities, without whose approval nothing can be imported into Germany, a German agent acting for the American importer buys American cotton at the world price for \$1,000 and sells it in Germany for 2,500 Reichsmarks (the world price at the prevailing rate of exchange of 40 cents), plus a premium of 33-1/3%, making a total sales price of 3,333 Reichsmarks, the equivalent of \$1,333. This sales price has been fixed in advance by the German import control authorities, and the German purchaser of the cotton is required to pay it into a special account in a German bank in free German marks, which immediately become blocked and frozen and thereafter, for all practical purposes, are usable only by the American importer in the purchase of cameras which the German exchange control authorities have authorized to be exported from Germany. The American importer thereupon buys cameras for \$1,333 (3,333 Reichsmarks) and imports them into the United States. Thus, for cameras which cost the American importer \$1,000 the German exporter is paid \$1,333; with the result that the German exporter is enabled to compete unfairly with, and probably to undersell, American camera manufacturers, while the exportation to Germany of American cotton is correspondingly restricted or curtailed.

Section 303 of the Tariff Act of 1930 (46 Stat. 687; U. S. C., Chap. VII, title 19, sec. 1303) reads:

"Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government,

and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of such additional duties."

In an opinion, dated June 2, 1936 (38 Op. 489), the Attorney General had occasion to consider certain practices then prevailing in Germany, including that of currency manipulations by the German Government through "controlled", "frozen", or "blocked" mark accounts known as "Aski mark accounts" and "Barter mark accounts", and held them to constitute "the payment or bestowal, directly or indirectly, of bounties or grants upon German exports" within the meaning of the above-quoted section of the Tariff Act of 1930, "calling for the imposition by the Treasury Department of countervailing duties" under that statute.

Comparison of the present German practices and those considered in the above-mentioned opinion of the Attorney General shows that they are identical in purpose and effect. Adopting the language of that opinion (p. 497-498), the present practices, like the former, "are * * * for the benefit of German exporters and enable them to export their goods so as to be in a position to compete with our domestic products * * *"; under them, "Export transactions are completely

controlled by the German government which permits only such exports as it seems to be in the German interest, and the devices described are means by which the German government enables the German exporters to export without incurring loss"; "the German authorities also completely control imports into Germany, permitting only those which are deemed for the benefit of that country"; and, manifestly, "The whole policy indicates a desire to encourage exports from and discourage imports into Germany."

The same opinion, after discussing the facts there involved, continued in part:

"I have no doubt that the script and bond practices and also the currency manipulations constitute the payment or bestowal, directly or indirectly, of bounties and grants upon German exports calling for the imposition by the Treasury Department of countervailing duties. * * *

* * * * the whole aim seems to be to vest in the German government absolute control over exports; the determination of whether the particular export is to the best interests of Germany, the determination of how much depreciated currency is required by the exporter in order to enable him to place his goods in this country in competition with similar goods here, and the necessary manipulation to accomplish the end desired. * * * The intent of the practices is to assist German exporters and the results carry out that intent. 'However the same be paid or bestowed' it is plain that there is a bounty or grant paid or bestowed 'directly or indirectly' by the German government which has established the machinery for the benefit of the German exporter and which assists him in the operation of it."

Since the German practices now prevailing are identical in purpose and effect with those discussed in the above-mentioned opinion of the Attorney General, it follows that they likewise call for the imposition by the Treasury Department of countervailing duties.

From other data available, it appears that in December 1936 the German Government was advised, with your approval, that certain practices then proposed by the German authorities to govern the exchange of proceeds of American goods sold to Germans for German goods sold to Americans would not call for countervailing duties. An examination of those practices, however, shows a fundamental difference between them and the practices now under consideration. The former contemplated that both the sale of the American goods and the purchase of the German goods concerned were to be upon an uncontrolled market "at the current fair German open-market prices for such goods", while the latter involves a controlled market for both American and German goods and, as to American goods, prices arbitrarily fixed by the German Government. The practical effect of the present practices is the same as that which would flow from the imposition and collection by the German Government of a special duty or impost upon American goods and the subsequent use of the funds thus derived to subsidize German exports to America in order to enable German exporters successfully to compete in the markets of this country. In so far as they involve imports into Germany of American goods, such imports are restricted to essential raw materials which Germany does not produce in quantities sufficient to supply its needs and which, therefore, must be imported. Instead of permitting these raw materials to be purchased at world prices and paid for in foreign exchange, as is customary in international trade, the German Government requires them to be purchased and paid for under the practices outlined. Thus burdensome

import restrictions are imposed upon American goods and at the same time substantial subsidies are bestowed upon German goods exported to this country.

It is my opinion, therefore, that it is the duty of the Secretary of the Treasury to impose countervailing duties under section 303 of the Tariff Act of 1930 upon such goods imported into this country from Germany as are affected by the practices outlined in the above-mentioned memorandum of November 28, 1938, and that the proposed Treasury Decision, copy of which accompanied the memorandum, is appropriate in form to carry out that purpose.

Respectfully,


Attorney General.



DEPARTMENT OF STATE
WASHINGTON

In reply refer to
Eu

March 18, 1939

My dear Mr. Secretary:

I refer to my letter of March 17, 1939, with regard to the existing situation in Czechoslovakia. Recent information reaching the Department of State indicates that the Province of Ruthenia (Carpatho-Ukraine) is no longer under the control of the Czechoslovak Government and that Hungarian military forces are in occupation thereof. While this Government does not recognize that any legal basis exists for the changed status of Ruthenia, the Department is obliged by existing circumstances to consider that that part of the Czechoslovak Republic is now under the de facto administration of the Hungarian authorities.

The Department of State, therefore, perceives no objection to the Treasury, under such regulations as it may issue, regarding as Hungarian for customs purposes,

including

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

-2-

including the application of rates of duties, goods coming from the Province of Ruthenia.

Sincerely yours,



Acting Secretary.

TREASURY DEPARTMENT

224

INTER OFFICE COMMUNICATION

DATE March 18, 1939.

TO Secretary Morgenthau
FROM E. H. Foley, Jr., Acting General Counsel

For your information

I spoke by telephone to Huntington Cairns in Paris this afternoon. He arrived there only yesterday and hence had little to report. Wait is ill with the grippe but Cairns talked by telephone yesterday with May in Berlin. May is doing some work in Berlin for Cairns and will come to Paris when Wait is better. At my suggestion Cairns and the others will not go to Germany next week but will limit their activities to Paris and London. As you suggested, the wives have been notified of this change.

May informed Cairns that the Germans knew of the proposed issuance of the T. D. three days ago so that the action taken today is no great surprise to them.

Cairns reports Mussolini will make a speech on March 24 when it is anticipated that he will announce his intention to go into Albania.

Cairns and the others are staying at the St. James Hotel. They have booked passage on the S. S. Washington sailing April 6. As travel to the United States is heavy, this is the earliest express steamer upon which they will be able to obtain accommodations.

E.H.F.

COPY

225

March 18, 1939

Secretary Morgenthau

E. H. Foley, Jr., Acting General Counsel

For your information

Attached is a copy of the letter from the State Department in regard to Ruthenia (Carpatho-Ukraine), and a copy of the telegram which Johnson sent to the Collectors of Customs. For Customs purposes, goods coming from this area will be treated after midnight tonight as Hungarian. No change in rates of duty is involved, but the marking, of course, must indicate Hungarian origin.

(Initialed) E. H. F., Jr.

EHF:s Typed 3/18/39

DEPARTMENT OF STATE

Washington

March 18, 1939

(Seal)

In reply refer to
Eu

My dear Mr. Secretary:

I refer to my letter of March 17, 1939, with regard to the existing situation in Czechoslovakia. Recent information reaching the Department of State indicates that the Province of Ruthenia (Carpatho-Ukraine) is no longer under the control of the Czechoslovak Government and that Hungarian military forces are in occupation thereof. While this Government does not recognize that any legal basis exists for the changed status of Ruthenia, the Department is obliged by existing circumstances to consider that that part of the Czechoslovak Republic is now under the de facto administration of the Hungarian authorities.

The Department of State, therefore, perceives no objection to the Treasury, under such regulations as it may issue, regarding as Hungarian for customs purposes, including the application of rates of duties, goods coming from the Province of Ruthenia.

Sincerely yours,

(Signed) Sumner Welles
Acting Secretary

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

COPY

TELEGRAM

To all Collectors of Customs

March 18, 1939

State Department having today advised Treasury Department that in view of the recent military occupation of the Province of Ruthenia (Carpatho-Ukraine) by Hungarian military forces and the assumption of control over these areas by the Hungarian authorities, the State Department, while not recognizing any legal basis for the changed status of Ruthenia is obliged by existing circumstances to consider that that part of the Czechoslovak Republic is now under the de facto administration of the Hungarian authorities, products of the area mentioned exported from any country on or after March 19, 1939, shall be regarded as products of Hungary for the purposes of the marking provisions of the Tariff Act of 1930 and for determining applicable rates of duty. Give importers all possible notice. Apply provisions article 822(e) Customs Regulations 1937 in determining dates exportation

(Signed) W. R. Johnson

Acting Commissioner Customs

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

March 18, 1939

TO Secretary Morgenthau
FROM E. H. Foley, Jr., Acting General Counsel

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E.H.F.

Attachments (2)

C
O
P
Y

DEPARTMENT OF STATE

Washington

(Seal)

March 18, 1939

In reply refer to
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(Signed) Sumner Welles
Acting Secretary

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

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(Signed) W. R. Johnson
Acting Commissioner Customs

PROPOSED ENTRY FOR SECRETARY'S DIARY

3-22-39

Secretary Morgenthau took the attached memorandum and attachments to the Cabinet Meeting on Friday, March 17, 1939. The President started off the meeting with a discussion of German invasion and occupation of Czecho-slovakia.

Secretary Morgenthau handed Acting Secretary of State Welles a draft of the attached letter which representatives of the Treasury and State Department had agreed should be sent by State to the Treasury. Acting Secretary Welles said that he had been unable to give attention to the proposed letter, but would read it. The President suggested that "de facto" be inserted on line 9 of the letter after the word "the" and before the word "administration". With this change the letter was approved.

Secretary Morgenthau then read from the attached memorandum and attachments. It was agreed that occupation of Bohemia, Moravia and Slovakia by German armed forces would not be recognized on a legal basis by the United States, but that the Treasury would regard goods coming from such areas as German for Customs purposes, including the application of rates of duty.

Secretary Morgenthau stepped out of the Cabinet Meeting and telephoned Mr. Foley the change made in the proposed letter by the President. Secretary Morgenthau suggested that Mr. Foley call Mr. Welles' office and have the letter run off on State Department stationery and sent to Mr. Welles at the Cabinet Meeting. Accordingly, Mr. Foley called Mr. Hackworth, who caused the letter to be prepared and sent over to the White House. A memorandum of protest signed by Mr. Hawkins accompanied the proposed letter, but Mr. Welles disregarded the protest and in the presence of Secretary Morgenthau

signed the letter.

Commissioner Moyle then sent the attached telegram advising all Collectors of Customs of the change in respect of goods coming from the provinces of Bohemia, Moravia and Slovakia, and Mr. Gaston released this information to the press.

F. W. F. L.

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(Initialed) E. H. F., Jr.



DEPARTMENT OF STATE
WASHINGTON

In reply refer to
Le

March 17, 1939.

My dear Mr. Secretary:

In view of the recent military occupation of the Provinces of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and the assumption of control over these areas by German authorities, the Department, while not recognizing any legal basis for the assumption of so-called "protection" over this territory, is constrained by force of the foregoing circumstances to regard the above-mentioned Provinces as now being under the de facto administration of the German authorities. The Department of State, therefore, perceives no objection to the Treasury, under such regulations as it may issue, regarding as German for customs purposes, including the application of rates of duties, goods coming from the Provinces of Bohemia, Moravia and Slovakia.

The Honorable

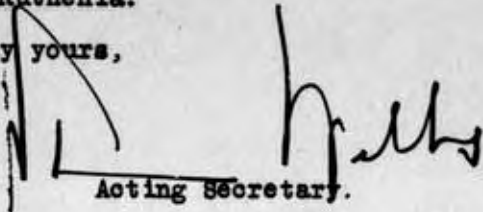
Henry Morgenthau, Jr.,

Secretary of the Treasury.

-2-

Slovakia. You will later be advised as to the Province of Carpatho-Ukraine or Ruthenia.

Sincerely yours,



Acting Secretary.



Received 2 P.M.

GENERAL COUNSEL
TREASURY DEPARTMENT
WASHINGTON

237

March 17, 1939.

MEMORANDUM TO SECRETARY MORGENTHAU:

We have three problems which we are working on/^{con}currently with the State Department.

I
Treatment of Imports from Czechoslovakia

We have cleared with the State Department, subject to approval by you and Mr. Welles, a draft of a proposed letter (copy attached) announcing the changed status of Czechoslovakia. If this letter is signed substantially in this form it will serve as the basis for instructions from the Commissioner of Customs to all Customs officers that products of the areas involved (all areas in Czechoslovakia except Ruthenia), effective as to goods exported on or after March 19, 1939 will be

- (a) Required to be marked to indicate German origin;
- (b) Subject to higher rates of duty applicable to German goods;
- (c) Subject to custom valuation as German goods.

A proposed draft of Commissioner's instructions which has been tentatively cleared with the State Department is attached.

Unlike the Austrian case, but like the Sudeten case, the only grace period will be that given to goods in transit.

-2-

The State Department agrees with us that the proposed action will not disturb the application of reduced rates of duty established pursuant to the Czechoslovakian trade agreement to goods from third countries such as Belgium.

It is proposed that the letter of notification of change in respect of Czechoslovakia will be dated tomorrow. Immediately upon receipt of this letter the Commissioner of Customs will release his instructions.

II

German Countervailing Duties

It is our understanding that the opinion of the Attorney General approving the proposed T. D. announcing countervailing duties on dutiable imports from Germany financed through "barter" transactions will be received tomorrow morning. Upon receipt of this opinion, the Treasury Decision (copy attached) will be signed by the Commissioner of Customs and approved by you. The new duties will apply to goods entered or withdrawn after the expiration of 30 days after the order is published in TREASURY DECISIONS. The date of publication will be Thursday, March 23, if it is sent to the printer Monday morning.

It is our understanding that announcement to the press of the proposed countervailing duty action will be made by you simultaneously with your announcement of the action in respect of the changed customs status of goods from the Czechoslovakian areas.

III

Czechoslovakian Balances in This Country

Following up your request, the Federal Reserve Bank has informally asked the leading New York banks to withhold important clearances involving Czechoslovakian accounts until Monday, March 20. In the meantime, we are considering the action which the Government may take to protect its interests and the interests of the American citizens. One suggestion is that banks, brokerage houses, etc. should be required to file detailed reports of balances, securities, etc. which they are holding for Czechoslovakia's account and continue to hold such property until further notice. There are other possible methods of dealing with the situation which are under consideration, such as the imposition of general foreign exchange control which will permit us to deal not only with the Czechoslovakian situation but with any other related situation which might arise; or imposition of foreign exchange control limited to Czechoslovakian assets in this country.

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March 17, 1939.

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My dear Mr. Secretary:

In view of the recent military occupation of the Province of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and the assumption of control over these areas by German authorities, the Department, while not recognizing any legal basis for the assumption of so-called protection over this territory, is constrained by force of the foregoing circumstances to regard the abovementioned Provinces as now being under the ^{de facto} administration of the German authorities. The Department of State, therefore, perceives no objection to the Treasury, under such regulation as it may issue, regarding as German for customs purposes, including the application of rates of duties, goods coming from the Provinces of Bohemia, Moravia and Slovakia. You will later be advised as to the Province of Carpatho-Ukraine or Ruthenia.

Sincerely yours,

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

(B)

241

FROM _____
BUREAU _____
CHG. APPROPRIATION _____

U. S. GOVERNMENT PRINTING OFFICE: 1928

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

TO ALL COLLECTORS OF CUSTOMS

The State Department having today advised Treasury Department that in view of the recent military occupation of the Province of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and the assumption of control over these areas by German authorities, the State Department, while not recognizing any legal basis for the assumption of so-called protection over this territory, is constrained by force of the foregoing circumstances to regard the abovementioned Provinces as now being under the administration of the German authorities, products of areas mentioned exported from any country on or after March 18, 1939, shall be regarded as products of Germany for the purposes of the marking provisions of the Tariff Act of 1930 and for determining applicable rates of duty. Give importers all possible notice. Apply provisions article 822(e) Customs Regulations 1937 in determining rates of exportation.

(T.D. _____)

COUNTERVAILING DUTIES ON IMPORTS FROM GERMANY

Notice of countervailing duties to be imposed under Section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the exportation of certain goods from Germany. Collectors of Customs instructed to suspend liquidation of entries covering dutiable imports from Germany and to collect estimated additional duties in certain cases.

Treasury Department
Office of the Commissioner of Customs
Washington, D. C.

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The Bureau is in receipt of information concerning the operation of so-called "barter" transactions through which the importation into the United States of merchandise from Germany is financed by means of premium prices for certain products, particularly cotton and copper, which satisfies the Bureau that such transactions involve the payment or bestowal of bounties or grants within the meaning of Section 303 of the Tariff Act of 1930 (U.S.C., title 19, sec. 1303).

