THE RELATIONS OF GERMANY AND THE UNITED STATES INVOLVING THE STATUS OF NATURALIZED CITIZENS AND COMMERCE

1865-1898

by

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I

ORIGINS

Since the World War, there has been evident among students of American Diplomacy a growing interest in the relations of Germany and the United States prior to the year 1914. A survey of German-American affairs for the period 1866-1898 is particularly in order inasmuch as the field, with the exception of the Samoan Affair, has been subject to little research. Add to that the consideration that the period was important in the latent development of both nations and that it marked the beginning of the German-American commercial rivalry of the twentieth century, and the survey becomes worthy of attention as well.

Historically, the two countries seem to have much in common during the latter half of the nineteenth century. In 1865 the United States had concluded successfully a war which had threatened its destruction. By 1867, Prussia had attained, through a series of wars, the status of a first-class power which was followed in 1871 by the unification of Germany. This period was to witness the emergence of both as world powers. Likewise, in contrast to other nations, the foreign political interests of Germany and of the United States appear to be somewhat parallel.. George Bancroft, our Minister in Berlin, commented on this affinity in his letter of October 18, 1870 to Hamilton Fish, Secretary of State. [1]Bancroft pointed out that Bismark and the King of Prussia had been true to our union during the Civil War when France had

1. Mark Antony deWolfe Howe, The Life and Letters of George Bancroft, (New York: C. Scribners Sons, 1908), Vol. II, 246.

been endeavoring to secure a general European recognition of the Confederacy and Great Britain had been surreptitiously aiding the latter. Also Germany had respected the independence of Mexico when France had supported the Austrian adventurer. While Germany desired to follow the East-Asiatic policy of the United States, France intrigued for power in China through the demands of its Jesuit missionaries.[2] In principle, Germany like America was opposed to ultra-montane usurpations, whereas the French Republic had destroyed the Roman Republic and garr soned the Papal Dominions. The United States was the first power to speak for the security of private property at sea in time of war; Germany had been the only power to adopt fully this idea.[3] Moreover, the relations of Germany and formerly of Prussia to England and of the United States to England were on the same plane and had been so for a number of years. It was Bismarck's particular delight to give America prominence in the eyes of Europe as a balance to Great Britain. Lastly, Germany in her organization of Empire, adopted the federative system of government, corresponding to the American plan, but differing greatly from the French system of centralization. In general, concluded Bancroft, German and American institutions most nearly resembled each other, thereby laying the basis for an easier understanding and friendship. And to the perpetuation of their friendship both Bismarck and his King openly committed themselves in the first few years following 1866.

2. French commerce with China represented but 1% of the latter's foreign trade. Religion seemed the likely tool.

3. The German Diet adopted the resolution declaring the freedom of private property on the seas in the month of April, 1868.

However, harmonious elements to the contrary, a closer scrutiny of the affairs of Germany and of the United States in the interim from 1866 to 1898 shows the predominance of two issues which were to involve the friendly relations hitherto existing between the United States on the one hand, and Prussia and the other German States on the other, and to provoke much diplomatic correspondence thereto. These issues were the Status of Naturalized Citizens and Commerce.

The responsibility for the origin and growth of these two points of diplomatic controversy lies with various factors common to the national life of the two countries. Naturalization, due to the nature of our population, has always played more importance in our history than in that of any other country. Immigration has brought countless aliens to our shores; the welfare of the nation has necessitated that these people take their places in the citizen body. Accordingly, the United States has endeavored to hasten the processes of assimilation and Americanization. Inasmuch as the act of naturalization consists of two parts: (1) the formal renunciation of the old allegiance, and (2) the assumption of a new allegiance, expatriation (the change of allegiance from one's native or adopted land to another country and government), early became a subject of controversy between us and foreign nations. On this point, a great difference of opinion has existed. In regard to expatriation, the United States has held, as its Congress declared, that it was "a natural and inherent right of all people indispensable to the enjoyment of the rights of life, liberty, and pursuit of happiness".[4] European

4. United States Revised Statutes, 1999,2000.

powers, on the contrary, have been unanimous in refusing to recognise the free right of an individual to renounce his former nationality and its subsequent obligations. In the War of 1812, Great Britain denied the right of expatriation to her citizens holding that they could not renounce their native allegiance and assume a new one without her consent.[5] This doctrine was accepted by Chancellor Kent as in accord with the principles of English common law, and as a doctrine remained in effect until 1870. France did not permit a Frenchman to renounce his nationality but he lost it by positive law when he was naturalized in a foreign country. Such a transference of allegiance did not prevent him from being punished, upon his return to France, for avoidance of military service there.[6] Spain, in its Royal Decree of November 17, 1852, maintained that a Spaniard naturalised without the knowledge and authority of his government could not exempt himself from the obligations consequent to his primitive nationality.