Accordingly, notice is hereby given that dutiable merchandise imported directly or indirectly from Germany, which has been or shall be acquired by or through the disposal of other property on a premium basis (regardless of the character of such other property or of the method or means of such disposal), if entered for consumption or withdrawn from warehouse for consumption after the expiration of thirty days after the publication of this decision in a weekly issue of TREASURY DECISIONS, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated

- 2 -

to have been paid or bestowed upon its exportation from Germany.

Upon the entry for consumption or withdrawal from warehouse for consumption, on or after the effective date of this notice of dutiable merchandise imported directly or indirectly from Germany, there shall be collected in addition to any other duties estimated or determined to be due, estimated countervailing duties at the rate of 25 per centum of the invoice value. The liquidation of entries covering such merchandise shall be suspended and the facts concerning the manner of payment for the goods shall be reported promptly and in full to the Bureau.

Commissioner of Customs

APPROVED:

Secretary of the Treasury

HC/op 11/23/38
Rewritten 3/6/39



DEPARTMENT OF STATE
WASHINGTON

In reply refer to
Eu

March 24, 1939

My dear Mr. Secretary:

The Department of State has been informed by the Lithuanian Minister in Washington that his Government has formally ceded the Memel Territory of Lithuania to Germany.

In view of the Minister's statement, the Department accepts as a fact the transfer of the Territory in question to Germany. The Department of State, therefore, perceives no objection to the Treasury, under such regulations as it may issue, regarding as German for customs purposes, including the application of rates of duties, goods coming from the Memel Territory.

Sincerely yours,

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

March 29, 1939.

The Honorable,

The Secretary of State.

Sir:

The receipt is acknowledged of your letter of March 17 relative to the recent military occupation of the Provinces of Bohemia, Moravia and Slovakia of Czechoslovakia by German armed forces and of your letter of March 18 advising that the Province of Ruthenia (Carpatho-Ukraine) is no longer under the control of the Czechoslovak Government as Hungarian military forces are in occupation thereof; also of your letter of March 24 stating that your Department has been informed by the Lithuanian Minister in Washington that his Government has formally ceded the Memel Territory of Lithuania to Germany.

The Secretary has issued the necessary instructions to the appropriate Treasury officials.

By direction of the Secretary:

Very truly yours,

(Signed Stephen D. Gibbons)
Assistant Secretary.

76 2-28-39

2/28

Treasury Department
Division of Monetary Research

246

Date March 28, 1939. 1938

To: Secretary Morgenthau
From: H. D. White

1. The appended letter was sent to all members of the National Foreign Trade Council, one of whom forwarded it to us.
2. The State Department is preparing a compilation of all the correspondence which has been received commenting on the action taken with respect to German imports under the barter arrangement.

BULLETIN NO. 133

TO MEMBERS OF

Telephone: WHithall 4-1780
Cable Address: NAFTRAC

NATIONAL FOREIGN TRADE COUNCIL, INC.

26 BEAVER STREET • NEW YORK, N. Y.

		OSTRANDER	
		E. M. GRETZLER	
NATIONAL SUPPLY CORP'N		RECEIVED	
MAR 23 1939			
		ENG. DEPT.	
		ESTIMATING DEPT.	
		ORDER DEPT.	
		TRAFFIC DEPT.	
		ACCTS. DEP.	

AM
247

March 22, 1939.

COUNTERVAILING DUTY ON IMPORTS FROM GERMANY

The action of the Treasury in imposing a countervailing duty of 25 per cent ad valorem on imports from Germany is regarded with general approval.

The causes which have brought this about are briefly reviewed in the attached memorandum on the subject.

*Read by the Pres.
at Cabinet,*

248

PARAPHRASE OF TELEGRAM RECEIVED

FROM: American Embassy, Berlin, Germany

DATE: April 19, 1939, noon

NO.: 259

No. 15 FROM HEATH FOR TREASURY.

A few days ago I had a talk with Bergemann, the Director of the Commercial Policy Section of the Ministry of Economics. He asked somewhat plaintively what Germany could do to maintain its exports in the face of the 25 percent countervailing duty "handicap". Bergemann said it was inconceivable that Germany would at this time adopt the solution of a total devaluation of the mark.

Bergemann admitted that some thought had been given by the Ministry of Economics to such devices as making "free gifts" of merchandise to exporters who were regular importers of German goods. However, he supposed that such a procedure would run afoul of the customs laws in the United States.

Yesterday I talked with Bergemann again. He remarked that the countervailing duties would not presumably affect duty-free goods, which he said account for about 40 percent of German exports to our country. (This remark I construed as an admission that at least in certain instances, duty-free goods had received export bounties in the past. In the future such goods might receive additional bounties so that their sale in the United States might be extended to provide Germany with necessary foreign exchange). He told me during

the

- 2 -

the conversation that an effort would be made by Germany to sell for free foreign exchange some of the goods which had been exported over inland accounts in the past. Effort would also be made, he said, to export goods on the basis of payment partly in free exchange and partly in "eigene sperrmarken". [The latter are blocked marks which since being blocked have remained in a single ownership. That is, Bondholders, banking or other interests would be asked to become importers of German goods so that their blocked credits could be liquidated. There have not been many such transactions up to the present.]

The "inland account procedure" had not yet been canceled, Bergemann said. They were awaiting information from Washington to ascertain whether as a practical matter trading could still be conducted with such accounts. In view of the 25 percent countervailing duties, however, he supposed it would be very difficult to make use of such a system. At the present time, no effort would be made to revive Brinkmann's suggestion of an "American mark" which would sell at a discount, in view of the present tension, he said.

Last night Bergemann left Berlin to go to Slovakia. Slovakia, it seems is not able to take up German goods to the extent to which Germany wants to import its agricultural

cultural and timber products. The problem was an extremely difficult one, he said, for which he had found no solution to date. There could be no easy solution by Germany engaging in development work and investment in Slovakia in payment for raw materials, since the opportunities for investment there were less than the opportunities are in Rumania. In the latter country, he said, there has been a thriving "normal" trade which was more or less in balance. Thus investment and development work were needed.

He made reference to the treaty with Rumania, and said it was a "sheer accident" that its announcement coincided with Czechoslovakian "events". Last November the negotiations for the agreement had been begun, and some two or three days before the "event" agreement had been reached by Wohlthat in Bucharest. Bergemann said it was not true that any ultimatum was given to Rumania. He said that the fear of Rumania from Hungarian irredentism regarding Transylvania caused Rumania to want to conclude the treaty, in the belief that thereafter Germany would restrain Hungary from any aggressive action toward Transylvania. Bergemann also denied that no secret supplementary treaty with Rumania had been made. Originally, he said, it had been planned that the treaty was to be kept secret but it was deemed better to publish the treaty after "the events" in Czechoslovakia.

Bergemann

- 4 -

Bergemann did not deny that in Germany there is at present extreme foreign exchange stringency. He remarked that in Bohemia, Moravia the situation was not yet acute, since the Czech factories had in general stocks of raw materials sufficient to run them for quite a while.

END OF MESSAGE.

GEIST.

RECEIVED

SEP 10 1930

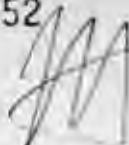
TELETYPE UNIT
RECEIVED AT 10:00
FROM NEW YORK

EA:LWW

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

252



DATE April 21, 1939.

TO SECRETARY MORGENTHAU,
FROM W. R. JOHNSON.

Dr. Tannenberg, First Secretary of the German Embassy, called at my office this morning to discuss the outstanding countervailing duty order against German imports. He stated that he was fully authorized by his government in all that he would say.

He first asked whether it would be possible to clear importations without the additional 25 per cent deposit if they were financed solely in dollars or free reichsmarks. I advised him that this had been thoroughly considered but no practical procedure had been devised.

Tannenberg then said that his government is convinced that it will have virtually no trade with the United States if the order stands without modification, and that Germany does not want this result. His careful study of the order, the Attorney General's opinion, and the practices which occasioned the order has satisfied him that there remains no practical way for Germany to assist her exports to the United States without incurring countervailing duties. He stated that if shipments to which their formal assurances made through the Department of State clearly applied could be cleared through customs without the 25 per cent additional deposit, Germany is prepared to repeal and prohibit completely, "today, if necessary", all decrees, regulations, and practices under which the "barter" procedures have been carried on; to prohibit effectively any practice or procedure for offsetting the

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disadvantages to German exports resulting from our dollar devaluation; and to prevent exports to the United States unless the transactions are financed solely in free exchange and without price manipulation of any kind. He did not make it clear, but I understood these proposals to relate to dutiable merchandise, since free goods are not subject to countervailing duties.

Tannenberg seemed anxious for an early response to his proposals but stated that he, of course, did not expect any reply from me today. I made it clear that, in my opinion, complete revocation of the order could not be considered since Germany could not now stop or recall subsidies applying to goods beyond its control.

Several times during the conversation Dr. Tannenberg remarked that unless we would assume that his government proposes to act in entire good faith his visit could have no purpose.

In reply to my inquiries Tannenberg estimated the volume of dutiable German imports into the United States recently financed without subsidies at 40 per cent of the total. He estimated that this volume, plus a third of the remainder, or a total of 60 per cent of the past volume of trade, could be continued on a no-subsidy basis if the 25 per cent deposit were eliminated. The remaining 40 per cent, he said, is lost beyond recovery, since it cannot be carried on without some assistance.

W. R. Johnson

C
O
P
Y

May 3, 1939

Dr. Herbert Feis,
Economic Adviser,
Department of State.

Dear Doctor Feis:

In compliance with your request to Mr. W. R. Johnson, Acting Deputy Commissioner of Customs, I enclose a copy of his report of a conversation which took place on April 21, 1939, between him and Dr. Wilhelm Tannenberg, first secretary of the German Embassy, concerning the outstanding Treasury order (T. D. 49821) with respect to countervailing duties on German importations.

Very truly yours,

(Signed) H. Morgenthau, Jr.

H. MORGENTHAU, JR.,
Secretary of the Treasury.

Enclosure no. 19869

WHA:WRJ:hl 4-29-39

RE COUNTERVAILING DUTIES
AGAINST GERMANY

May 3, 1939.
3:50 P. M.

Present: Mr. Foley
Mr. White
Mr. Cairns
Mr. Johnson

Foley: (Following two paragraphs were dictated by Mr. Foley in summary of the discussion which took place before actual recording of the conference began:)

We want to remind you of the offer made to Bill Johnson on April 21 by Dr. Tannenberg, the Commercial Attache of the German Embassy, as to the alteration of the countervailing duty order regarding German exports. While Dr. Tannenberg has not been pushing Mr. Johnson, Huntington Cairns and Mr. Johnson have asked for instructions as to the disposition of the offer so that they may know how to deal with Dr. Tannenberg should he contact them again.

The principal question to be decided is whether the offer on the part of the German Government should be treated as Treasury routine or, in view of the international complications connected with the order, the offer should be treated as a matter of general governmental policy. The action to be taken is somewhat complicated by a similar offer from the Netherlands regarding a countervailing duty order applying to exports from the Netherlands.

(Actual recording of the conference proceeds as follows:)

Foley: We have a T.D. imposing countervailing duties against the Netherlands outstanding at the present time, and an offer made by the Netherlands.

H.M., Jr.: May I interrupt you a minute? What is the offer that the First Secretary of the German Embassy made? I'm not clear. What did he do?

Johnson: The First Secretary of the German Embassy, Dr. Tannenberg, came to my office on Friday, April 21, and stated that by authority of his Government he was authorized to state that Germany is prepared to

- 2 -

repeal and prohibit completely today, if necessary, all decrees, regulations, and practices under which the barter procedures have been carried on; to prohibit effectively any practice or procedure for offsetting the disadvantages to German exports resulting from our dollar devaluation; and to prevent exports to the United States unless the transactions are financed solely in free exchange and without price manipulation of any kind.

H.M.Jr: That's....

Johnson: That's a complete capitulation if it's carried out in good faith.

H.M.Jr: Well, have I got a copy of that?

Johnson: Yes, sir. I was reading from my memorandum to you dated April 21.

H.M.Jr: Well, has he asked about an answer?

Foley: No communication since he called.

H.M.Jr: Well, what would you do normally? Supposing this was X country, what would you do?

Johnson: We would modify the order so that it would not apply to direct shipments made after the effective date of the German assurances.

H.M.Jr: Let me have that. I'm going over to the President soon. That will be another one.

Foley: Now, there's....

Johnson: I have another copy here.

Foley: There's one thing that you might bear in mind, and that is that Ostrander, Doc White's man, has been in Berlin with May, and will be sailing on the sixth of May, so that he'll be back here around the fifteenth or the eighteenth.

H.M.Jr: Yes. What's he doing over there?

- 3 -

- Foley: I don't know whether he'll be able to contribute anything or not. But having been on the ground and having gone over the situation, he might have some information that you might want to wait for.
- White: There is one other pertinent fact.
- H.M.Jr: When is he sailing?
- Foley: The sixth.
- White: Merely one other fact that may be pertinent. That is, May reports that the exporters have received advices not to give any information to any of the officers of the United States Treasury Department or any other American officials, with respect to these matters, which may not be....
- Foley: Of course, May and Ostrander don't know about Tannenberg's visit to Johnson.
- H.M.Jr: Annenberg?
- Cairns: Tannenberg.
- Foley: Tannenberg. And those orders may have been given at the time the T.D. was issued and no action has been taken with respect to those orders. On the other hand, it may be that they have additional information that would throw some light on the good faith of the German Government.
- White: Johnson points out, and that's Cairns' position too, that we are not in a position to officially question the good faith of the German Government. If they take this position, then we can only examine the situation after we have agreed, but certainly cannot assume that they will not live up to their agreement ahead of time. So it's a question as to whether you want to wait until he comes back - there may be some additional information but there will probably be no change in your analysis - or whether you want to take action now without waiting for your man to come back.

- 4 -

- Johnson: I think it is also a question as to whether this is to be handled as a mere routine matter of Treasury administration.
- Foley: Or, because of the imponderables involved, treating it as a matter of government policy rather than Treasury routine.
- H.M.Jr: Well, we'll ask the President of the United States, if he'll have time enough.
- When are you (Cairns) going to get busy as my spokesman over at the Munitions Board and get into that stuff?
- Cairns: I'm ready at any time.
- H.M.Jr: Well, will you start it?
- Foley: You have a letter addressed to Huntington designating him to act.
- H.M.Jr: I signed every blankety-blank letter that was put on my desk. I haven't got any letter.
- White: They never have any meetings - once a year, twice a year.
- Foley: It was attached to those papers you gave to Miss Chauncey to take home.
- Cairns: I've been preparing myself. I've also been waiting for the letter.
- H.M.Jr: O. K.

May 4, 1939

I read the attached memorandum from Johnson to Sumner Welles, today, and I asked him to advise me on it, first in his capacity as Under-Secretary of State and, second, what would he do if he were Secretary of the Treasury.

He told me that the first thing he would do would be to satisfy himself as to whether the Germans could live up to it. He also said he would give it careful consideration and let me know.

I told him that I was particularly anxious to continue my policy of giving the Germans more than an even break.

April 21, 1939.

SECRETARY MORSETHAU,

W. H. JOHNSON.

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(Signed) W. R. Johnson

WHA:HRJ:hl

~~WHA~~
WHA

COPY

262

DEPARTMENT OF STATE

Washington

(Seal)

May 10, 1939

Personal and
Confidential

My dear Mr. Secretary:

The Department has studied with attention the memorandum transmitted by the Treasury in regard to the conversation between Dr. Wilhelm Tannenberg, First Secretary of the German Embassy, and Mr. W. R. Johnson, Acting Deputy Commissioner of Customs, which took place on April 21.

I have discussed the questions involved with the Secretary of State and it is our thought that the matter might appropriately be handled if the Acting Deputy Commissioner of Customs informed the First Secretary of the German Embassy that if the German Government on its own initiative takes such action as will abolish the practices which made it mandatory for this Government to impose countervailing duties upon German exports, and this Government was satisfied that the objectionable practices have in fact been abolished, this Government in such event would rescind the order imposing the countervailing duties. Such statement to the First Secretary of the German Embassy would of course make it clear that action would have to be taken by the German Government unilaterally and upon its own initiative and that no agreement between the two Governments was involved directly or indirectly.

- 2 -

As most recently described in telegram No. 304 of May 2 from our Embassy in Berlin, there appears to be firmly established in Germany an all-pervasive direct and indirect system for facilitating exports. Even if the German Government wishes to exempt its exports to the United States from the effects of this system, there would remain the question of how effectively Germany could prohibit, with reference to exports to the United States, the different practices and procedures for enabling German products to compete on a price basis in foreign countries. It would appear that it must be difficult to devise assurances that the German system will not result in bounties or grants on various articles which would in the future make the latter subject to countervailing duties under Section 303 on grounds different from those covered in the assurances given by the German Government in August 1936 or which would be covered in additional assurances directed toward the practices covered by the most recent countervailing duty order.

The questions raised, both as regards the particular assurance mentioned by Mr. Tannenberg and by the more general aspects of the German system, are largely of detailed and technical legal character within the field of legal interpretation of the responsibilities of the Secretary of the Treasury under the mandatory terms of Section 303, and I find it difficult, without the necessary studies, to express a definite opinion.