The German attitude toward expatriation was similar to that of the European powers. In Prussia, a subject lost his nationality first by discharge at the subject's request; secondly, by sentence of competent authority; thirdly, by living ten years in a foreign country; fourth, by marriage, if a female, with a foreigner. Subjects who emigrated without obtaining a discharge were punished according to laws in that case provided, and if they returned to Prussia were considered criminals, subject to punishment from which no citizenship of any nation could liberate them. The obligation to military service was not extingui-

5. But she did not debar their return as a natural-born subject.

6. Executive document, 36th Congress, 1st. Sess. No.38
Count Walewski to Mr. Calhoun, Nov. 28, 1859.

shed by time; even an absence of more than ten years would not excuse a man from service when he returned to Prussia. Emigration from there was not permitted except by the express leave of the government. Hamburg made the denationalization of a subject dependent upon his obtaining a discharge from the government, the payment of a specified sum of money, and evidence of the fulfillment of military service in person or by substitute. Hanover required those who were emigrating to provide security for a military substitute.[7]

That German-American relations should be colored by disputes over expatriation was inevitable after the beginning of the large exodus of Germans to the United States in the 1830's and in the 1840's. In spite of Native-American propoganda, these immigrants were naturalized rapidly, and in large numbers.[8] Some of these, immediately upon acquisition of citizenship papers, returned to the Fatherland only to report that the local authorities there were refusing to recognize their status as naturalized citizens of the United States and were attempting to enforce military duty upon them, if not fines and imprisonment. Thus, as early as the 1850's, the question of expatriation from the various German states and principalities came to the fore as a diplomatic problem. The situation became more acute with successive years as the numbers emigrating from and going back to Germany continued to increase. Undeniably the German states regretted the loss of so many of their citizens (as is shown by

7. Congressional Globe, Appendix, 40th Cong., 2d. Sess., 97 Report of the Committee on Foreign Affairs to the House of Representatives, Jan. 27, 1868.

8. Donal V. Smith, "The Influence of the Foreign-born in the Election of 1860", Mississippi Valley Historical Review, September 1932, 193.

the protest of the Pomeranian Agricultural Society made in 1872),[9] but their main difficulty lay with the expatriates who, unburdened by the obligations of civic duty, were not only unmanageable but had a demoralising effect on the community in which they might reside. The presence in a district of any group of people relieved of the usual responsibilities accruing to the inhabitants, does not serve to better the welfare of that district. To Prussia, who was striving so valiantly to build up a great state to lead in the ambitious uniting of all the German states, the support of all native sons, whether they had been subsequently naturalised in another country or not, seemed imperative. The United States, on the other hand, by this same naturalisation, and its professed guarantee of protection for its own citizens, was responsible for the welfare of its naturalised citizens residing in Germany. Conflicting national doctrines, circumstance, (the ever-growing emigration of Germans to America), and national ambitions, made the Status of Naturalised Citizens an issue in the field of diplomacy in the latter half of the nineteenth century.

The mention of one factor alone in connection with German-American Commercial relations of this period would not be enough. There were many. But let it suffice to say here, in lieu of a later and more conclusive analysis, that there existed at this time a substantial trade relationship between Prussia and the United States.

9. Department of State. Papers relating to Foreign Affairs Accompanying the Annual Message of the President, (Washington: Government Printing Office, 1873) 1872-73, pt. 1, 189. This society passed a resolution to request the chancellor of the Empire to enjoin upon consuls in America to ascertain how many able bodied laborers there were there who would, for free passage, return to Germany. Bancroft to Fish, May 14, 1872.

The economic transformation of Prussia in the decade 1850-1860 began the creation of industrial Germany with its need for raw materials and food to feed its laborers. The country was no longer intrinsically self-sustaining. The United States, where industrialization was a slower process, remained essentially agrarian in 1865 and found in Germany a growing market for its agricultural products. Thus, there arose the basis for commerce and trade.

The fore-mentioned factors combined and intermingled play an impressive role in the foreign policy of the United States from 1865 to 1898. German-American diplomacy of this period amply illustrates these motivations. Therefore, it shall be the purpose of this treatise to develop and to present as accurately as possible the more important points arising from these various relationships.

II

THE STATUS OF NATURALIZED CITIZENS

In its dealings with England and France, the United States had always held that naturalization in conformity with the Constitution and the l United States absolved the r cipient from his native allegiance.[10] Maintenance of this doctrine was imperative if foreign powers were to be prevented from subjecting our naturalized citizens to obligations of a prior allegiance, as in case of war. In regard to the expatriation of Americans, the government was inconsistent. In 1799, in connection with the case of Isaac Williams who was tried in the Circuit Court of the District of Connecticut for accepting a French naval commission, the United States denied that an American citizen could expatriate himself without the consent of the government.[11] In 1817 there was an exhaustive debate in Congress on the subject with no definite solution. Not until fifty years later was there another serious attempt to define the right of expatriation.[12] The proposed Thirteenth Amendment, excluding any citizen from office under a foreign power,

10. Congressional Globe, Appendix, 40th Cong., 2d. Sess. 97.

11. His action was held contrary to the law laid down in Article XXI of the Jay Treaty that subjects of the one country should not accept commissions from a foreign state at war with the other. Williams claimed that he was appointed to a place in the French navy in 1792 and was naturalized in the U.S. that same autumn. The court maintained "the common law of this country remains the same as it was before the revolution", that all the members of a civil community were bound to each other by a compact, and that one of the parties to a compact could not dissolve it by his own act.

12. Frank George Franklin, The Legislative History of Naturalization in the United States (Chicago: University of Chicago. Press, 1906), 167.

with the penalty that he "shall cease to be a citizen of the United States" was evidence of the fact that Congress would not pass the acts permitting a renunciation of citizenship. In January 1858, a resolution was agreed to in the House directing the Committee on Judiciary to enquire if any, and what legislation by Congress might be proper to define what acts should, or should not, work expatriation or severance of allegiance by citizens of the United States and also "whether provision by law ought to be made for reinvesting with citizenship such persons, born in the United States, as may have assumed allegiance or citizenship to any foreign government."[13] On February 16, 1860 a similar resolution received the same reference. It was also asked if a law shouldn't be passed to vindicate the exemption of naturalized citizens of the United States from the claims of other governments of a right to enforce against such citizens the obligations of a prior and different allegiance.[14] This last inquiry of the resolution was referred to the Committee on Foreign Affairs at the request of the Judiciary Committee.[15] In 1860 there was also before the House Judiciary Committee a bill introduced by I. N. Morris to "provide for expatriation and to restrain citizens of the United States from entering into the military or naval service of foreign states and for other

13. Journals of Congress, II, 8, 21, Jan. 11, 1776. - Certain Tories, for instance, back in 1776 had been declared out of the protection of the United States.

14. House Journal, 36th Cong., 1st Sess., 314.

15. Ibid, 994.

purposes". It was ordered printed, together with certain notes on the subject, in March of that year. A few days later, on motion of its chairman, the committee was discharged from further consideration of this bill.[16]

Further debate on expatriation was effectively ended by the historic firing on Fort Sumter and the resultant chaos of civil war. Moreover, Union diplomacy was too concerned with preventing European recognition of the Confederacy to have time or the desire to approach Prussia and other German States concerning the treatment there of naturalized citizens of the United States. Another reason, quite as important, induced governmental forgetfulness. Many Americans (naturalized ones) were fleeing to Germany during the years of the war to escape military service in the adopted country. Naturally, the United States was not proud of these deserters and neglected to consider their cases.[17]

The status of naturalized citizens in Germany, although as we have seen the subject of much discussion between the two countries before 1860, as a diplomatic problem came into particular prominence in 1865 with the end of the Civil War. Citizens of the United States, Germans by birth, who had, many of them, served under the Union Flag for the last three years or more, were returning in not inconsequental numbers to the Fatherland to visit their relatives.[18] Arriving there these adopted

16. Ibid, 216,311,423,519.
17. Foreign Affairs 1865-1866, 61. Mr. Judd to Mr. Seward, Aug. 9, 1865.
18. Ibid.

citizens found themselves threatened with compulsory military service. Joseph A. Wright, appointed Minister to Prussia in 1865, estimated that in October of that year there were five hundred American Citizens in Prussia who were liable to perform military duty according to its laws and regulations.[19] Although Prussia succeeded in placing in the army, according to the same estimate, only about one out of fifty of these, the situation was deplorable.[20] Many of these men had just been naturalized and that often as a reward for participation in the Civil War; to have these ex-soldiers scurrying and hiding from Prussian authorities did not speak well for our government or for the morale of its individual members. Moreover the United States had always claimed the free right of expatriation for its naturalized citizens. This claim could no longer be made if Prussia continued to attempt to enforce its compulsory military service upon them. Both Mr. Wright and his predecessor, Mr. Judd, wrote to Secretary of State Seward asking that war time restrictions upon their actions be removed and that instructions be sent on the matter at hand.

That the United States Government take a firm stand on the status of its naturalized citizens in Germany was made to seem imperative by the case of Jacob Carl Brieger which came into particular prominence at this time. Briefly, the situation was this. Jacob Brieger, having left Germany when he was thirteen years old to emigrate to America,

19. Ibid, 64. Mr. Wright to Mr. Seward, October 26, 1865.

20. Ibid, 67. Mr. Wright to Mr. Seward, November 15, 1865. With this estimate Count Bismarck agreed.

applied to the Prussian government for permission to return to his birthplace to settle some family affairs. He had now become a citizen of the United States. The Circuit Court of the district of Newstadt on the tenth of February, 1858, condemned Brieger to a month's imprisonment or a fine of fifty thalers for having left the country with the intention of avoiding the performance of military duty. In April, 1865, the matter was referred by the American minister to Baron Thile, acting minister of foreign affairs during Count Bismarck's absence. Baron Thile answered that:

> "In consideration of the peculiar circumstances of the case, the government will permit the said Brieger a short stay in Prussia upon the condition that he submits to the judgment which was passed upon him, and he pays besides the costs. It is in this sense that the authorities have been instructed to act."[21]