Sincerely yours,

(Signed) Sumner Welles
Under Secretary

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MAY 11 1939

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I am also sending you herewith a copy of a letter which I received today from Sumner Welles on this subject.

Since there is so much involved in this matter, I would appreciate very much if you would advise me how you would like me to proceed.

Respectfully yours,

The President

The White House

Enclosures

W.R. F.N.H.

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DEPARTMENT OF STATE
WASHINGTON

May 10, 1939

Personal and
Confidential

My dear Mr. Secretary:

The Department has studied with attention the memorandum transmitted by the Treasury in regard to the conversation between Dr. Wilhelm Tannenberg, First Secretary of the German Embassy, and Mr. W. R. Johnson, Acting Deputy Commissioner of Customs, which took place on April 21.

I have discussed the questions involved with the Secretary of State and it is our thought that the matter might appropriately be handled if the Acting Deputy Commissioner of Customs informed the First Secretary of the German Embassy that if the German Government on its own initiative takes such action as will abolish the practices which made it mandatory for this Government to impose countervailing duties upon German exports, and this Government was satisfied that the objectionable

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

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practices have in fact been abolished, this Government in such event would rescind the order imposing the countervailing duties. Such statement to the First Secretary of the German Embassy would of course make it clear that action would have to be taken by the German Government unilaterally and upon its own initiative and that no agreement between the two Governments was involved directly or indirectly.

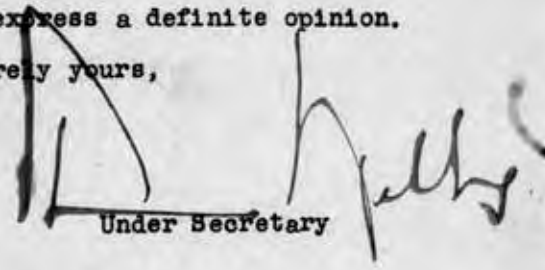
As most recently described in telegram No. 304 of May 2 from our Embassy in Berlin, there appears to be firmly established in Germany an all-pervasive direct and indirect system for facilitating exports. Even if the German Government wishes to exempt its exports to the United States from the effects of this system, there would remain the question of how effectively Germany could prohibit, with reference to exports to the United States, the different practices and procedures for enabling German products to compete on a price basis in foreign countries. It would appear that it must be difficult to devise assurances that the German system will not result in bounties or grants on various articles which would in the future make the latter subject to countervailing duties under Section 303 on grounds different from those covered in the assurances given by the German Government in August 1936 or which would be covered in additional assurances directed

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toward the practices covered by the most recent countervailing duty order.

The questions raised, both as regards the particular assurance mentioned by Mr. Tannenberg and by the more general aspects of the German system, are largely of detailed and technical legal character within the field of legal interpretation of the responsibilities of the Secretary of the Treasury under the mandatory terms of Section 303, and I find it difficult, without the necessary studies, to express a definite opinion.

Sincerely yours,



Under Secretary

MAY 17 1939

MEMORANDUM FOR THE PRESIDENT:

In accordance with your suggestion, I have consulted with the Department of State with respect to the German proposal to abolish subsidies on exports to the United States. There is attached a recommendation prepared in the Department of State as to the appropriate action, to which I have agreed.

If you approve the recommendation and will so advise me, I shall proceed accordingly.

(Signed) Henry Morgenthau, Jr

HC/ep 5/17/39

HFC P.N.T.H.

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(Signed) H. Morgenthau, Jr.

EM/ep 5/17/39

MEMORANDUM FOR THE PRESIDENT

Although it is apparent that there is still firmly established in Germany a system for facilitating exports which is so all pervasive as to make it difficult for the German Government effectively to devise measures to exempt its exports to the United States from present practices and procedures which have been adopted to enable German products to compete on a price basis abroad, nevertheless we recommend the following:

That the Acting Deputy Commissioner of Customs inform the First Secretary of the German Embassy that if the German Government on its own initiative took such action as would abolish the practices which made it mandatory for this Government to impose countervailing duties upon German exports, and this Government was satisfied that the objectionable practices had in fact been abolished, this Government in such event would ~~reconsider~~^{modify} the order imposing the countervailing duties. Such statement to the First Secretary of the German Embassy would of course make it clear that action would have to be taken by the German Government unilaterally and upon its own initiative and that no agreement between the two Governments was involved, directly or indirectly. The First Secretary would furthermore be cautioned that should this Government ~~reconsider~~^{modify} the countervailing duties under the circumstances set forth, such action could naturally not limit the responsibilities of

- 2 -

of the Secretary of the Treasury under Section 303 in the event that other practices, resulting in bounties or grants, are utilized by Germany.

SECRETARY OF STATE

SECRETARY OF THE TREASURY

Bu: PM: OMS: DG
5/15/39

EA



DEPARTMENT OF STATE
WASHINGTON

May 16, 1939

My dear Mr. Secretary:

In accordance with our telephone conversation, I am sending you herewith a suggested memorandum to be addressed to the President by the Secretary of State and by yourself with reference to the imposition of countervailing duties upon German goods.

You will see that this memorandum follows very closely the lines indicated in my letter to you of May 10. The Secretary of State has signed the memorandum and if it meets with your approval, I would suggest that it be sent to the President without further delay.

Believe me

Yours very sincerely,

Enclosure:
Memorandum for the
President.


Under Secretary

The Honorable

Henry Morgenthau, Jr.,

Secretary of the Treasury.

GENERAL COUNSEL
TREASURY DEPARTMENT
WASHINGTON



May 17, 1939

MEMORANDUM FOR THE SECRETARY'S FILES:

Under Secretary Welles of State called the Secretary today regarding the attached memorandum. The Secretary advised him that it would be necessary to change the word "rescind" where it appeared in two places on page 1 to the word "modify", because the countervailing duty order in question will apply in any case to transactions which will have been subsidized. Secretary Welles stated that it would be agreeable to him to have the change made in the Treasury.

Huntington Cairns

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(Signed) Huntington Cairns

HC/ep 5/17/39



THE SECRETARY OF THE TREASURY
WASHINGTON

May 17, 1939

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Henry Myertham Jr.

*HMF
AK
JHR*

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of the Secretary of the Treasury under Section 303 in the event that other practices, resulting in bounties or grants, are utilized by Germany.

Cordell Hull

SECRETARY OF STATE

Henry M. Guthrie

SECRETARY OF THE TREASURY

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

289

DATE
May 19, 1939

TO Secretary Morgenthau
FROM E. H. Foley, Jr.

For your information -

In accordance with your instructions, Huntington Cairns and Wm. R. Johnson saw Dr. Tannenberg at 3:45 this afternoon. A stenographer was present and took down the entire conversation. The substance of the memorandum in regard to modification of the German countervailing duty order signed by you and Secretary Hull was summarized and communicated orally to Dr. Tannenberg, but, of course, no disclosure of the memorandum was made. Dr. Tannenberg asked numerous questions looking toward an understanding of the proposal.

The matter was presented to Dr. Tannenberg with the statement that it had been studied in the Treasury from the point of view of an interpretation of Section 303 of the Tariff Act of 1930 in the light of controlling judicial decisions. The background of the study was not, of course, revealed to Dr. Tannenberg.

He did not indicate whether the proposed procedure was acceptable to him, but said that he wanted to study it. If he has any further questions, he will call Huntington Cairns.

E. H. F.

May 19, 1939

Secretary Morgenthau

E. H. Foley, Jr.

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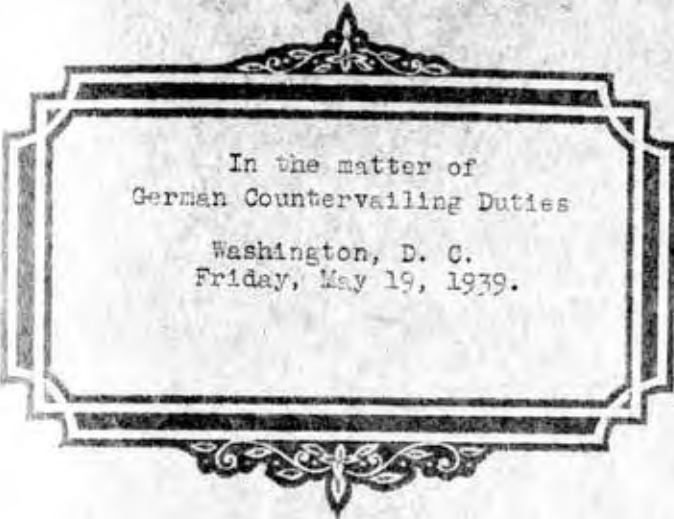
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HFFr/HC/fm
Rewritten
5/19/39

(Initialed) E. H. F., Jr.

For the Seely
file

Seely - original
Seely Hull 1st carbon
E.H. Foley 2nd carbon
Carrus 3rd carbon
Jannenberg 4th "
Johnson 5th carbon



In the matter of
German Countervailing Duties

Washington, D. C.
Friday, May 19, 1939.

TREASURY DEPARTMENT

Office of the General Counsel

.....
 In the matter of
 German Countervailing Duties .

Washington, D. C.
 Friday, May 19, 1939.

The above-entitled matter came on for
 discussion at 3:45 o'clock P.M.

PRESENT:

Huntington Cairns, Esq., Asst. General Counsel.
 W. R. Johnson, Esq., Acting Deputy Commissioner
 of Customs.
 Dr. Wilhelm Tannenberg, 1st Secretary, German Embassy.

MR. CAIRNS: I believe you saw Mr. Johnson on
 April 21st, Dr. Tannenberg. He studied very carefully the
 matter that you took up with him and submitted a report
 and recommendation to the Treasury, and we have been studying
 it since. Of course, we have to interpret the countervailing
 duty statute in accordance with its terms and in the light
 of the controlling judicial decisions.

It should be understood, I think, at the beginning
 of our talk this afternoon, that the result of the conver-
 sation does not in any way imply negotiation or agreement.
 I think the best thing for me to do is to state, in summary
 form, the conclusions that we have reached, interpreting
 section 303 as I have just indicated.

The first conclusion is:

If the German Government, on its own initiative, took such action as would abolish the practices which made it mandatory for this Government to impose countervailing duties upon German exports and this Government was satisfied that the objectionable practices had, in fact, been abolished, this Government, in such event, would modify the order imposing the countervailing duties.

The second conclusion is:

It should be understood that that action would have to be taken by the German Government unilaterally and upon its own initiative and that no agreement between the two governments is involved, directly or indirectly.

It also should be understood, and this is my third and last summary conclusion, that:

Should this Government modify the countervailing duties under the circumstances set forth, such action could naturally not limit the responsibilities of the Secretary of the Treasury under section 303 in the event that other practices resulting in bounties or grants are utilized by Germany.

Now, Mr. Johnson, do you want to add anything to that?

MR. JOHNSON: I think the natural question of Dr. Tannenberg would be what we mean by modifying the order.

MR. CAIRNS: I think Mr. Johnson made it clear to you that it would be impossible to rescind the order. Did you

explain that to Dr. Tannenberg at the last conference?

MR. JOHNSON: Yes.

DR. TANNENBERG: Yes. Of course, I would like to get it entirely straight so that I will understand what you mean.

MR. CAIRNS: Yes. We wish it to be entirely clear to you.

DR. TANNENBERG: At our conference -- of course I do not remember the date, but at our conference, after we discussed the scope of the decision, I inquired whether we could obtain a modification of that decision if that procedure to which the Attorney General's opinion objected would be abolished. Our opinion has been, according to our own study of his opinion and decision of the Treasury Department, that the opinion of the Attorney General was directed exclusively to the so-called Inlandskonto procedure; namely the sale of American products to Germany at the German market price, which was above the world market price, and the use of the proceeds of the sale for the payment of merchandise brought into this country. That is what I always understood, and that is what I made clear, that that is the basis of the Attorney General's opinion, and, consequently, my suggestion was that if we eliminate that procedure, there would, in our opinion, be no further grounds for imposing countervailing duties on German imported goods.

MR. JOHNSON: Pardon me, Dr. Tannenberg. That is the real reason for point number three here.

DR. TANNENBERG: Yes. Now, I said that the principal question with which we are concerned is the general twenty-five per cent deposit on all dutiable German goods. I said we did not want to argue about the decision itself. We have applied this procedure according to our own understanding of the decision of the Treasury Department, during the past two years. We have been under the impression that this procedure of using the proceeds of the sale of cotton and copper in Germany for payment of German goods to be imported to this country was done with the approval of the Treasury Department, and I said "Now, the Attorney General has made his decision, we have nothing to say so far as the decision is concerned; all we are interested in is to find a method of doing trade with the United States, under which the remaining trade can be carried on as unmolested as possible." And I said, "If we repeal those decrees and orders which established the Inlandskonto procedure, and if we do not make use of that procedure any more, then, in our opinion, there would be no further justification for the application of countervailing duties."

I understood at the time from what Mr. Johnson emphasized that, of course, our discussion was not on rescinding the decision, but our discussion was on a problem as to whether the requirement of depositing twenty-five

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per cent of the countervailing duties could be dispensed with on our assurance that the Inlandskonto procedure would henceforth be no longer used. That was the question.

MR. JOHNSON: Yes.

DR. TANNENBERG: And I referred briefly to the countervailing duties imposed upon dairy products from the Netherlands and the decision which was based on your finding that those dairy products were subsidized by the Dutch Government, and I referred to the fact that that decision was repealed on the assurance of the Dutch Government that henceforth no further subsidy would be granted.

If the Attorney General now finds that a premium paid on American cotton, as he puts it, or as we put it, the use of proceeds of sale of cotton in Germany above the world market price, implies or involves a grant or a bounty within the meaning of section 303, then we say "All right; let us abolish the entire procedure." We started the procedure on the assumption that the Treasury Department had approved it. We never would have started it if that had not been the case. If the Attorney General now finds that this is a matter which involves the bestowal of grants or bounties, then, of course, we want to discontinue the entire procedure, and find out whether it would not be possible to carry on trade between the two countries on a straight dollar or free reichsmark basis.

That was my suggestion at the time.

MR. JOHNSON: Pardon me, Dr. Tannenberg. Did I not understand you correctly in that conversation to go just a little further than you state now, and to state that your Government was prepared to take measures to insure that all exports to the United States would be financed on a wholly free exchange basis?

DR. TANNENBERG: Yes. I said, that in my opinion, this procedure was the only basis under which ultimately the importer received a certain discount on the purchase of German goods. If that is eliminated the only basis for doing trade is to pay in dollars or in free reichsmarks, and, consequently, when we repealed those decrees, the only basis for carrying on trade with the United States would be to provide for payment in dollars or reichsmarks.

MR. JOHNSON: Free reichsmarks.

DR. TANNENBERG: Free reichsmarks, and, of course, we would be entirely willing to provide and see to it that German goods are sold in this country only against dollars and free reichsmarks.

MR. JOHNSON: Just as a matter of my own information, do you regard the so-called dividend marks as free reichsmarks?

DR. TANNENBERG: I personally would. For instance, take the case of General Motors. That is not a matter of my concern, but take the case of General Motors. They sell rubber to Germany, that is, to their Opel Works. They ship rubber which they buy in the world's market into Germany.

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It is put into tires, and their tires are put on the cars in Germany. They receive no foreign exchange for rubber. They receive payment in reichsmarks on their own account, and, as far as I know, they are of the opinion that this is their own money for which they put in valuable raw material. In other words, they put gold into Germany and they ought to be able to withdraw it at any time. Now, as I said, we cannot pay for the rubber in dollars. We pay for it in reichsmarks. The reichsmarks are credited on their account, and are held in Germany.

MR. CAIRNS: Excuse me a minute. Who owns the Opel Works?

DR. TANNENBERG: General Motors.

MR. CAIRNS: So they receive payment for the rubber in the form of dividends?

DR. TANNENBERG: No.

MR. JOHNSON: Dr. Tannenberg is talking about one account General Motors has in Germany, and I was talking about another. But let us pursue this first account.

DR. TANNENBERG: Yes. Of course, the Opel Works are an independent entity. They pay for the rubber that they receive from General Motors, although they are a subsidiary of General Motors, and, consequently, there are accounts in Germany upon which the proceeds of sale of rubber to the Opel Works are credited. Those are merchandise accounts of General Motors in Germany.

MR. CAIRNS: Is there an over price on that rubber?

DR. TANNENBERG: No.

MR. CAIRNS: That rubber is purchased by the Opel Works at the world market price.

DR. TANNENBERG: At the world market price.

MR. JOHNSON: And so credited on the Opel books? General motors would get marks to pay for the rubber on the basis of two and a half marks per dollar on the cost to General Motors of the rubber, and no profit at all in the transaction.

DR. TANNENBERG: I had a talk this morning with the representative of General Motors. That is the reason I mentioned rubber first.

MR. JOHNSON: Mr. Carroll?

DR. TANNENBERG: No; not Mr. Carroll. It was Mr. Stemm. He mentioned these accounts to me, and he said "Those accounts are gold marks so far as we are concerned. We ship the rubber to Germany. We receive the purchase price in reichsmarks at the rate of forty cents to one reichsmark, and this is money which is forty-cent marks to us." To the best of my knowledge there is no over price, because I do not see why, under those circumstances, the Opel Works should pay any over price on the rubber.