Minister Wright regarded this reply as being without any precedent whatsoever. He considered it absurd to charge that a child of thirteen years of age left the country purposely to avoid military duty. In discussing the reply in his dispatch of October 25, 1865, to Seward, he wrote:

> "This language is applied to a young man who left this country when a child with his brother, having committed no offense, upon whom no liability had accrued of any kind, and who is now only

21. Ibid, 65. Dispatch of Baron Thile to Mr. Wright, October 21, 1865.

22. Ibid, 64. Mr. Wright to Mr. Seward, October 25, 1865.

asking permission to return to adjust and settle his family matters with a government which have, by solemn treaty with us in 1828, stipulated and agreed, among other things, that "the inhabitants shall be at liberty to sojourn and reside in all parts whatsoever of said territories in order to attend to their affairs' ".[22]

The document to which Mr. Wright referred above was the Treaty with Prussia of March 14, 1828. On one of its articles, the United States based its claim for the inviolability of its citizens in Germany. With the exception of the conventions with both Wurtemburg (October 8, 1844) and Saxony forbidding any tax on emigration, this treaty was the only one that pertained. It provided that the inhabitants of the respective states of the high contracting parties "shall be at liberty to sojourn and reside in all parts whatsoever of said territories in order to attend to their affairs and shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of submission to the laws and ordinannes therein prevailing."[23] Prussia, while not gainsaying the existence of the provision, reserved the right to apply its military laws as it saw fit.

In November of 1865, Mr. Wright conferred with Count Bismarck, Minister of Foreign Affairs, who had just returned to his official

22. Ibid, 64. Mr. Wright to Mr. Seward, October 25, 1865.

23. Congressional Globe, Appendix, 40th Cong., 2d. Sess., 97.

capacity. The time seemed propitious, due to the general dissatisfaction of the Prussian people at the moment, for the discussion of critical matters.[24] The latter confessed to no knowledge of the case of Jacob Carl Brieger, it having been acted upon during his absence. After promising to look into the matter, the conversation gravitated easily to the whole subject of Prussian laws as connected with military service and the difficulties in the way of adjusting the same with the United States. Bismark remarked that it would be almost impossible to change by legislation the Prussian laws, in view of the prejudice among the German peasants that, as all Prussians are subject to military duty, the returning adopted citizens would be exempt.[25]

Count Bismarck, in this same interview, admitted that the problems of the impressment of American citizens into German compulsory military service was becoming a more formidable and complicated one every year as the numbers returning from the United States continued to increase. He said that "there was no desire on the part of His Majesty's government to arrest any American citizen returning to his native land on business; but when a case was presented to the government by the police authorities, giving the name, place of birth, age, etc., the law was imperative and the government compelled to act."[26]

24. Foreign Affairs, op. cit. 64

25. At this time, the Landtag, Prussia's popular legislature, was protesting against the arbitrary levying of taxes by the king for the army without appropriations made by law.

26. Ibid, 67. Mr. Wright to Mr. Seward, Nov. 15, 1865.

After expressing his most earnest desire to adjust the difficulty, he stated that it could only be done by some treaty arrangement with the United States whereby, if successful, its principles would be carried out by the legislative authorities of both countries. Count Bismarck then suggested a plan for the settlement of this vexed question. He proposed military exemption to all Prussian subjects returning to their native land who had left before their seventeenth year. This same exemption was also to apply to all other persons who were not in the army or notified to enter at the time of leaving, and who shall have been out of the country for ten years.

After mutual testimony as to the difficulty in arresting and bringing to trial persons charged with criminal offences in either of the two countries under the present extradition laws, the two diplomats parted. The understanding was that Count Bismarck was to communicate with Baron Gerolt on the necessity of some modification of the extradition laws between the two countries, and with the military authorities of his Majesty's government in Prussia. If they should concur in his views he would then, through the American legation, communicate to the United States government his views upon the propriety of making some changes in the present law upon the subject of surrendering criminals. The expectation was that if the government of the United States received the same favorably, it would reply with an allusion to the military laws of Prussia, asking that they be modified in certain respects. It was hoped that a satisfactory adjustment would result.

On December 2, 1865, Secretary of State Seward wrote to Mr. Wright answering the latter's inquiry as to the President's views in

regard to the proceedings in Prussia. His statement therein as to the stand of the American government on the question of the impressment of its citizens into compulsory military service was firm and direct to the point. It was as follows:

> "The United States have accepted and established a government upon the principle of the rights of men who have committed no crime to choose the state in which they will live, and to incorporate themselves as members of that state, and to enjoy henceforth its privileges and benefits, among which is included protection. This principle is recommended by sentiments of humanity and abstract justice. It is a principle which we cannot waive. It is not believed that the military service which can be procured by any foreign state in denial of this principle can be important or even useful to that state."
> 27.

Seward instructed Wright to present the subject to the serious consideration of Count Bismarck. The latter was also to be informed that any suggestions that he might think proper to make relative to the extradition laws of the two countries would receive "just and friendly attention".

The negotiations begun in 1865 by Bismarck and Wright were broken off temporarily by the outbreak of hostilities between Prussia and Austria on June 16, 1866. Although Prussia had no German allies of importance whereas Austria was supported by the four kingdoms --

27. Ibid. 68-69. Mr. Seward to Mr. Wright, Dec. 3, 1865.

Bavaria, Wurtemberg, Saxony, and Hanover, as well as by Hesse-Cassel, Hessel-Darmstadt, Nassau and Baden -- the Seven Weeks War ended with Prussia victorious. The latter's army, commanded by General von Moltke, had long been ready for such a contingency. In efficiency and leadership it far surpassed the ineffectual Austrian troops. The aid of Italy was most important, too, in subduing Austria. On August the 23d, the Peace of Prague was signed. Thus freed of Austrian influence in Germany, Prussia, upon the closure of the conflict, busied itself in uniting all those German states north of the Main River. The North German Confederation, as this group of twenty-two states came to be called, was a real federal state with great power. Its constitution, which went into force July 1, 1867, was, with certain slight and formal changes, to become the constitution of the German Empire. In the new confederation, Prussia was dominant. Her king was to be President. In the Bundes rat (the Federal Council), she was allotted 17 out of the 43 votes, needing to command only five more for a majority. In regard to military organization no change in the laws could be made without the consent of Prussia. Moreover, the South German states, instilled by Bismarck with a ready fear of France, entered into a military alliance, offensive and defensive, with the North German Confederation. In a military sense, Germany was unified. It was with the North German Confederation that the United States had to deal in further negotiations.

Prussia bequeathed its compulsory military system to the new union. The Constitution of the North German Confederation made every North German citizen subject to military duty. No substitute could be

made. Every able-bodied man was to serve three years in the field, four years in the reserves and then five years in the militia. Proscription began at the age of twenty. Colonization and emigration were to be regulated by the Bundesrat and the Reichstag (Parliment) of the Confederation.[28] Pressure on the naturalized citizens of the United States residing in North Germany promised to be more severe.

In November, 1867, the United States recognized officially the Parliament of the North German United States and the collective German Customs and Commerce Union upon the ground that by the paramount constitution of the North German United States, the King of Prussia to whom we were accredited, was at the head of those several organizations or institutions.[29] Our minister at the Berlin Legation immediately began proceedings for the enactment of a treaty on naturalization.

Diplomatically, it was an auspicious moment to begin negotiations. The King of Prussia, William I, and Bismarck, were gratified at the United States' friendly attitude toward the new body. Prussia was sadly in need of friends. The annexations to her own territory made by her at the end of the Seven Week's War had not endeared her to her neighbors. A nation does not increase her area by thirteen hundred square miles, her population by over four and a half million subjects, and gain a cohesion she formerly lacked - all through the right of military conquest - without arousind the jealousy and suspicion of

28. Executive Documents (No.9.) 40th Cong., 2d. Sess., 16-23

29. Foreign Affairs, op cit. 1868-69 Part 2, 40. Mr. Seward to Mr. Bancroft. Dec. 9, 1867.

other countries. Annexation of the small states was done without even permitting the inhabitants to vote on it. Prussia had further strengthened her position by coming into control of the northern coast of Germany, with brief gaps, from Russia to Holland. Europe had sat back and permitted the swift consummation of these changes which assuredly altered the balance of power and the map of Europe.[30] The Tsar had said, "I do not like this dethronement of dynasties", but he failed to express his dislike in action.[31] Already, France bitterly regretted her complaisance and she was to repent it more in the next three years. Thus, surrounded as Prussia was by hostile nations, it is no wonder that she desired to secure the good will of the United States. An insight into the events to come, as the inevitable war with France -- inevitable in view of Bismarck's determination to complete the political union of Germany - colored both Germany's domestic and foreign relations at this time.[32]

30. Bismarck, the man and the statesman, dictated by self under the supervision of A. J. Butler (New York & London: Harper & Bros.) (1899) Vol. II 61.
In July 1866, Gortchakoff of the Russian Cabinet invited France to a common protest against the overthrow of the German Confederation and experienced rebuff.

31. The Russian government, declaring that as the German Confederation had been founded in 1815 by the Congress of Vienna, to which all powers were parties, it could not be abolished by Prussia alone, proposed a new international Congress to settle the terms of peace. Against this proposal Bismarck assumed an attitude so fierce, threatening war, that it was dropped.