MR. JOHNSON: Well, there is a very good reason why they should. If they send in rubber to the value of a hundred dollars, at a cost to them of a hundred dollars, and get credit for two hundred dollars worth of reichsmarks,

which could be exported in merchandise and sold to this country at, say, a hundred and fifty dollars, that would offset some of the other recoveries which they could not make from Germany, and there would be a very strong inducement to take credit at an over price in that connection.

MR. CAIRNS: Are the reichsmarks that they receive "blocked"? Are the proceeds utilized only for the purpose of exports?

DR. TANNENBERG: No.

MR. CAIRNS: Are they free to take the reichsmarks?

DR. TANNENBERG: They cannot, because they can not get any foreign exchange.

MR. CAIRNS: That is an additional inducement, is it not?

MR. JOHNSON: May I explain my understanding of that? There is no "block". As far as the account stands, the Opel books merely have a debit, but as Opel sets aside that money and transfers it from its own title and possession to the title and possession of General Motors in Germany, it will then be "blocked" as a foreign holding. Is that correct?

DR. TANNENBERG: Yes; they would be. Of course, you have to understand this, that every credit in Germany that belongs to a foreign creditor cannot be withdrawn, and in that respect is "blocked". It cannot be withdrawn, because no foreign exchange is available for those credits. That is the reason.

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MR. JOHNSON: However it is controlled, it is what we call a "blocked" account.

DR. TANNENBERG: Yes. In the broad sense of the word, it is "blocked". There's no doubt about that. But as to your other question, if General Motors would receive a higher price for the rubber than the world market price, would then the opinion of the Attorney General apply in any way?

MR. CAIRNS: Yes; it would.

MR. JOHNSON: Clearly.

DR. TANNENBERG: Consequently, I am not talking about such account. I said, if General Motors shipped rubber to Germany, and if they received the world market price for their rubber, because we can not pay them in foreign exchange, and their money is held in Germany because of that lack of foreign exchange, then I feel they could take it out in the form of goods without any interference on the part of -- now let me say the Customs here. I mean without violating any of the rules and regulations of the Customs Department. Their position is that "we shipped good raw material to Germany; we can not receive foreign exchange; why can we not take out this money, these reichsmarks, in the form of German goods, if we match the world market price against the home market price of German goods?"

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MR. JOHNSON: My only point right there is that that situation is one that would require either a spot check or some sort of an investigation by our Treasury agent from time to time.

DR. TANNENBERG: Yes.

MR. JOHNSON: Because, as I see it, there is a strong inducement there to operate on a premium basis, vis-a-vis General Motors and Opel; it would be a strong inducement for General Motors to liquidate as much as possible of its mark assets through the medium of excess credits for shipment of goods into Germany.

DR. TANNENBERG: But I understand the opinion of the Attorney General clearly applies to any such transaction. As I said, we discussed a case this morning where they shipped rubber to Germany and received the equivalent in reichsmarks and the world market price in the form of credits in Germany, and where they desired to liquidate these reichsmarks by taking out the German merchandise they can use in their own factories, like wheels for Chevrolets, which, after all, is a pure barter of merchandise against merchandise, only that the world market price for rubber is credited to their account, and that account is liquidated against German merchandise.

MR. CAIRNS: The case you have given is not within the scope of the Attorney General's opinion.

DR. TANNENBERG: No.

MR. CAIRNS: And assuming that no other subsidy enters into it, either by way of excess goods or otherwise, section 303 would not be applicable.

DR. TANNENBERG: Yes. My answer to that question is that I would consider any such account as a free reichsmark transaction.

MR. CAIRNS: But Mr. Johnson had in mind, I think, a different case.

MR. JOHNSON: Opel declares dividends, which are credited in an account in Germany to General Motors for such use as General Motors may desire to make of the marks.

DR. TANNENBERG: Yes; and there my idea is this; General Motors invested a very substantial amount of money in Germany for the building and completing of the Opel Works. That money was invested in free reichsmarks. That investment in Germany, of course, existed in the form of plants and industrial output. Now, that concern declares dividends, which are credited to General Motors as their share in the profits of the concern.

MR. CAIRNS: May I ask you there whether the German law regulates the amount of dividends payable.

DR. TANNENBERG: Yes; six per cent.

MR. CAIRNS: No more than six per cent?

DR. TANNENBERG: No more than six per cent. You see, any dividends in excess of six per cent must be invested

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in German securities under the law. And, of course, they are not part and parcel of dividends. So the dividend which Opel declares is a limited dividend, which is credited to General Motors in Germany, and here, again, my opinion is that is money which does not involve payment of a premium or the bestowal of a grant or subsidy by the German Government, because it is a return on the original dollar investment of General Motors. Your question, of course, implies that General Motors or Opel might go ahead and declare a sixty per cent dividend.

MR. JOHNSON: No, Dr. Tannenbergh, my question is aimed solely at clarification of your use of the term "free reichsmarks".

DR. TANNENBERG: Yes.

MR. JOHNSON: I wanted to make sure that you were not excluding dividend mark transactions and transactions in marks received by a resident of the United States from an inheritance in Germany, or things of that sort, which, to my conception of the matter, are "blocked" funds and not free reichsmarks, but which are equally held at a forty cent value by the owner who is resident outside of Germany.

DR. TANNENBERG: May I say this, that I would include, as a matter of our discussion here today, in the term "free reichsmarks" all those moneys that are legitimately derived from either sound investments or the sale of goods

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in Germany at world market prices and are being used by the original owner for his own account, and which are held in Germany simply because of the fact that no foreign exchange is available to effect their transfer.

Now, in the inheritance case, an American citizen receives a certain legacy, we will say, from a German estate, five thousand marks. That is his own money. We can not transfer it, because we do not have the necessary foreign exchange. Consequently, all he can get is money in Germany, which he can use in Germany. Now, why should this man not -- leaving aside our own consideration in Germany, but from your point of view, -- why should not this man be in a position to liquidate his original holdings by German goods, just as in the case of General Motors? And the same is true if somebody ships merchandise to Germany and receives the equivalent of the world market price and the present rate of exchange. Why should he not be able to liquidate this money for his own account by the purchase of German goods?

The objection which I find in the Attorney General's opinion to our previous procedure is that if a premium is paid, as he said, above the world market price, or if the purchaser makes use of the Inlandskonto market price, which is above the world market price, then that difference in his view, would be a bounty or grant.

MR. CAIRNS: Doctor, may I ask you a question to clear up one point there?

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DR. TANNENBERG: Yes.

MR. CAIRNS: When surplus dividends are invested in Government bonds, those Government bonds are not marketable?

DR. TANNENBERG: Yes.

MR. CAIRNS: Suppose Opel paid a dividend of 60 per cent and 54 per cent was invested in Government bonds, how would that extra 54 per cent be controlled?

DR. TANNENBERG: I can not give you a definite answer, but as far as I remember and know our law, it must be held in a portfolio. Of course, I can not give you any further information on that. The idea is that concerns in Germany that make a profit of more than 6 per cent, which is considered reasonable, should invest the money in German bonds, because they realize this profit as the result of extreme activities on the part of the German Government. As I remember it, there is a definite proportion which must be held by the company for account of their stockholders in deposits, and they may not be used for a long period of time. If, for instance, there would be a company in Germany that, in order to assist exports, would declare a dividend of 60 per cent, that case, of course, would not be covered by our remarks. I am speaking of all legitimate reasonable transactions, where the money --

MR. CAIRNS: Free commercial transactions.

DR. TANNENBERG: Yes -- where the money is simply

- 16 -

held as a result of the lack of foreign exchange, and where, if we had the normal foreign exchanges, the transfer would be immediately effected.

MR. CAIRNS: Is your question answered, Mr. Johnson?

MR. JOHNSON: Yes. The next point I have in mind comes under number three of your conclusions as to possible future developments. I think it is clear from our knowledge of the economic situation in Germany and the difference between the German price levels and the world price levels, that there is every inducement for traders to avail themselves of subsidy devices of all kinds. For example, on dividends or inheritance marks, those are frequently held by people who are not interested in importing German goods in regular channels of trade, and they would like very much to sell those marks at very substantial discounts. That is not feasible at the present time, but there are transactions that come so close to that that a practical man cannot very well tell the difference.

There are also situations, such as we encountered in the importation of ethylene dibromide from Germany, in which a company in the United States was subsidizing the export of ethylene dibromide from Germany as a rather intricate means of liquidating certain mark accounts.

In those situations, in the interest of both Governments I believe the activities of our representatives in Germany should be facilitated in every way possible. At

the present time, they very definitely are not being facilitated. Now, that is just a fact for practical consideration in this matter. I think there should be emphasized at this point the desirability of facilitating investigations, in order that operations can be on the basis of understood facts, with as much of the element of rumor and misinformation as possible eliminated.

DR. TANNENBERG: But may I say, in regard to --

MR. JOHNSON: Do you recall the reference to that Netherlands order?

DR. TANNENBERG: No. It was recent, you know.

MR. JOHNSON: Of course, this is not any matter that is appropriate for negotiations, and I am not talking about any terms and conditions at all.

DR. TANNENBERG: Yes. I mean so far as the work of the Treasury attaches and Treasury agents are concerned, we can advise our Government of your wishes because we had no idea that what you said --

MR. JOHNSON: You might not even call them "wishes". They are merely observations on the situation.

DR. TANNENBERG: Yes, I understand.

MR. CAIRNS: Are there any questions you wish to ask, or is it entirely clear to you?

DR. TANNENBERG: I was just wondering whether I made myself entirely clear in so far as my opinion as to

reichsmarks is concerned.

MR. JOHNSON: Yes; I think so.

MR. CAIRNS: Yes; I think you have.

DR. TANNENBERG: You mentioned the sale of accounts in Germany to others. It is clearly understood that is covered by Attorney General's decision of June 2, 1936, wherein he held that all such moneys or accounts sold to others at a discount would involve bestowal of a bounty or grant within the meaning of section 303. I was speaking simply of reichsmark credits in Germany, originally owned by people who obtained them legitimately and that were realized upon legitimate transactions in Germany, as, for instance, the proceeds of the sale of rubber, if the sales were effected at world market prices.

I have two questions, and the first, of course, would be with the understanding that there is no agreement on any matter, but an exchange of views as to what might properly be done. Would that mean a modification of the decision of March 18?

MR. JOHNSON: I think I can state that by way of illustration. Bounties have heretofore been paid on certain products of a certain country exported to the United States. We are satisfied that since a certain date the payment has been discontinued; therefore, a new notice will state that the order will not apply to direct shipments of the United States made after that date.

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DR. TANNENBERG: Yes.

MR. CAIRNS: We are now satisfied that the Government in that country has in fact already eliminated payment of subsidies.

DR. TANNENBERG: Now, if we would repeal the Inlandskonto procedure, that is cancel all orders and decrees establishing that procedure completely, would it be reasonable to assume that then countervailing duties would not be imposed upon dutiable German merchandise imported into this country, where payment is made in dollars or in free reichsmarks, as I have defined them?

MR. JOHNSON: That is true, but I think your question is really whether the 25 per cent deposit would be required.

DR. TANNENBERG: Yes.

MR. JOHNSON: Yes; and the second point is equally true. Our answer to that would depend upon certain other things that are not included in your question. If you cancel your decrees and orders and abolish the Inlandskonto procedure today, there would still be money in Germany belonging to residents of United States, derived from the sale of merchandise in Germany at a premium. Is that true?

DR. TANNENBERG: It may be so; yes.

MR. JOHNSON: Any merchandise financed with that money would benefit just as much from a bounty or grant as though the procedure had not been abolished. Is not that true?

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DR. TANNENBERG: For instance, if we would leave aside for the moment one set of cases I have in mind, if we would not only abolish the Inlandskonto procedure completely, but would also discontinue any permits or forbid the payment of merchandise imported into the United States subsequent to April 22nd out of the old Inlandskonto, would that satisfy you?

MR. JOHNSON: Why do you use the word "old"?

DR. TANNENBERG: Because you refer to the Inlandskonto procedure.

MR. JOHNSON: That is right.

DR. TANNENBERG: You see, we discontinued the procedure, and there can not be any new Inlandskonto established.

MR. JOHNSON: Is your question "What would be the result if you took effective measures to prevent the exportation of goods to the United States which are to be paid for otherwise than in dollars, free reichsmarks, or so-called dividend marks, and so forth, of the kind we are talking about?"

DR. TANNENBERG: Absolutely.

MR. JOHNSON: Is that correctly restating your question?

DR. TANNENBERG: Yes.

MR. JOHNSON: There would be no reason for any deposit of estimated countervailing duties on exports leaving

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Germany after that new situation existed.

MR. CAIRNS: Does that answer your question?

DR. TANNENBERG: Yes.

MR. JOHNSON: What there is no reason for doing would not be done.

DR. TANNENBERG: My question is this: Would it be announced so that the importer would know --

MR. CAIRNS: Of course, we would issue a Treasury decision.

DR. TANNENBERG: I mean would it be modified to such an extent that in all such transactions as you have described no deposit of 25 per cent countervailing duty will be required?

MR. JOHNSON: I am not sure that we are talking together. It would be impractical, as I see it, for us to issue any announcement that no official deposit would be required on transactions financed in a certain manner, for the reason that our exploration of the matter led us to the conclusion that we can not tell prior to any entry how it is financed, if there are two systems of financing or more than one system in vogue. Therefore, to eliminate the deposit requirements it would be necessary to eliminate the transactions altogether.

MR. CAIRNS: Would it be simpler if you stated --

DR. TANNENBERG: Yes; but I mean --

MR. CAIRNS: Let me make this suggestion; would it

be simpler if we stated the language of the modified countervailing duty order that would be issued?

DR. TANNENBERG: Yes.

MR. JOHNSON: Assuming the facts to be that the German Government had taken effective steps to preclude any shipments to the United States financed otherwise than on a free exchange basis, the countervailing duty order would be that the Treasury Department, having satisfied itself that the bounties or grants which occasioned the issuance of the T. D. and so on, have been discontinued with respect to goods exported from Germany to the United States, on or after a stated date, collectors of customs are hereby instructed that the provisions of T. D. 49821 shall not be applied to imports from Germany exported after the said date.

MR. CAIRNS: Does that clarify it?

DR. TANNENBERG: Yes.

MR. JOHNSON: That is in rough terms.

MR. CAIRNS: That is our customary form of modifying a previous countervailing duty order.

MR. JOHNSON: There is one little difference here, and that is that I do not see that we are in the direct or indirect importation situation here.

MR. CAIRNS: No.

MR. JOHNSON: We have an entirely different problem with respect to goods imported from Germany via third countries.

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I happen to know of an old transaction where 41 per cent of the invoice price was paid as a subsidy on automobiles from the Opel Works and shipped to Spain. They were destined to Spain as the ultimate destination. If one of those cars came to the United States, it would be our obligation to collect a subsidy equal to the 41 per cent. That sort of transaction is not covered by the outstanding countervailing duty order, and, therefore, it would not have to be covered by the modified order.

DR. TANNENBERG: So far as our exports to the United States are concerned our assurance that no subsidy will be paid, directly or indirectly, still stands; the Inlandskonto procedure was, as I said, undertaken by us with the idea that it had the full approval of the Treasury Department. Otherwise, no subsidies have been paid on exports to the United States; the subsidy fund which is being collected in Germany does not apply to the United States and there is not a single case in which it was used. There is no other method, so that I think those are exceptional cases, where somebody would undertake to export that car from Spain to the United States.

MR. JOHNSON: Well, perhaps, I should not have used that illustration; but today we have gloves coming from Belgium, that are made from German materials which are

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probably being subsidized on exportation to Belgium.

DR. TANNENBERG: I do not know. There is not a single case known to me.

MR. JOHNSON: I believe that to be the situation; so I am talking about something that is really a factor in the future.

DR. TANNENBERG: Yes. But everything I said in our previous conference, and I wish to emphasize it, was to the effect that we were acting in good faith. If we say this will be eliminated and we will do our trading on the dollar and reichsmark basis, that will be done, and we have no interest in devising any subterfuges. We wanted to make it a straight proposition, because all we are interested in is seeing that importers and exporters both can carry on the trade they desire to continue as unmolested as possible, and consequently it has been my suggestion from the first moment that we find a way by which American importers and German exporters and vice versa, can carry on trade without interference on the part of either Government and with as little molestation as possible. That is the proposition I made to Mr. Johnson at his conference, and consequently my question is how you would proceed and what would be the decision. That is also a matter of concern to the importers and exporters, because imports and exports cannot be carried on if people do not know what they have to expect.

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MR. CAIRNS: If we reach the stage contemplated by the issuance of a modifying Treasury decision, of course, it will be given the publicity that such a Treasury decision would ordinarily receive.

DR. TANNENBERG: Then an American importer, for instance, who buys German merchandise, and pays in United States dollars would definitely know that that would be exempt from any countervailing duty on the basis of that decision?

MR. JOHNSON: Yes.

DR. TANNENBERG: And if he would, of course, use --

MR. JOHNSON: You see, Dr. Tannenber is talking from the point of view of what the German Government may or may not do. That is his capacity, to represent his Government.

MR. CAIRNS: Yes.