32. Bismarck, op cit. Vol. II, 57.

The United States was particularly fortunate that the minister sent to the Berlin Legation to establish the right of the German Americans to renounce their old allegiance was one of the most able of the American diplomats of the nineteenth century - George Bancroft. His tact and patience were invaluable in bringing into being the naturalization treaties. Well-educated, part of his training had been acquired in Germany at Göttingen where he took the degree of Ph. D. in History. He studied also at Heidelberg and on a visit to Jena met the venerable Goethe at Weimar. Becoming acquainted with many famous German scholars, he acquired an insight into the German mind which was to prove very useful during his official sojourn there. Primarily a historian, he never-the-less had occupied several offices of political prominence before going to Berlin. In 1844, he was appointed Secretary of the Navy by President Polk. To his credit lies the establishment of the Naval Academy at Annapolis. Also, his diplomatic foresight and decision were much in evidence at that time in his constantly renewed orders to the American Pacific Squadron to seize California in case hostilities should break out with Mexico - orders executed with fateful results. His services at Washington led to his appointment as Minister to Great Britain (1846-49). Retiring from public life upon his return from England, he pursued his historical studies until again interrupted in 1867 when he was sent as Minister to Prussia, remaining as Minister to the North German Confederation in 1868 and to the new German Empire in 1871. From this post he was recalled, at his own request in 1874. Frank in his admiration of the Teutonic

nation and feeling that the two countries had much to gain from each other, Bancroft endeavored to promulgate the feeling of friendship between Germany and the United States.[33] The results of his diplomatic work at Berlin may be studied in the Naturalization Treaties between the United States and the German governments (1868) and in the Convention respecting Consuls and Trade-Marks (1872). He also assisted in bringing about the settlement of the Northwest Boundary dispute between Great Britain and the United States.

Before the actual conference on the matter of a treaty in regard to naturalization had been authorized by the King of Prussia, the German Foreign Department took two perfunctory steps. In the first place, it sent to the English and French legations in Prussia letters of inquiry as to whether the points that the United States deemed to be essential in the proposed treaty would meet with the approbation of Great Britain and of France; these points were enumerated. The reply of France was agreeable to the United States on the more important demands. England's answer voiced no opposition to what was proposed.[34] Having encountered no actual disapproval, the foreign department next took the opinions of the Prussian minister of war and the Prussian minister of Internal Affairs. Both were adverse. Thereupon Bancroft was given permission to discuss the subject with these officials.

33. A frank expression of this admiration in a letter to Count Bismarck on September 30, 1870, which letter handed to the German press was printed in the London Times and subsequently read by the French, was misunderstood by the French and led to intense feeling on their part against Bancroft.

34. Foreign Affairs, 1868-69, part 2, 41. Mr. Bancroft to Mr. Seward, January 21, 1868.

The objections of the War Department, as delivered to Bancroft, related chiefly to form. The War Minister expressed himself as having no intention of holding an adopted American citizen to service in the Prussian army. But he did think it advisable to leave the existing law unaltered in order that the subject might be under control. Instead, he proposed to grant exemption as each individual case should arise. Bancroft felt that the above objections might be easily overcome as they were.

The arguments of the Minister of the Interior, Count Eulenberg, were a little harder to assuage, being based on the Prussian Constitution and the Prussian law which, the Minister felt, conflicted with the request of the United States. Bancroft wisely refused to discuss with the German official the interpretation of the laws of his own country. But Bancroft did answer that, "whatever might be the laws of Prussia, they must be considered as finaly only for Prussians, and the relations of a foreign power were a proper subject for a convention".[36] And to this truly unanswerable statement, there was no dissent.

The objections given above were removed primarily through the efforts of Count Bismarck who saw to it that a new law on changing citizenship was drafted which would greatly facilitate the concessions that the United States desired. Even before the law's final adoption, the Department of the Interior withdrew its opposition to the proposed convention. All that remained was to obtain the king's written assent.

35. Ibid, 62.

Count Bismarck had just informed Bancroft that the king had given verbally his concurrence.[36]

In the meantime, the British government had been watching the proceedings with interest, as shown by its inquiry in January 1868 of Bismarck as to the answer the Prussian government would make to the American government on the subject of naturalisation.[37] In reply, Bismarck admitted the intention of the German Government to reach an agreement with the United States according to its request. England then signified its intention of doing likewise. When Secretary of State, Seward, heard through Bancroft of this correspondence, he informed the British Minister in Washington, "that a proceeding in a form of mutual common legislation in the two countries would be more simple and probably easier than formal negotiations inasmuch as there are so many other questions which urgently require settlement between the United States and Great Britain, besides that of the conflicting naturalisation laws".[38] British and German diplomacy were somewhat correlated in this period.

36. Ibid, 42.

37. England at this time found its relations with the United States complicated by difficulties arising out of the Civil War; the Alabama case, for one, was still brewing.

38. Foreign affairs, op cit. 44. Mr. Seward to Mr. Bancroft, Feb. 13, 1868.

At his official meeting with Mr. Konig, to whom the German government had delegated full powers to negotiate with regard to naturalization, Bancroft proposed the following terms:

1. Germans and Americans may reciprocally emigrate.
2. Naturalization after a five years' residence changes nationality and releases from military duty.
3. Naturalization till after a residence of five years shall not be binding on the original country.
4. Naturalization shall not be an excuse for desertion from military service actually entered upon, but shall free from all liabilities for eventual service not due at the time of emigration.
5. A naturalized citizen returning to his native country with intent to resume his domicile therein and proving his intention by a continuous residence of ________ shall not be entitled to the interposition respectively of the United States and of North Germany.[39]

Mr. Konig received the proposals with a general assent, offering to send in return the draft of a treaty, which he did. The draft, although impaired in clearness, as Bancroft complained, by Konig's obvious desire to avoid a glaring conflict with ancient laws, offered a basis for settlement.

The Treaty of Naturalization between the United States and North German Confederation was signed by Bancroft and Konig on February 22, 1868. On the question of the right of expatriation there arose no

39. Ibid, 44-45. Mr Bancroft to Mr. Seward, Feb. 14, 1868.

discussion, as it was recognised by the laws of both countries. Likewise, on the question of residence as a condition of naturalisation which the mother country should respect there existed no difference. The time of residence was a more delicate point, but in the new treaty Germany agreed to accept the American rule of five years continuous residence, as it had been established by law there since 1795. In this regard should the United States see fit, for its own purposes, as in the act of July 17, 1862, to concede naturalisation on a shorter residence, its right to do so is not impaired; but it will not ask North Germany to recognize such naturalisation till the adopted citizen shall have completed the term of residence now required by its normal law.[40] The question as to whether the emigrant should be released from liability to military service _from_ the moment of his emigration or _from_ that of his naturalisation was settled in Article II. Germany agreed that the emigrant on his return should not be called to account for the non-performance of any military duty to which the liability might arise subsequent to his emigration.

Article III established the principle that a North German who, in conformity to the terms of the first article, has been received as an American citizen is no longer liable to extradition.

Article IV was intended to prevent insincerity in the transfer of allegiance. A German naturalised in America and returning to Germany for two years does not necessarily renounce his American

40. That is, the requisite five years.

citizenship; only he may be called upon to declare his purpose implicitly. Therein the United States conceded its old principle that a citizen naturalized by its laws renounces permanently his former nationality.

Articles V and VI, dealing respectively with the duration of the convention and by whom it was to be ratified, need no explanation. The treaty was to endure for ten years, expiring then only on sufficient notice of one of the two signees.[41]

The treaty regarding naturalization between the United States and North Germany met with prompt acceptance in Germany. Laid before the Council of the Confederation, it was agreed to (without dissent) on March 21st. The King of Prussia in his speech, given when opening the Diet of the Confederation on March 23, 1868, spoke of it in the following words:

> "A Treaty which has been concluded with the United States of America is designed to regulate the nationality of immigrants to either country, and thus to remove from the relations between two nations, closely related by commercial interests and family ties, the germ of discord."[42]

When the treaty came up for consideration in the Imperial Diet on April 2, there was no opposition and little discussion. It was on this occasion that Chancellor Bismarck, when called upon to authorize Konig's interpretation of the convention remarked:

41. This notice was never given.

42. *Op. cit.*, 60. Included in Bancroft's dispatch of March 23, 1868.

"The literal observation of the treaty includes in itself that those whom we are bound to acknowledge as American citizens cannot be held to military duty in North Germany. That is the main purpose of the treaty. Whoever emigrates 'bona fide' with the purpose of residing permanently in America, shall meet with no obstacle on our part to his becoming an American citizen, and his 'bona fides' will be assumed when he shall have passed five years in that country, and, renouncing his North German nationality, shall have become an American citizen." 43

As the above statement of the chancellor's cleared up the few questions asked, the treaty was immediately voted upon and accepted.

The special importance of this Treaty of 1868 with North Germany lay in its being the first formal recognition of the principle of renunciation of citizenship at the will of the individual. Such a principle was against the usage of Germany and against the policy of the War Department of Prussia and all the other North German States. The argument that weighed much with Bismarck for granting the wish of the United States was that the Germans in America might not be interrupted in their domestic intercourse with their parents, with their brethern, with the members of their families who remained at home. The desire to be on amiable terms with the United States was an even more decisive factor. As George Bancroft, speaking of the treaty,

43. Ibid, 51. Mr. Bancroft to Mr. Seward, April 3, 1868.

44. Howe, Vol. II, 202.

said: "But for the triumph of union in America, it could not have succeeded in North Germany". [44]

Four other conventions dealing with the rights and privileges of naturalized citizens on their return to their original states, were concluded between the United States and German soverignities in 1868. These were:

1. Treaty between the United States and the Kingdom of Bavaria concluded May 26, 1868.
2. Treaty between the United States and the Kingdom of Wurtemberg, signed July 17, 1868.
3. Treaty between the United States and the Grand Duchy of Baden of July 19, 1868.
4. Treaty between the United States and the Grand Duchy of Hesse-Darmstadt of August 1, 1868.

These conventions were very similar to the one with North Germany. Termination in ten years, if desired, was a stipulation common to all five. Article IV in the agreement with the Grand Duchy of Baden varied from the others. It ruled that an emigrant on his return to Baden would not be forced to resume his former citizenship; if he did it of his own accord, no renunciation would be allowed or a fixed term of residence required for the recognition of recovery of former citizenship. In the protocol of the treaty with Bavaria, it was stated that a naturalized citizen must have the Bavarian government's permission to resume citizenship there. The treaties with

44. Howe, Vol. II, 202.

Baden and Bavaria stood out because they were the only ones to establish, explicitly, the non-liability of returning emigrants to punishment for deeds committed before emigration.