MR. JOHNSON: And I am talking from the point of view of administering section 303. That section is not limited to governmental activities, and I know the astuteness of importers to find means of using these "blocked" funds in Germany in ways, which, by reason of the price differentials in Germany and on the world market, to my mind, are apt to involve subsidies.

MR. CAIRNS: I think Dr. Tanneberg understands if there are any cases in which bounties or subsidies are paid, directly or indirectly, we must impose countervailing duties.

DR. TANNENBERG: I fully understand that it is your duty to apply section 303 wherever you find it, but I understand that our discussion concerns the decision of March 18, which, as I said, is based on one procedure which the Government established in Germany, and so I say that if the German Government removes that procedure, then I feel that there would be no further necessity for applying that decision of March 18th.

MR. CAIRNS: That is correct.

MR. JOHNSON: The situation today with a man dealing unequivocally in free exchange is that he knows that he has to deposit 25 per cent additional, and that some day he will get it back. Under the modifying order that you have been discussing, he would know that he did not have to put up an extra deposit in the first place, and he would know that we would not come after him for anything later.

DR. TANNENBERG: Yes; I understand. The last question I have is this: As you know, there have been many cases where firms bought merchandise in Germany last year and the beginning of this year, prior to the issuance of that decision of March 18th, making the purchases on the assumption that they could pay for the merchandise out of the Inlandskonto in Germany. Now, those contracts in a great number of cases provided for delivery at subsequent dates. Merchandise is coming in, and may come in in the future, under transactions

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made last year. I referred to those transactions when we classified them as previous commitments. Now, is there any way of assisting importers to pay for these purchases out of accounts they still have in Germany in transactions that were entered into before March 18?

MR. JOHNSON: We have had that question on several occasions and the answer has been uniformly that the effective date must be on the basis of entry or withdrawal, regardless of the date of any commitment; so that no exception could be made by reason of the commitment having been made prior to any Treasury announcement. That is a very general fundamental principle of our customs practice.

DR. TANNENBERG: My idea has always been that, so far as these transactions are concerned, for instance, had we had an understanding that the Attorney General would consider that method of payment a bounty or agreement within the meaning of section 303, we would have immediately taken steps to discontinue it, but certainly with a proviso to injure American importers and German exporters as little as possible. Now, this decision was handed down suddenly and the importers were surprised by the sudden action and could not take any steps. There were quite a number of importers who had purchased German goods under the understanding that by the sale of cotton in Germany they might realize a certain discount and now they find that they had to pay 25 per cent more,

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which, in some cases, is quite a hardship on the importer, and I was wondering whether in view of the fact that we are indeed willing to repeal the entire procedure and to come to an understanding under which German merchandise is sold in this country or is brought into this country on the basis that we discussed, whether an exemption could not be granted in exceptional cases.

MR. JOHNSON: The question reduces itself to this: Does the prior commitment, with lack of knowledge that the transaction would be held to involve a subsidy, alter the character of the transaction so that the Treasury Department could say "This is not a subsidy because the man did not know it was"? Stating the question in that way, the answer is clearly no. Therefore, if we reach the unescapable conclusion that the date of the commitment does not affect the character of the transaction, as involving a subsidy or not involving a subsidy, it necessarily is not a factor. It is not a factor that the Treasury could consider, because the law says that if anybody is given a grant or a bounty, then there shall be assessed, collected and paid an equivalent countervailing duty. The sole exception to that is the thirty-day grace period, which is now a matter of statute, where there is an established and uniform practice.

MR. CAIRNS: There is no authority in any officer to waive the provisions of section 303.

DR. TANNENBERG: But does not the law speak of a period of time of at least thirty days?

MR. JOHNSON: Was it you with whom we discussed that?

DR. TANNENBERG: No.

MR. JOHNSON: Well, it was with someone else. The law says that no administrative ruling resulting in the collection of higher duties than have been imposed under a uniformly established practice shall be effective until after thirty days after publication in the weekly Treasury decisions,

MR. CAIRNS: Section 6 of the Customs Administrative Act contains the following provision: "No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the weekly Treasury Decisions of notice of such ruling."

DR. TANNENBERG: My question was whether, "prior to the expiration of thirty days," that would not give you some leeway in extending that period to make any reasonable exception.

MR. JOHNSON: It would be prior to forty days or fifty or sixty or seventy. You see, you have your mandatory

provision in section 303, and the exception to it, which previously was traditional, has now been crystalized in the statute as thirty days. I am sure that the statute is not susceptible of construction so as to give more than thirty days grace.

DR. TANNENBERG: There is no general authority for the Secretary of the Treasury to make exemptions in individual cases of hardship?

MR. JOHNSON: Oh, no.

MR. CAIRNS: None at all.

MR. JOHNSON: There is only one authority that I know of, and that is in Title 31, section 236 of the United States Code:

"When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon."

MR. CAIRNS: That is not applicable to this situation, though, any more than section 618.

MR. JOHNSON: If the moneys were paid and a claim

on the ground of equitable relief were submitted, I think the Comptroller General could act on it. It would have to be after payment, of course.

DR. TANNENBERG: That would be after payment of the deposit?

MR. JOHNSON: After payment of the liquidated countervailing duties. Refund of liquidated countervailing duties paid cannot be paid from the appropriation for customs refunds on any grounds of equity. I referred you to that only to indicate the clear lack of authority in administrative officers to grant equitable relief.

DR. TANNENBERG: I do not think I have any further questions; but is it possible for me to have the points that you have referred to, for my own use?

MR. CAIRNS: Yes; you may have a transcript of this entire conversation, if you would like to have it.

DR. TANNENBERG: Yes, I should like to have it. You do not have the three points available?

MR. JOHNSON: Could you let him have those in advance?

MR. CAIRNS: Yes. I shall be glad to do that now.
(Whereupon at 5:15 o'clock P.M. the conference was concluded.)

MAY 25 1939

My dear Mr. Secretary:

I enclose for your information, a copy of a transcript of conversation between representatives of this office and Dr. Wilhelm Tannenbergr of the German Embassy with respect to modification of the outstanding German countervailing duty order.

A copy of the transcript is being furnished to Dr. Tannenbergr.

Very truly yours,

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury.

The Honorable


The Secretary of State.

Enclosure

HC:mjb

*By hand 4:25
pm.*

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TREASURY DEPARTMENT
IN THE MATTER
GERMAN COUNTERVAILING DUTIES

TREASURY DEPARTMENT

Office of the General Counsel

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 In the matter :
 German Countervailing Duties :

Washington, D. C.
 Wednesday, June 21, 1939.

The above-entitled matter came on for further discussion at 3:30 o'clock P.M.

PRESENT:

- Huntington Cairns, Esq., Asst. General Counsel.
- W. R. Johnson, Esq., Acting Deputy Commissioner of Customs.
- Dr. Wilhelm Tannenberg, 1st Secretary, German Embassy.

MR. CAIRNS: Mr. Johnson, while you were away, Dr. Tannenberg telephoned me and said that he wanted to continue the discussions which were initiated at our last meeting. I told him that I wanted to defer any further discussion of the matter until you returned from New Orleans. Dr. Tannenberg is now here; I do not know what points he wants discussed, but I told him that we would be glad to consider anything that he wanted to bring before us.

DR. TANNENBERG: After our last conference here on May 20, we informed our Government fully about the situation here and about the matters that we discussed, and we attempted, of course, to make your position as clear

as possible. In the meantime, we received instructions from our Government, and I wanted to advise you that, according to these instructions, we were asked to advise the Treasury Department that the German Government regrets that the Treasury decision of March 18th has made the Inlandskonto procedure impossible for all practical purposes, and that under the circumstances, and in view of the discussions that we had, the German Government intends to discontinue those practices and will issue a circular decree to the Exchange Offices that handled the Inlands Accounts, that is, that supervised the Inlandskonto procedure, that henceforth these practices will no longer be used, and that no longer will any permits be granted by the German Government, or should be granted by the competent authorities in Germany. So, as I understand it, the entire practices which were the subject of the Attorney General's opinion of March 18th are to be discontinued.

My question now is as to a continuation of our discussion in the same friendly spirit of mutual assistance as to how we should go about it in reaching the result that you announced. I mean the modification of the order, as you explained it.

MR. CAIRNS: When do you expect this decree to become effective?

DR. TANNENBERG: Immediately.

MR. CAIRNS: Today or tomorrow, or just when?

DR. TANNENBERG: We have to advise our foreign office as to whether the method that I suggested will be satisfactory to the United States Government, because, as you will remember, in the statement that you dictated at the beginning of our last conference, you said that if the German Government unilaterally takes such action as will abolish the practices complained of in the Attorney General's opinion, and if the Treasury Department was satisfied that those practices had been discontinued, the countervailing duties would be modified, and, as you said later, the countervailing duties would be no longer applicable to German imports as from the date the practices have been abolished. Now, you will, of course, understand that if we proceed according to what I said, we would like to know that that action would be entirely in accordance with what you said, or would be satisfactory.

MR. JOHNSON: You want to know if it would satisfy us?

DR. TANNENBERG: Yes.

MR. JOHNSON: That no countervailing duties would be required?

DR. TANNENBERG: And, if I may add there, I should like to know in to what form it should be put and how it should be brought to the attention of your Government here.

MR. JOHNSON: I wonder if we could be of assistance to you by suggesting some of the questions that we would

have to consider, as follows:

1. Does the German Government contemplate abolishing the procedure only to the extent that new permits will not be granted?
2. What would be the status of outstanding permits covering transactions which have not been completed by the exportation of the merchandise to the United States?
3. What would be the status of funds in Inland accounts insofar as the possibility of their utilization for financing exports to the United States is concerned?
4. What would be the attitude of the German Government towards other forms of assistance to exports from Germany to the United States?

Those are the questions that, it seems to me, would come up immediately. Do you think of any others?

MR. CAIRNS: No; I think those cover the subject. They are the major questions that we would have before us immediately.

MR. JOHNSON: Our problem would be to interpret the effect of the contemplated action insofar as the application of our tariff laws is concerned.

DR. TANNENBERG: Yes.

MR. CAIRNS: Let me ask a question at this point. The contemplated action would, I take it, consist not only

of the issuance of the decree which you mention, but would also be coupled with the formal assurances of the Government that the practices had, in fact, been discontinued -- assurances similar to those given in the 1936 case. Is that correct?

DR. TANNENBERG: Yes.

MR. JOHNSON: Of course, whatever is done by the German Government would be communicated to the Treasury Department through our State Department.

MR. CAIRNS: You recall that before we modified the countervailing duty order of 1936, this Government received the formal assurances of the German Government that the practices giving rise to the 1936 Treasury decision had, in fact, been discontinued.

DR. TANNENBERG: Yes. Now, as I said, our instructions were quite specific. They started off with the statement that the Government regrets that the Inlandskonto procedure under the decision has become impossible for all practical purposes, and the Government wants to draw the necessary consequences. That is, they said the Government intends to abolish it, that is, to discontinue the practice, and intends, just as previously the entire procedure was put into form by a runderlass, meaning a circular decree to the Foreign Control Exchange Offices, to instruct the Foreign Control Exchange Offices specifically that no permits will henceforth be granted by the Government, nor should they

be considered by the Foreign Control Exchange Offices. That is the language of our instructions.

Now, you asked a few more questions and I should like to ask you this: Is it your idea that our statement should be brought to the attention of the United States Government by a note to the State Department?

MR. JOHNSON: I think that would be the procedure to be followed. In formulating those questions, I had in mind that I really did not understand your authorized statement. It appeared to me as though there would be continuing transactions under permits now outstanding, perhaps for a long period of time.

DR. TANNENBERG: No; no. You see, there may be cases where the German goods came into this country prior to April 22nd, and if the importer has not yet paid, he will pay out of his Inlandskonto; he still has the Inlands account in Germany, because those entries or those transactions are not covered by the Treasury decision, which did not become effective until after April 22nd. So if we take this case where the merchandise was brought to this country before April 22nd, and the importer had sixty or ninety days within which to pay, he would pay out of his own Inlands account for that merchandise because that case does not fall under the decision of March 18th.

MR. JOHNSON: But no new permit would be issued even with respect to those old transactions, notwithstanding

that no countervailing duties would accrue even if a permit were issued. Is that your understanding?

DR. TANNENBERG: I would say that, in my opinion, in all cases where the merchandise had entered prior to April 23rd, the importer can not pay out of the Inlands account in Germany under the old practice, which, according to our information had the approval of the Treasury Department. I do not know whether there are still cases remaining where the importer today still owes something to his German exporter for merchandise already delivered prior to April 23rd. I do not know, but there may be individual cases where the American purchaser had ninety days and where today he would be in a position to pay out of Inlands account for merchandise which clearly entered the United States prior to April 23rd.

MR. CAIRNS: Would he pay for it under the old barter system? That is, would he sell cotton in Germany after the issuance of the decree, in order to obtain funds to pay his ninety day account? That is your question, is it not?

MR. JOHNSON: I wonder if I could state it a little differently. In the past, we encountered transactions in which the Inlandskonto procedure was used to pay old merchandise debts. Now, I take it, under the language of your statement, that if goods had been imported into the United States prior to April 23rd, but no Inlandskonto procedure

had been arranged to pay for it and there is at the present time no permit outstanding under which payment could be made for those goods, then no permit would hereafter be granted.

DR. TANNENBERG: Yes; because if he did not contract or stipulate that payment out of the Inlands account should be made or granted, then, of course, that is not part and parcel of the original contract, and he could not at this time come forward and say "This is an old transaction in which I should be able to use the Inlands account". I refer to those cases where the American importer bought the merchandise in Germany with the understanding that payment would be made out of the Inlands account under that old system and where he still owes the money and where under the original agreement he could make payment out of the Inlands account.

MR. JOHNSON: And a permit has already been issued for that purpose?

DR. TANNENBERG: Yes.

MR. JOHNSON: Regardless of any other developments, those transactions would be free of countervailing duties?

DR. TANNENBERG: Yes. Now, you mentioned those cases where no stipulation was made as to payment out of Inlands account; I mean where the German importer accepted dollar or free reichsmark payment, or, under the contract between the two parties, payment had to be made in dollars or in free reichsmarks.

MR. JOHNSON: No; I had in mind those transactions in which they expect to pay through the Inlands account, and had imported the merchandise but had not yet obtained their permit.

DR. TANNENBERG: I do not know whether there are any such cases in existence.

MR. JOHNSON: I do not know, either, but I do know that in the past Inlandskonto payments were permitted for merchandise transactions for which no permit had been issued at the time the goods arrived in the United States.

DR. TANNENBERG: But, as I understand the procedure as it was used during the past two years, when the merchandise was bought, the importer, of course, stipulated that he would make payment out of the Inlands account, and then he obtained his permit and went ahead.

MR. JOHNSON: Perhaps I can make my point more clear by saying that the information that we have indicates that the cotton barter procedure for Inlands account was used to pay for merchandise from Czechoslovakia purchased before October 11, 1938.

DR. TANNENBERG: I do not know of any such case.

MR. JOHNSON: That would indicate that the permits could be obtained after the contract had been negotiated. I might refer you to a decree of the German Government providing for a forty per cent currency premium for foreign exchange received in payment of invoices payable in Czech

crowns, where the merchandise had been sold prior to October 11, 1938, with a proviso in the decree that the currency premium would not be allowed if the account were settled through cotton or copper barter.

DR. TANNENBERG: But still I do not think that this has any effect upon the present question, because, as I said, in my opinion, there are not many cases outstanding where the importer still owes for merchandise that was brought into this country prior to April 22nd.

MR. JOHNSON: I wanted only to indicate my understanding of that statement, which is that it would be quite clear that no permit would be issued in those cases.

DR. TANNENBERG: Where there was no understanding as to payment out of Inlands account.

MR. CAIRNS: That is correct.

MR. JOHNSON: But where there was no permit issued for payment out of Inlands account, although the private parties to the transaction may have intended to obtain a permit later.

MR. CAIRNS: No; I understand that Dr. Tannenberg's conception turns on whether or not the parties have agreed that payment would be made from the Inlands account at the time the transaction was entered into.

MR. JOHNSON: But I refer you back to the original statement with which he prefaced his remarks.--

MR. CAIRNS: Yes, let us clear it up.

MR. JOHNSON: That no new permits would be issued.

DR. TANNENBERG: That is the general statement.

MR. CAIRNS: But do I understand that if the parties to the transaction agreed that it would be paid from the Inlands account a new permit would be issued after the decree?

DR. TANNENBERG: As I understand our instructions, from a certain date no new permits would be granted -- none whatsoever.

MR. JOHNSON: Regardless of the date of the order.

MR. CAIRNS: Or the understanding of the parties.

DR. TANNENBERG: No new permits would be granted from a certain date. I think the question was an academic one.

MR. JOHNSON: Perhaps so.

DR. TANNENBERG: Whether in case where the parties had contracted for payment out of Inlandskonto, the merchandise coming in prior to April 22nd, and where the purchaser still owes the purchase price, such case would be exempt from countervailing duties, even if the Government today would still grant a permit. I think that is a rather complicated situation, and as I read our general instructions, from a certain date no permits will be issued. I think that is what the question is.

MR. JOHNSON: My purpose was to show that I understood that the emphasis is on no new permits.

DR. TANNENBERG: Yes.

MR. JOHNSON: That would imply to me that payments could still be made under old permits on new business. To make it more specific, I have in mind the question which has been presented to us as a concrete one. An American importer has contracted for a considerable quantity of German merchandise to be paid for through Inlands account, deliveries to commence in June, 1939, and continue for several months thereafter. Now, I assume that a permit has been granted for that transaction, and was granted perhaps several months ago. With that in mind, I stated the question: What would be the status of funds now in Inlands account with reference to their use in payment for merchandise to be exported to the United States?

DR. TANNENBERG: I would have to ask that question specifically of the German Government.

MR. JOHNSON: It is an essential part of any answer from us which would clarify the situation for you.

DR. TANNENBERG: Yes. Now, of course, we must presume that permits were granted, let us say, up to today, and for transactions that may result in the importation of merchandise in the next few months, and there is nothing specific in our instructions to cover that point. We would have to clear up the intention of the German Government in regard to those permits that have been granted up to this time. That is your second question, as to what should be done or as to what the German Government intends to do with

those permits that are outstanding, but have not been completed.

MR. JOHNSON: I think I might make the statement in connection with that question, that if payments continued to be permitted under old contracts although no new permits are granted, it would be necessary for us to collect countervailing duties on the imports that received benefits under the permit, and that it would be very difficult to segregate those transactions so as to waive the assessment of the estimated additional duties on other transactions.

MR. CAIRNS: You can appreciate the administrative difficulty we are confronted with in that situation.

DR. TANNENBERG: Yes. Now, the main effect of declaring that decision inapplicable as from a certain date, and the first effect, is to dispense with the deposit of the twenty-five per cent estimated countervailing duties. Even if there are cases where a permit has been granted up to this time -- even if there are a number of cases, could we not proceed on the same premise? Those cases in which payments out of Inlands account are made for merchandise entered subsequent to April 22nd would be subject to the decision, and you would, as I understand it, collect countervailing duties in such cases.

MR. JOHNSON: And it would be necessary, in connection with the collection of countervailing duties, to secure the collection of the countervailing duties by requiring a

deposit of the estimated additional duties. I do not see how it would be possible to select those cases in which countervailing duties are going to be assessed, so as to limit the requirement of additional deposits to those cases.

MR. CAIRNS: You are stating to Dr. Tannenberg that we will have to continue to collect the estimated additional duties in all cases?

MR. JOHNSON: That seems to me to be the case as long as some shipments are subject to countervailing duties, unless we can work out a way of segregating the cases at the time of entry, and so far we have been unable to devise any workable system for doing that. We have in one or two instances of transactions solely between one American and one German worked out a procedure under which the estimated additional duties could be avoided.

MR. CAIRNS: But the procedure in those one or two cases is not suitable as a general proposition.

MR. JOHNSON: No; they are peculiar arrangements in which they can satisfy us in advance that no countervailing duties will be involved. One involves a large German chemical concern; another involves a supplier to chain stores in the United States.

DR. TANNENBERG: What would be your idea as to a satisfactory arrangement under such circumstances?

MR. JOHNSON: I do not see how the Customs Administration could safely eliminate the deposit of the estimated additional duties so long as there will be future exportations

from Germany under old permits.

MR. CAIRNS: Does the German Government have a record of all such transactions?

DR. TANNENBERG: Of course, we can obtain from the Foreign Exchange Control Office and through the banks it will be possible to get all the cases where permits have been granted. How much time it would take, I do not know.

MR. JOHNSON: Permits under which transactions could hereafter be carried on?

DR. TANNENBERG: Yes.

MR. CAIRNS: You think such a list could be furnished us?

DR. TANNENBERG: Yes; I think so. I think we can get a complete list. You see, our foreign exchange offices exercise control over specific districts, and those cover the entire Germany, and I do believe that we can get a list of all those cases in which permits were granted and where the merchandise has not yet reached the United States.

MR. JOHNSON: So that we could limit our requirement of additional deposits to shipments from those German exporters?

DR. TANNENBERG: Yes. I mean we could get a list which would be as complete as humanly possible.

MR. JOHNSON: One difficulty in that connection is that, as I understand it, the permit is issued to the American importer, and it is probably not known to the

German Exchange control authorities at the time who will be the exporter.

MR. CAIRNS: In every case is the permittee the importer, the American importer, for customs purposes?

MR. JOHNSON: We have difficulty there in that the importer of record who appears in the customs documents may not be the purchaser of the merchandise. Many importations are made in the names of customs brokers and I would assume that the permittee would be named in the invoice as the purchaser.

MR. CAIRNS: Would the German exporter be named?

MR. JOHNSON: No; I believe that is frequently unknown to the German exchange authorities. Is not that true, Dr. Tannenberg?

DR. TANNENBERG: I doubt whether he is known in every case. I doubt that, but since I have to cable back, anyway, we could inquire as to whether a list of those cases can be furnished which would be complete.

MR. CAIRNS: And as to precisely what the list will show.

DR. TANNENBERG: Yes. That would be a list of permits granted on all transactions where the merchandise has not reached the United States prior to April 23rd.

MR. JOHNSON: And the amount available under each such permit and the name of the permittee.

DR. TANNENBERG: Now, if we discontinue the entire practice, no permits would be issued as of a certain date -- I mean if we have a general assurance that no permits whatsoever will be issued as from a certain date, then we would have a very general dead line as to all transactions subsequent to that date. That is the first point. I mean a definite and general deadline.

Then, the second point, as I understand it, would be a list of the transactions or a list of permits which have been granted up to that point covering transactions that have not been completed prior to April 23rd, and by "completed" I mean where the merchandise had not entered into the United States before April 23rd. That will take care of all the permits that have been issued up to this time, and if we could furnish such a list, would not that be a sufficient guarantee to you, if you have this list available, that all importations for importers on that list will be examined specifically, so that you can dispense with the twenty-five per cent deposit?

MR. JOHNSON: If it were practicable under that list to identify the importers, I would agree with you. I would raise this question, though: There is a company in New York -- I am not sure that I recall the name -- the Continental Import --

DR. TANNENBERG: The Continental Import and Export Corporation.

MR. JOHNSON: The Continental Export and Import Corporation, which, as I understand it, is the permittee, but is not the purchaser, nor importer. It is an agent for the purchaser or importer, and its name does not appear in any customs document. Those permits could not be correlated on this side.

DR. TANNENBERG: But, as you know, the Continental Export and Import Corporation has an agency in Berlin and they could furnish us with a complete list of the transactions.

MR. CAIRNS: Are there any other brokers or individuals similarly situated?

MR. JOHNSON: Is there a Pioneer Import Company?

DR. TANNENBERG: Yes. They have no permit under the Inlandskonto procedure.

MR. CAIRNS: Are there any others in a position similar to the Continental Export and Import Corporation?

MR. JOHNSON: There is one other -- the American Trading Corporation.

DR. TANNENBERG: Yes. May I explain how that is done?

In the case of so-called cotton barter transactions the permit is granted to the individual importer, and the account is carried in the name of the individual importer, so they would know from the account who the purchaser of the goods is.

In the case of the copper barter transactions the

Continental Export and Import Corporation acted as the agent. They received the permit and carried the account for the individual purchaser in a so-called sub-account and only the Continental Export and Import Corporation had this general permit.

The American Trading Company was a sub-agent of the Continental and, as far as I know, the American Trading Company may have had a sub-account under the Continental, but it was not an independent account like the Continental Export and Import Corporation.

MR. JOHNSON: Does the Chase National Bank have any permit for the account of some other importer in the United States?

DR. TANNENBERG: I do not know.

MR. JOHNSON: Or the Guaranty Trust Company?

DR. TANNENBERG: No; I do not think so. I mean to state that the general rule is that the cotton Inlands accounts are carried in the name of the importer, and I know of no exception. In the case of the copper Inlands account, the main account was under the heading of the Continental Export and Import Corporation, consisting then of sub-accounts in the name of the individual importer.

MR. CAIRNS: Are the sub-accounts known to the German Government?

DR. TANNENBERG: They are known to the Continental, and, of course, are kept by the Deutsche Bank, because the

Continental did business exclusively with the Deutsche Bank and all the sub-accounts are in the Deutsche Bank in Berlin. So that could be very easily gotten. Of course, as you will remember, I told you that we had to limit the copper transactions because of the limited demand in Germany for copper. We limited it to a certain amount of copper, and in order to control the importation of copper, the Continental Export and Import Corporation was liable and in order to make that control of the importation of copper still easier, we had only one bank handle those transactions in Berlin, the Deutsche Bank. Otherwise, we would have hundreds of accounts which we could not control. There was a definite amount of copper that we desired to import from the United States, and to make that control possible the Continental Export and Import Corporation enjoyed an exclusive position in that respect, and so did the Deutsche Bank; so that we could at any time obtain from the Deutsche Bank a statement of how much copper has now been sold in Germany. So those copper sales could be regulated, and I think it would be very easy for us to obtain that information. I am also convinced that there was not a second company that had any similar position to that of the Continental Export and Import Corporation. The American Trading Company is an old New York firm. I do not know how long it has been in existence, but it was used by the Continental as an agency for very small transactions; so there may be a sub-account under the name

of the American Trading Company, but under the heading of the Continental Export and Import Corporation.

MR. JOHNSON: Those sub-accounts under the name of the American Trading Company are for small transactions?

DR. TANNENBERG: Yes.

MR. CAIRNS: Will the German Government be able to advise this Government whether or not there are any other corporations in a similar position to the Continental Export and Import Corporation?

DR. TANNENBERG: Yes. There will be no difficulty. As I said, I am firmly convinced there is none, because I have been dealing only with the Continental.

MR. CAIRNS: But the German Government will be asked about that?

DR. TANNENBERG: Yes.

MR. JOHNSON: There is one other point in connection with this question of getting information of that kind from the German Government, and that is exemplified by oil transactions, which, as I understand, were not regarded as within the Inlandskonto procedure, but which, in our view, involved, so far as the countervailing duties are concerned, the same considerations. The company in the United States sold oil to Germany at a premium price and purchased merchandise for importation into the United States, namely pipe. Would the balances available for such importations

be of record in Germany, so that those transactions could be segregated?

DR. TANNENBERG: May I first say this: On the basis of our discussions, we advised our Government that, under the opinion of the Attorney General, which would be a guide for your action, you would consider any premium paid above the American or world market price of American products in Germany as a bounty or grant within the meaning of Section 303.

MR. JOHNSON: When that premium is tied up with exports to the United States.

DR. TANNENBERG: Yes. That if an American raw product or any American product is sold in Germany, with a substantial over-price, and with the proceeds of sale, including the over-price, used for the purchase and payment of German products to be imported to the United States, the Treasury Department would feel that this transaction would be subject to countervailing duties? We have said that, according to your opinion, based again on the opinion of the Attorney General, the market in Germany is regulated to such an extent that today there is no free open market price for American raw products in Germany, and that consequently if an importer sells American merchandise in Germany and realizes a substantial over-price, even if it should compare with the domestic price of a similar product, the United States Government would consider that premium a bounty

within the meaning of Section 303. Are we absolutely clear in understanding that that is your opinion?

MR. JOHNSON: Yes; but my question was not quite along that line. It is as to whether the information is available with respect to the balances in Germany under transactions which are not Inlands account transactions, so that information concerning that could be furnished to us similar to that which we have just discussed with respect to cotton and copper.

DR. TANNENBERG: Oh, I understand you. I just wanted to make it clear that we understood about that, that such transactions are also covered, whether they are called Inlands account transactions or not, as covered by the opinion of the Attorney General. As I understand it, you mean whether such transactions were carried on before, and if carried on in the meantime whether they could be found out in order that we could add those cases to the list which I said might be obtainable in Germany? .

MR. JOHNSON: So that that list would not be limited to the Inlandskonto procedure, but would encompass all transactions involving premium prices, however arranged.

DR. TANNENBERG: That, of course, I would have to find out.

MR. JOHNSON: I do not know whether a permit is involved, such as is used in the Inlandskonto procedure, but I believe the system is entirely different.

MR. CAIRNS: Do you know, Dr. Tannenberg?

DR. TANNENBERG: I know of two or three cases where an independent oil company went to Germany and obtained a certain price for its product, or took pipe line in Berlin, and that transaction was, of course, subject to the approval of competent German authorities, because there was a very substantial amount involved. We referred that account ourselves to the foreign minister. They showed the receipts, and, in general terms, covered all their transactions and, of course, such transactions would be known; but in regard to any other similar transactions, if an over-price was involved, I would have to find out whether those cases could also be furnished and the necessary information given as to the amount involved.

MR. JOHNSON: There is another difficulty that occurs to me. You mentioned or stressed the American materials, and our information indicates that there have been some barter transactions in which dutiable goods have been imported into the United States and payment therefor made in Germany from the proceeds of sale of products of other countries. We had some discussion at our last meeting in regard to rubber, and it was my understanding that we were discussing a theoretical future arrangement in which no over-price was involved, but I did not understand you to say that no over-price had been involved in the past on importation of, say, Belgian rubber which was sold in

Germany and the proceeds used to pay for goods shipped to the United States.

DR. TANNENBERG: I referred to transactions between General Motors and its subsidiary in Germany, the Opel Works, and, as you will remember, I said I had had a discussion with a representative of General Motors of those accounts that they had in Germany, and I said "I am convinced -- although I do not know definitely, I am convinced that General Motors did not sell that rubber at an over-price to its subsidiary in Germany".

MR. JOHNSON: It would if it could, in order to realize more funds from "blocked" accounts.

DR. TANNENBERG: But you know they could not use these accounts. They furnished rubber and they had to accept reichsmarks, and those accounts simply piled up, and now they are coming forward and saying "We furnished you goods in Germany; why not give us a permit, if we liquidate these accounts by taking the German merchandise and if we can not get foreign exchange." That would be easily available by getting in a man from General Motors and letting him explain to us what price he realized on that rubber.

MR. JOHNSON: The transaction I had in mind did not involve General Motors, but it did involve the sale in Germany of materials from places other than the United States, with the use of the proceeds from the sale of such

merchandise to finance exports to the United States.

DR. TANNENBERG: But, you see, under the position that the Treasury decision has taken in regard to these "blocked" accounts, you permitted the use of these "blocked" accounts by the original American owner, on the theory that in his person the money represented the full value and, of course, did not contain a bounty or grant within the meaning of Section 303.

MR. JOHNSON: Provided they were not derived from the sale of merchandise of American or other origin at an over-price.

DR. TANNENBERG: Yes; I understand that, and it was those cases that I had in mind; I mean the case of General Motors, where they furnished rubber to Germany, and obtained reichsmarks, because we can not pay the foreign exchange, where they, the American corporation, may want to restore this money from Germany in the form of goods.

MR. JOHNSON: My present question is limited only to this: Could the German Government inform us whether there will or there will not be the possibility of shipment of German products to the United States, with payment made from the proceeds of the sale in Germany, at a premium price of products of other than American origin?

DR. TANNENBERG: I do not know that I quite understand your question.

MR. JOHNSON: Could I give you an example of what I have in mind?

DR. TANNENBERG: Yes.

MR. JOHNSON: Butter from Denmark is purchased by an American importer and sold in Germany at a premium price. The Danish seller of the butter, who is the original and continuous owner of those marks, is permitted to use them to pay for merchandise to be shipped to the United States.

DR. TANNENBERG: That practice would be discontinued. That is included.

MR. JOHNSON: But are there any available funds so derived?

DR. TANNENBERG: I do not know.

MR. JOHNSON: That would be an additional question. I might say that it is our understanding that in the past some importations have been financed in a similar manner -- not involving butter.

DR. TANNENBERG: Of course, I do not know of any such case where an American importer bought farm products and sold these farm products in Germany at an over-price. In those copper transactions, a portion of the copper shipment, although it was shipped from New York, may have come from Arizona or just across the border, or it may have come from some other place. We do not know where the copper brokers got their copper, but we bought copper in New York and shipped it to Germany; but that is a remote case. We simply bought the copper here in New York, and it was shipped from New York to Germany.

MR. JOHNSON: The case I have in mind involves an American manufacturer who has a branch plant in Germany and who imported materials into Germany from elsewhere than the United States, and by reason of those importations was permitted to use the funds set up as their purchase price to pay for merchandise exported from Germany to the United States. Just how much premium was involved, I do not know at this time.

DR. TANNENBERG: As I said, if we would discontinue the practice of the Inlands account in general, so far as the United States is concerned, and issue no further permits for payment out of such Inlands account irrespective of whether they were established by the sale of American or other raw materials, as long as they contained a substantial over-price --

MR. JOHNSON: And also abolish any system such as that covering the oil or any similar system?

DR. TANNENBERG: Yes; I would include that.

MR. JOHNSON: You stated it in your own terms in a little different fashion, but if I understood you correctly, you suggested that adequate measures might be taken by the German authorities to insure that exports to the United States would in no case be paid for otherwise than with free exchange.

DR. TANNENBERG: Free exchange?

MR. JOHNSON: Dollars or free reichsmarks.

DR. TANNENBERG: And those free reichsmarks we were discussing were considered as free reichsmarks as long as they were used by the original creditor --

MR. JOHNSON: The dividend marks, the old holdings marks.

MR. CAIRNS: I want to insert a cautionary statement at this point. You understand that any action that we might take predicated upon the list which you think you may be able to furnish us will depend entirely upon the character of the information contained on that list.

DR. TANNENBERG: Yes.

MR. CAIRNS: I just wanted that understood.

DR. TANNENBERG: I fully realize that we can not reach a conclusion today, but it is only to explore the ground as far as possible, even at the risk of taking up too much of your time.

MR. JOHNSON: Not at all. We are suggesting that the list limited to holders of Inlands accounts would not cover the entire situation, unless there were no other transactions of the kind that I have suggested, outside of the Inlandskonto procedure.

DR. TANNENBERG: Would it not facilitate our discussion if I had the language of the four points that you just dictated at the beginning of our conference, and then get information from my Government in regard to these various points, including the list?

MR. JOHNSON: Those points were thought up on the spur of the moment, and I am not sure that I could remember them offhand. We can get them from this record.

DR. TANNENBERG: Would it be possible to have them?

MR. JOHNSON: I am not sure that they cover everything else that we have discussed here today.

DR. TANNENBERG: Would it be possible for you to give me those four questions, either tomorrow or the day after tomorrow, or whenever you may find it convenient, because I would like to have it as complete as possible when I ask my questions of the foreign office?

MR. JOHNSON: You may certainly have those questions, but I am not sure that they cover every point that we have since discussed. I may have suggested other questions in addition to those four. For example, I am not sure that those four questions would cover the case of the oil company or the branch plant that imported goods from places elsewhere than the United States.

DR. TANNENBERG: Would it be possible for you to exemplify the question, then, and just give it to me informally. I do not mean today.

MR. JOHNSON: You may have those four questions today because we can have them written out immediately.

MR. CAIRNS: There may be other points that were made subsequently to those, and a study of the record will disclose that.

MR. JOHNSON: Let us get those four questions now.
(Questions typed and given to Dr. Tannenberg.)

MR. JOHNSON: The authorized statement that you first made is limited in its actual scope, because it is confined strictly to the Inlandskonto procedure. It does not cover certain possibilities clearly within the Treasury decision.

DR. TANNENBERG: Yes; for instance, the oil.

MR. JOHNSON: Yes. The Treasury decision covers all transactions involving premium prices, and I have not thought of any better terms of contra-distinction than those you suggested; namely, payment in dollars or free reichsmarks. Between the two there is a considerable field in which transactions involving premium prices might be possible.

DR. TANNENBERG: Of course, we got this authorization after we explained fully your point of view, to just consider all these methods as impracticable, as impossible, and issue no longer any permits and direct all of the competent authorities to issue no further permits, but stop and discontinue the practice completely, because that statement which I gave to you is an answer to our outline, that the Treasury decision involves or comprises not only the cotton Inlands account and the copper Inlands account, but all other similar accounts derived from the sale of products, foreign products, in Germany, at an over-price.

MR. JOHNSON: But in actual result it does not facilitate the common understanding, because it is, in terms, different from those contemplated by our Treasury decision and statute. It is stated in terms of the granting of permits, whereas our Treasury decision was in terms of premium prices. Now, the two may be synonymous in actual German procedure, but if that is true, we did not know it, and therefore it does not cover the field that we have had under consideration, in terms that we understand, at least. Is it your understanding that transactions can not involve premium prices unless some kind of permit is issued?

DR. TANNENBERG: Yes.

MR. JOHNSON: We did not know that that is so. We had no information of that kind. Therefore, an assurance that permits will not be issued is not synonymous to us with assurances that premium prices would not be allowed.

DR. TANNENBERG: As you know, this procedure was started after our delegation came back from the United States and explained how it worked. It was started by instructing the local foreign exchange control offices to issue permits, because, if we had allowed the sale of American cotton or copper or any other American raw product in Germany without a permit within this meaning, prices would have gone sky high. A permit of the Foreign Exchange Control Office was absolutely necessary in order to keep the price down and keep it at a certain level, and, consequently, when we advised

you in 1936 that cotton in Germany sold in reichsmarks at a definite over-price, at so much higher, for instance, than cotton you would buy against foreign exchange, we showed that there were definite price fluctuations in Germany in the reichsmark price of cotton, and in order to avoid that, this procedure would drive the price of American cotton way up, because no American importer would ship cotton, and everybody in Germany might perhaps substitute something else for American cotton. The Foreign Exchange Office received instructions to exercise control over these transactions, and the price was definitely kept down to 33-1/3 per cent, in order not to make American cotton too expensive for our German spinners, and, consequently, in all of these transactions, the control offices, Foreign Exchange Control Offices, exercised a certain supervision over these transactions. Of course, when, today, the Government advises us that no further permits will be granted and that no further permits can be granted by these Foreign Exchange Offices, it means that the entire practice is completely discontinued, because it is based on the functions that were issued by the Governmental authorities. They had a right to grant the permits, and now that right is and will be withdrawn under our proposal.

MR. JOHNSON: But that is not the necessary meaning in international communications. I take it you do not know, and I know I do not know, whether it would cover

any permit for, for example, that oil transaction and one or two others we have in mind. That is my reason for indicating the possible inadequacy of the terminology.

DR. TANNENBERG: Yes; I understand, and I shall inquire as to what definite proposal can be made.

MR. JOHNSON: The thing I understood the most clearly was your statement about limiting the transactions to dollars or free reichsmarks. That does exclude the premium prices?

DR. TANNENBERG: Yes.

MR. JOHNSON: Question Number Four really covers a big field.

DR. TANNENBERG: And your idea is, as Mr. Cairns suggested, that the statement as to payment in dollars and free reichsmarks would cover the last point?

MR. JOHNSON: I have forgotten the exact way you stated it, but it seems to me it did.

DR. TANNENBERG: May I suggest that I take this matter up, and then, as soon as I have received instructions, I shall ask for an opportunity to continue our discussion? Would that be agreeable to you?

MR. CAIRNS: Yes; that will be perfectly agreeable. Thank you, Doctor.

(Discussion adjourned at 4:45 o'clock P.M.)

RE COUNTERVAILING DUTIES MATTERS

July 11, 1939.
12:30 p.m.

Present: Mr. Foley
Mr. Gaston
Mr. White
Mr. Duffield
Mr. Johnson
Mr. Manning
Mr. Stinebower (State Department)

H.M.Jr: All right, let's have a report.

Foley: First, on amber that's been imported from Danzig. The shipment is quite small, and not a great deal of amber comes in from Danzig. And after talking it over we have come to the conclusion that it ought to be treated in the regular way and that no special treatment should be made of this shipment. Accordingly, it is suggested that a letter be written to the State Department informing them of the facts, and then if the reply comes back favorable, an order will be put out imposing countervailing duties, which would take effect thirty days after it appeared in the Federal Register. But we'd handle it just the same way we handle other matters of this kind; that is, there would be no deviation so far as elimination of the thirty days' notice is concerned.

H.M.Jr: Is there something for me to sign?

Foley: No, there is nothing for you to sign. I mean the letter to the State Department has not been prepared.

Johnson: This was prepared on a different basis, and we reversed that this morning. It will be written, come over in the regular way tomorrow.

H.M.Jr: Is everybody in the Treasury satisfied on this?

White: On this decision? Yes.

H.M.Jr: Care to say anything, Mr. Stinebower?

Stinebower: That's perfectly all right so far as we're concerned.

H.M.Jr: Well, if you can get me a letter after lunch, I'll sign it. We'll send it over by hand this afternoon.

Foley: And the other matter is in regard to a change in the law to take care of situations where the goods are not of the country of origin that's imposing the subsidy; and you might discuss that, Bill.

Johnson: I'd suggest you just read from the draft of the letter to the President. Page 2.

Foley: This is a letter for your signature to the President.

"I wish to call to your attention two typical examples of situations which have recently developed in which the present language of Section 303 of the Tariff Act of 1930 does not provide for the levying of countervailing duties on imported foreign articles or merchandise upon which foreign countries have paid bounties or grants.

"(1) Bulgarian tobacco has been imported into Germany and from there exported to the United States with the assistance of a German export subsidy. Since the tobacco has not been produced in Germany and has not been processed in that country, it is not an article or merchandise manufactured or produced in Germany and the provisions of Section 303 do not apply since that section does not cover situations where the bounty or grant is paid or bestowed by a country other than the country of manufacture or production.

"(2) Paragraph 1763 of the Tariff Act of 1930 places raw silk on the free list. Raw silk is produced in considerable quantities in Italy and exported to other European countries. The Italian Government pays a bounty upon such exportation. The Italian raw silk is manufactured in, say, England into textiles and silk articles of many types. These are exported to the United States. However, since the bounty was paid on the raw silk, and raw silk is on the free list, the provisions of Section 303 are not applicable, notwithstanding the fact that the raw silk has been processed into articles which are dutiable when imported into the United States."

Those are the ...

H.M.Jr: Who do I write it to?

Foley: ... are the two situations. Now, this is a proposed

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letter to the President, which we were discussing when we came in here.

- H.M.Jr: Oh, I wouldn't bother the President with it. Why bother the President with it? He said - he made the suggestion, he wants this sort of thing done. Why not let's just go ahead and do it?
- Foley: Well, the legislation then would go from here to the Budget and let the Budget send it down in the regular way.
- H.M.Jr: Why send it to the President?
- White: I have some reservations about that second thing. I think it needs a little more examination.
- H.M.Jr: All right. Well, when it's ready, let me know. The President specifically asked for this thing.
- Foley: That's the one on the silk.
- H.M.Jr: Well, he said that kind of thing.
- Foley: That kind of thing.
- White: Well, that specific illustration, as it applies to free goods, raises a question which appears to me to run counter to both our policy and possibly the whole justification for countervailing duties. I think it needs a little more reexamination.
- H.M.Jr: All right, skip it for today. When you boys are ready, let me know.
- But let Mr. Hull know that we're thinking about it, will you?
- Stinebower: Yes.
- H.M.Jr: And that thing - the President specifically asked for it. It goes counter to what Mr. Hull said this morning; thought - he wished we'd loosen up on that stuff a little bit.
- Stinebower: I've been thinking about that.
- H.M.Jr: He told me that. But the President specifically said,

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"What about if the English bought the same silk, manufactured the goods, sent it from Dublin here. Could you take care of it?"

I said, "No, we couldn't. We're working on something to block it."

"I want that done."

I don't know whether he said England. He said, "If England or France bought this particular kind of silk, manufactured the finished product, sent it over here, anything we could do to stop it?" I said, "No, sir."

Foley: Shall I give Mr. Stinebower a copy of the legislation?

H.M.Jr: Definitely.

Foley: And then you (Stinebower) can be thinking about it, let us know what your ideas are.

My dear Mr. President:

Section 303 of the Tariff Act of 1930 provides that whenever any foreign country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation pays or bestows, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article manufactured or produced in such country, etc., and such article is dutiable under the provisions of the Tariff Act of 1930, then upon the importation of any such article or merchandise into the United States, whether imported directly or indirectly from the country of production, there shall be levied an additional duty equal to the net amount of such bounty or grant, which amount is to be ascertained or estimated and declared by the Secretary of the Treasury.

You will note (1) that the countervailing duties provided for by this section are applicable only when a bounty or grant is paid or bestowed by a foreign country or other political subdivision upon articles or merchandise of its own manufacture or production, and (2) that the countervailing duties provided for by this section are not applicable to cases where a bounty or grant is paid or bestowed by any foreign country upon articles or merchandise on the free list of the tariff act.

I wish to call to your attention two typical examples of situations

which have recently developed in which the present language of section 303 of the Tariff Act of 1930 does not provide for the levying of countervailing duties on imported foreign articles or merchandise upon which foreign countries have paid bounties or grants.

(1) Bulgarian tobacco has been imported into Germany and from there exported to the United States with the assistance of a German export subsidy, since the tobacco has not been produced in Germany and has not been processed in that country. It is not an article or merchandise manufactured or produced in Germany and the provisions of section 303 do not apply since that section does not cover situations where the bounty or grant is paid or bestowed by a country other than the country of manufacture or production.

(2) Paragraph 1765 of the Tariff Act of 1930 places raw silk on the free list. Raw silk is produced in considerable quantities in Italy and exported to other European countries. The Italian Government pays a bounty upon such exportation. The Italian raw silk is manufactured in, say, England into textiles and silk articles of many types. These are exported to the United States. However, since the bounty was paid on the raw silk, and raw silk is on the free list, the provisions of section 303 are not applicable, notwithstanding the fact that the raw silk has been processed into articles which are dutiable when imported into the United States.

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I am taking this opportunity of calling this matter to your attention. I do so without recommendation, since the Treasury Department concerns itself with the administration of the customs laws and not with determining what the policy of those laws should be, except to the extent that administrative difficulties are involved. The Treasury has adhered to this position for many years and, in my opinion, it is a sound one. I believe, however, that I would be derelict in my duty if I did not call the matters which I have discussed to your attention for such consideration and action as you may deem appropriate.

Faithfully yours,

Secretary of the Treasury.

The President,

The White House.

SRJ/mgp 7-10-39

In the matter of
German Countervailing
Duties

Washington, D. C.
Tuesday, August 1, 1939

TREASURY DEPARTMENT
Office of the Chief Counsel

In the Matter	:
	:
German Countervailing Duties	:
	:

Washington, D. C.
Tuesday, August 1, 1939.

The above-entitled matter came on for
further discussion at 2:30 o'clock P.M.

Present:

Huntington Cairns, Esq., Assistant General Counsel,
W. R. Johnson, Esq., Deputy Commissioner of Customs,
Ralph Dwan, Esq., Chief Counsel of Customs,
Dr. Wilhelm Tannenbergl, First Secretary, German Embassy.

Mr. Cairns:

Dr. Tannenbergl, I understand you are ready to discuss the
German countervailing duty matter further.

Dr. Tannenbergl:

Yes. Now I told you when I asked for this meeting that we had
an opportunity to discuss this matter with members of the Ministry of
Economics. After our last conference at which we reported we thought
it might be better instead of continuing our internal deliberations
by cable to sit down and discuss the entire field and advise those
gentlemen of our Ministry of Economics who are in charge of our
exports to the United States of your position fully and of our
position. Since we make it a rule to get together anyway every
six months if we can, the Minister of Economics readily consented

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to send Mr. Harnack and Mr. Reismann over here so that we could fully discuss the problems that we have and they came over at the beginning of July, I think the 10th of July. In the meantime we have discussed every phase of our trade relations with the United States. They informed us about the attitude of our Government in these matters and we have reached indeed a full and comprehensive understanding of our own problems. So far as we are concerned we are very happy that we had this occasion to explain your position to our home authorities and our own too. There was one thing entirely clear right at the outset that our home authorities realized and knew from our reports that the United States Government would abide by the decision or by the opinion of the Attorney General so far as the Inland Account procedure is concerned. We were advised by these two gentlemen that while the German Government regrets that the decision was taken, it is entirely willing to draw the practical conclusion and discontinue the Inland Account procedure entirely. Our last instructions that I read to you in our last conference was meant to be the authority to advise you that the entire procedure will be abolished. As I tried to explain to you when I was here, that is the way I understood the instruction and so, in effect, it is meant. I explained to the two members of the Ministry of Economics your position and the questions and they said immediately there is no question about the action that the German Government has determined to take. The practices which formed the basis of the Attorney General's opinion will be abolished. The simple matter is as to the form.

Mr. Cairns:

You say "will be". It has not yet been?

Dr. Tannenberg:

May I answer that question in a while? It will be abolished with the understanding that has been the basis of our discussion here. Now, just to give you an answer to what you said, I was informed that no permits for new Inland Accounts have been issued since March 18 and that what has been continued is a liquidation of the accounts that existed on March 18.

Mr. Johnson:

No replenishment?

Dr. Tannenberg:

I do not know. I think that on one or the other of these accounts people may have continued to purchase cotton and get credit for their proceeds in Germany. That may have been continued after March 18 under outstanding permits but no new permits for new Inland Accounts have been issued so that after March 18 there has been a complete - what is the word, "cessation" - of any new undertakings. I was also advised that our Government fully understood your position in regard to the future basis of trade with the United States and we have gone into every question that was raised here. We have found an answer to any question and we have then drafted a statement of the German Government which in my opinion contains an answer to all questions that were raised here. Of course, that statement is tentative. If it is to be submitted to

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the United States Government in the form of a note it has to have the approval of our Government at home, but I brought it along and with the understanding that you treat it as a tentative draft of our ideas here I should be only too glad to read it to you. My understanding of what has been discussed between us is that if Germany creates a certain state of facts which will result in the abolishment of the procedure dealt with in the Attorney General's opinion of March 18, that then, the United States Government, that is, the Treasury Department, on its own initiative, will declare the countervailing duty decision inapplicable. With that understanding I should like to tell you what we have drafted here, subject to the approval of our Government. In our previous discussions I said that we, of course, had not concurred in the opinion of the Attorney General. Our idea is that the trade methods that we applied in 1937 and 1938 do not fall within section 303 and this idea, of course, we want to maintain. I do not want to convey the impression that whatever I tell you is an admission of something which is not in accord with the laws of the United States. This, as I said, is a tentative draft of a statement by the German Government which we would recommend to be presented as a note of the German Government to the Government of the United States:

"The German Government has taken note of the position of the Treasury Department of the United States of March 18, 1939 and the opinion of the Attorney General of the same date upon which that decision is based. The German

Government furthermore has been apprised of the fact that the Government of the United States is resolved to abide by the legal considerations set forth in the said opinion of the Attorney General. The German Government desires to state, in this connection, that the methods of trade which in the opinion of the Attorney General involve the bestowal of a bounty or grant within the meaning of section 303 of the United States Tariff Act of 1930 in its considered opinion do not fall within the scope of that provision; that those methods of trade were inaugurated and developed in accordance with an understanding reached between the Governments of the United States and Germany in the Fall of 1936; that during the intervening two years they were applied by the German authorities as well as American exporters and German importers in strict observance of that understanding and that they had established a sound basis for a steadily increasing and successful exchange of American raw products for German products. As a result of the decision of the Treasury Department of the United States of March 18 and the position taken by the Government of the United States in regard thereto, these methods of trade in the commerce between Germany and the United States have, for all practical purposes, become impossible. Due to the fact that the advantage

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accruing from these trade methods to both the American importer and the German exporter is limited by the imposition of countervailing duties, the German Government has repealed in their entirety the methods of trade dealt with in the opinion of the Attorney General of March 18.

"These methods commonly known as the Inland Account Procedure, that is, the sale of American products in Germany at a substantially higher German inland market price and the use of such proceeds of sale for the payment of German goods have been inaugurated and established in Germany by virtue of the several decrees of the Reich Ministry of Economics of (then follow the dates of the various decrees). The decrees of the Reich Ministry of Economics above enumerated and the administrative regulations appertaining thereto have been repealed by the decree of the Reich Ministry of Economics of (let us say September 1, 1939). The German Government has the honor herewith to bring the text of the said decree to the attention of the Government of the United States. As a result of this action the legal phases for the so-called Inland Account procedure is withdrawn effective September 15, 1939 and the practical execution of transactions based upon the principles established in that procedure discontinued as from that date.

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"In view of the decision thus reached by the German Government and the measures taken by it to make it effective that state will be restored in the trade relations between Germany and the United States which existed prior to the inauguration in the Winter of 1936 of the so-called Inland Account procedure and as it is defined in the note of the German Government of August 12, 1936 which has retained its validity also during the period of the existence of the so-called Inland Account procedure.

"The German Government will regulate German exports to the United States in conformity with the principles established by it in that note. Merely in order definitely to clarify the situation upon which there already exists complete accord the German Government desires to add that complying with the wishes of American creditors it will consent to the use of cash holdings maintained by or accruing to them in Germany if originally and continuously owned by them for the purchase in whole or in part of German goods to be imported by them into the United States for their own account and in their own name.

"As regards existing Inland Accounts the German Government states that no permits for the establishment of new Inland Accounts have been issued since March 18, 1939 and that no such further permits will be issued.

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by the competent German authorities. The German Government further states that the total of outstanding balances in United States Inland Accounts as of September 1st is estimated at reichsmarks (blank) which is a comparatively small amount. As it is in the interest of the American creditors to liquidate these remaining balances the German Government will grant them permission to use balances for the payment of German products until December 31, 1939 with the proviso that the competent United States Customs officials are advised of every individual transaction in which such remaining Inland Account balances are used in whole or in part for the payment of the German goods. Any balance remaining in Inland Accounts after December 31, 1939 will no longer be available for the purchase of German goods.

"The German Government trusts that the countervailing duties imposed upon all dutiable German goods by the decision of the United States Treasury Department of March 18, 1939 will be removed as from the date of the discontinuance of the so-called Inland Account procedure given above.

"The German Government furthermore expresses the hope that trade relations between Germany and the United States will improve and that the Government of the United States not only will restore to Germany on the American

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market a position on a parity with that of all the other nations of the world but also will collaborate in endeavors to restore to Germany on the American market the time-honored competitive position which existed before the devaluation of the United States dollar undertaken in 1933-1934."

That is the draft of the statement and I may add, with reference to the question of the amount, we can definitely determine what the total amount of outstanding Inland Account balances is. The two gentlemen of the Ministry of Economics did not have available the actual figures since they have to go back and since the note has to be presented to the Government at home, we can insert, of course, the actual figure. The idea of mentioning the figure is that the total balance is so small compared to the remaining trade between the two countries that we can easily advise the United States Customs officials of any transactions in which the remaining balance is used. Our idea is that those American importers who still have their remaining balances in the Inland Accounts should have a free period of grace within which to liquidate these accounts. I am entirely willing to discuss that if you have any other idea. Our suggestion was to stop the practices definitely as of September 15 and then give those American creditors who still have remaining balances from previous transactions an opportunity to liquidate these, of course, subject to the Treasury Decision of March 18, 1939, so that they will have to pay the countervailing duty. We are entirely willing to

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cooperate in order to make those cases known to the United States Customs officials so that from September 15, we may return to a free exchange of goods.

Mr. Cairns:

In the last discussion we asked what would be the attitude of the German Government toward other forms of assistance to exports from Germany to the United States.

Dr. Tannenberg:

Yes. I made it entirely clear that is the purpose of the statement here in the note. We expressly state that by the abolishment of these practices we restored the state of affairs. I mean the status, of the time before the inauguration of the Inland Account procedure, that is, on the basis of the note of August 12, 1936 and we expressly state here that the German Government will regulate German exports to the United States in conformity with the principles established by it in that note. That is a clear statement because if you read the note you will find what we said there as to the methods of payment for German exports to the United States.

Mr. Johnson:

Treasury Decision 48479 contains in its first paragraph a close paraphrase of the essential part of the German note referred to. There are two matters that are not quite clear to me. First, as to the use of the proceeds from the sale in Germany at an over-price of products from countries other than the United States.

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the other day I had in my office certain gentlemen who were inquiring about certain transactions in which goods from three countries, the United States and two others, were sold in Germany by the same company and as I understood from these gentlemen the proceeds were placed in one Inland Account, the overprice ranging from 25 to 40 percent depending upon the product involved and the proceeds being used to bring German merchandise to the United States.

Dr. Tannenberg:

You know those decrees about which I spoke do not limit the Inland Account procedure to American cotton or American copper or American products as such. If those decrees are abolished there is no legal basis for any such practice and if you refer to any individual cases we want to make it entirely clear in the note that the practical execution of transactions based upon the principles established in that procedure are discontinued as from September 15. Not only do we say the legal basis but we added expressly that the practical execution of transactions based upon the principles of that procedure shall be discontinued as from that date and in my opinion, and as it is clearly understood by everyone I talked with here, henceforth no permission will be given for the sale of products and the use of the proceeds for the payment of German goods to be exported to the United States. That is what we wanted to make clear with this addition to the statement, that we restore the legal basis and repeal those decrees.

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Mr. Johnson:

Now on that same point we previously discussed the possibility of General Motors importing products into Germany and exporting German goods of equivalent value. It was your understanding that that could be carried on only in such manner that General Motors would receive in Germany for the purchase of goods for export marks equivalent on the forty-cent basis to the world price of the products imported into Germany by General Motors.

Dr. Tannenberg:

That is what I said, but may I add here I misunderstood the set-up of General Motors when I made that statement. In the meantime I have discussed the question with the gentlemen from General Motors when we talked about the rubber account. The rubber account is a dollar transaction. In other words they supply Germany with rubber and obtain the dollar credit in Reichmarks. They received a Reichmark credit which is freely convertible into foreign exchange. When they exported goods from Germany and used part of their dividend account to pay for these goods we insisted on a part payment in dollars to cover the foreign raw material portion that we had to import and that was billed into their product and for that foreign exchange portion of the purchase price they used the rubber credit. Consequently that is a straight dollar credit as far as I understand the situation now, so that if they purchased, for instance, wheels for their Chevrolets for the export markets, the wheels are not being entered into the United States, they pay 50 percent out of their dividend account and 50 percent, the

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foreign exchange portion, out of their rubber account. But if we should have a case where General Motors furnishes raw materials to Germany and receives a credit, General Motors will receive a credit which is the equivalent of the American market price converted into Reichmarks at 40 cents so that the credit will not contain an overprice. If we should buy from General Motors certain raw products, that is of course only a theoretical case, where they realized a higher German Inland Market price, we will not allow them to use that credit for the purchase of German goods. That is our full and complete understanding and what is meant by the language that the principles, not the legal form, but the contents of that procedure as explained in the Attorney General's opinion is to be discontinued.

Mr. Johnson:

Recent information I have received indicated that the German Government established a production quota for certain American owned companies at 75 percent of the 1936 production level. For example, the 1936 production level was 40,000 units. Then for the production currently of 30,000 units a foreign exchange allocation would be made for the importation of the essential foreign products for the manufacture of the 30,000 units. For any excess production over the quota of 30,000 units the company would have to finance any imports with exchange from outside Germany, in other words, add to its impounded capital investment in Germany. It was my understanding that, in connection with the financing of those commodities needed for the production above the quota, an overprice was being

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allowed. Now you have made it clear that that would be discontinued.

Dr. Tannenberg:

I may say this, I do not know anything about the details of that scheme but where merchandise is coming into Germany and the foreign exporter receives the German inland market price the proceeds of sale will not be used to finance exports to the United States.

Mr. Johnson:

You made that quite clear.

Dr. Tannenberg:

For instance, Brazilian cotton has a definite inland market price. The seller receives his proceeds of sale in German marks. That of course does not effect our exports to the United States but I want to make clear with respect to our exports to the United States, our understanding is absolutely clear that the practices dealt with in the opinion of the Attorney General are discontinued entirely. That is our intention of putting it in this note. We are writing in a foreign language. We tried to express our thoughts clearly. As I said, our understanding is entirely clear. We want to present to you a clear and frank statement of what we are willing to do.

Mr. Johnson:

In the past, cotton, for example, has been imported into Germany against Inland Account marks and against foreign exchange.

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In those cases where foreign exchange was allotted by the Reichsbank for the importation into Germany of cotton and the cotton was resold in Germany at a 33 1/3% overprice, the German Government has by some means expropriated the 33 1/3% overprice or has taxed the transaction in such way as to preclude an individual profit on the transaction.

Dr. Tannenberg:

As far as I understand it this cotton was imported into Germany from all over the world and from the United States. The people that could pay for the cotton in Reichsmarks paid an overprice of an average of 33 1/3% and that cotton was sold to the spinner in Germany at that price or with the usual commercial profit that the cotton broker or cotton importer obtained.

Mr. Johnson:

A very small profit of one or two percent.

Dr. Tannenberg:

A very small profit in the cotton trade and in the case of Japanese cotton we paid an overprice of sometimes 40 percent; in the case of Brazilian cotton we paid an overprice of 15, 20 and 25 percent; in the case of cotton from India we paid an overprice of 50 percent.

Mr. Johnson:

It was my information that the cotton from Egypt and India was bought with foreign exchange.

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Dr. Tannenbergl

I went to the Berlin Cotton Exchange last year and asked how do you handle these complicated transactions. Mr. Pabst said we have to import our cotton under various different set-ups under which we import cotton with foreign exchange or on a compensation basis or in a clearing system or in some other way depending upon the system. It sometimes reaches 55 percent. In order to give the German spinner a somewhat uniform price at which he can get his cotton they equalize these overprices so that anybody can make a reasonable profit and the cotton is brought into Germany at somewhat uniform prices. That is what I understood about the set-up when I was in Germany last year.

Mr. Johnson:

That is, they would throw it into a pool and charge a uniform price to the spinner and allocate that to the vendors at whatever the cost was plus whatever the margin was in the pool?

Dr. Tannenbergl

That, in general, seems to be the set-up.

Mr. Johnson:

So if any foreign exchange cotton went into that pool the man would get 2 1/2 marks per dollar of cost, plus his 1 or 2 percent profit. That leads me to the second point that occurred to me as you read your memorandum - the permission to use foreign exchange derived from the exportation of German products. Take one simple case. You have a large chemical company which for many years has used a

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special type of American borax. Some four or five years ago that company bought an artificial leather plant in Germany and imports American cotton for use in its own plant. For sometime it has been permitted to retain in New York the dollar balances accruing from the sale of its chemicals in the United States and to use those dollars without turning them into the Reichsbank to purchase the borax and cotton which it ships to Germany and uses in its own plant. Apparently there is no overprice situation there at all because there is no sale in Germany. In another case, however, where goods were sold from Germany to the United States the dollars were permitted to be retained in this country and used for the purchase of a raw material that went to Germany. The manufacturer used about 90 percent in his own production and sold the other 10 percent at a very substantial overprice. Apparently there was no Inland Account involved. Now it is not clear to me whether the overprice would be directly allocated to the benefit of the exports to the United States or whether there was some means in Germany of taking that premium from him. If he retained the overprice it is clear, under the Attorney General's opinion, that would be as much a subsidy as if he operated an Inland Account and it would be --

Mr. Tannenberg:

But, Mr. Johnson, is not that a rather singular case? If we would dig into the past we might find, of course, such cases. Our statement today is that we abolish in good faith, fully understanding your position, the practices described by the Attorney General in his

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opinion. That means that the German Government shall not allow such practices to prevail; shall not lend its hand to any such practices. If then, after the Treasury Decision has been declared inapplicable, we discovered a case in which in some way, the German importer receives a bounty of grant that we could not anticipate you may be sure that we would collaborate even in such individual cases. My idea in making this statement was to convince you that here our general attitude is expressed. These practices are abolished in their entirety and if there are any individual cases we can follow these cases. I fully understand that if an importer, even for the 10 percent, receives an overprice and throws it into the sale of his goods in the United States, the countervailing duties apply.

Mr. Johnson:

No. The overprice, so far as I know, was not used for the purpose of purchasing goods for export into the United States but the overprice was received on merchandise purchased with the proceeds of his prior exports to the United States. Now you characterized that as a singular case but I would like to say that there has been recently discussion in certain trade circles in Germany, very active discussions, of working a procedure exactly along that line with the thought that it would not fall within the order of last March and I would like to say now it is my opinion that it would clearly fall there.

Dr. Tannenber:

I mean that is without our sanction. No doubt you know as much as I that since March 18 there has been quite a talk about what one

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could do to some way overcome the effect of the dollar devaluation and many plans have been submitted and from wise men who state all we have to do is carry out the transaction, keep the dollars and buy the cotton and sell the cotton at an overprice. Such a situation is clearly covered by you statement. We understand that is part of our statement and would not be permitted. It is the principle of the thing which is abolished and I can tell you that after March 18, people came to me and said that we understand that the devaluation of these transactions is what the Attorney General wanted to have discontinued and why not do it two months later and I advised them the Inland Account procedure contains a definite principle. That principle is the basis of the Attorney General's opinion. If that opinion cannot be removed, if the United States abides by that opinion and we want the countervailing duties removed then the principle has to be abolished and that is what we wanted to say.

Mr. Cairns:

It is your view that the case cited by Mr. Johnson is within the principle. In your last statement you gave the essence of this case.

Dr. Tannenberg:

I may go further. You mentioned the case of the Mexican oil. When we talked about it here some time ago, somebody had the idea of buying the cheaper Mexican oil and selling at the American market price. Nobody pays an overprice. But he realizes a definite overprice on the purchase of the Mexican oil which today is cheaper in the world market because that market is largely closed against

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Mexican oil. It is fully realized that no such case will be permitted by us.

Mr. Johnson:

I have one other point. That was as to certain language in your memorandum with reference to the press releases or rather the matter incident to the press release of December 23, 1936.

Mr. Cairns:

He did not refer to the press releases but your note began with the statement that the procedure condemned in the Attorney General's opinion was the result of an understanding between the United States and the German Government. What is the basis for that statement?

Mr. Johnson:

I think he meant to say that advice received - information received.

Mr. Cairns:

He said "understanding".

Mr. Johnson:

"Understanding" to us connotes a bilateral agreement and as you recall there was no element of negotiation. There was merely a request for certain information at that time. The Treasury Department made it clear that it does not negotiate with foreign countries on tariff matters.

Dr. Tannenberg:

Is it your idea to say "in accordance with advice received"?

Mr. Johnson:

"Information received". I believe that is the sense in which

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you meant it.

Dr. Tannenberg:

Yes.

Mr. Cairns:

Yes. Have you any further question?

Mr. Johnson:

No.

Dr. Tannenberg:

Your suggestion is that this should read that those methods of trade were inaugurated and developed in accordance with the information received by the German Government in 1936?

Mr. Johnson:

I merely asked if that is the sense of your statement.

Dr. Tannenberg:

It is the sense, yes.

Mr. Dwan:

It is very clear to me.

Mr. Cairns:

We will consider this and communicate with you promptly.

Dr. Tannenberg:

May I only make one suggestion. These two gentlemen from the Ministry of Economics must go back next week to Germany. Of course it would facilitate our discussions greatly if I could talk about whatever you have to say and perhaps work out details of our understanding.

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Mr. Johnson:

What date will they sail?

Dr. Tannenberg:

They want to leave Saturday if possible.

Mr. Johnson:

Of this week?

Mr. Cairns:

That is the 5th?

Dr. Tannenberg:

It is merely a suggestion I want to make. We have taken our time because it is difficult to communicate 3,800 miles and, of course, if you want to consider the matter and if you can continue our discussion during the course of this week, it will be greatly appreciated.

Mr. Cairns:

We will do our best to proceed promptly.

Transcript by Ida R. Zamanske.