While Bancroft was negotiating these various treaties, there came up for discussion inthe Senate in Washington, D. C. a House Bill on the Rights of Citizens Abroad.[45] This bill had been proposed in January, 1868, a month before the Naturalization Treaty was signed. Passed by the Senate with amendments which were accepted in turn by the House, the bill became a law on July 25, 1868. In essence, it proclaimed our support of the principle of expatriation declaring that naturalized citizens abroad should receive the same protection from this government as would native citizens. Section 3 of the new law was more forceful in tone. It authorized the President to demand the release of any citizen unlawfully held by any foreign government, and if this release should be delayed,"it shall be the duty of the President to use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate such release, and all the facts shall be communicated to Congress."[46] To one Senator's protest that the latter clause was vindicative, the reply came that stringent measures were imperative when foreign states continued to insist on allegiance from former subjects, now naturalized American citizens. Plainly the bill was a warning to other nations.

45. Congressional Globe (Appendix) 40th Cong., 2d. Sess. 4204.

46. Ibid, 4445.

As far as Great Britain was concerned, this warning was not necessary. The British Minister had, as we have seen, been keeping watch over our negotiations with North Germany, with the determination to abide by the result of the treaty. One of the immediate results of the signing of the Naturalization Treaty of 1868 was the renunciation by England of her claim to indefeasible allegiance, and to the right to impress into the British service a former British subject who had become an American citizen. An Act of Parliament and a treaty with the United States in 1870 committed Great Britain to this change of doctrine. Thereafter, the act of naturalization in a foreign country automatically released an Englishman from his natural citizenship. In case there was a difference as to a man's true citizenship, the man might be allowed to choose.[47]

In considering the results of Bancroft's diplomacy, one must include the actual relieving of the German-Americans from military service in Germany. Although marking a new epoch in international law, the treaties did function very successfully in the first decade after their formation. To illustrate their practical operation, Mr. J. C. B. Davis, American Minister to Berlin, reported in 1875 that since 1868 there had been only thirty-five military cases in all in which the German authorities had set up a claim.[48] Eleven of these were adjusted without any intervention of the American legation. In three cases, the latter declined to intervene finding that the

47. The United States' regulations as to the expatriation of American Citizens did not appear until the law of March 2, 1907.
48. Foreign Affairs, 1875-'76, Part 1, 566. Mr. Davis to Mr. Fish, Aug. 23, 1875.

claimant was in the wrong and the German government in the right.[49] Of the twenty-four remaining, all of which were brought to the attention of the German Foreign Office by our minister, three were still pending. Only in three cases, among the twenty-one settled did Germany refuse to release parties from service in the army, and Mr. Davis felt that she was justified.

In the caseof Henry Mumbour, the refusal was made mainly upon the ground that he had returned to Germany to reside with the intention of remaining there. This action, it was contended, operated under the treaty as a renunciation of his naturalization. Verification of this fact lay in his own statement to that effect, made before the tribunal occupied with the investigation of his case. [50]

Carl F. Selbach, another defendant, had, it appeared, returned to Germany immediately following his naturalisation. Thereupon, he had gone into business in Mannheim with his father. Shortly before the expiration of two years' residence, the German authorities notified him that should he prolong his residence beyond two years, he would be regarded as having forfeited his naturalisation.

49. One of these, Anton Stack was actually on the army rolls, and absent on furlough at the time of his emigration. In other words, he was a deserter from the Bavarian army - a purely military offense not affected by the treaty. A second claimant, Charles Rosenthal, had by his own admission procured his naturalization through fraud. He had resided only four years in the United States and had not been in the army.

50. The naturalisation treaties gave a German-American the right to expatriate himself upon living two years in his native land. The treaties did not provide that such a residence would work an expatriation.

Accordingly, Selbach, who continued to stay, was ordered into military service at the end of the time limit. Again offered the opportunity of returning to America, he refused, and was then put in the army. He served a short while before deserting, pending the decision upon his application.

In the third case, Jacob Weich had been actually summoned to perform military duty in the army of Baden when he emigrated. Technically, in the opinion of the military heads, he was a deserter and this decision was adopted by the German Foreign Office in its note to the American Legation. To this statement, the American minister could make no objection for even before the conclusion of the naturalization treaties, that is, in 1859, Lewis Cass, Secretary of State had instructed the United States' Legation in Berlin that, where a person had before emigration been actually summoned to do military duty and had disregarded the summons, he became subject to the military jurisdiction, notwithstanding subsequent naturalization.[51]

An occasion for general satisfaction on the part of the United States in the working of the Naturalization Treaties was expressed in a report of the Committee of Foreign Affairs of the House of Representatives on February 16, 1876.[52] Investigation had shown that much of the evil involving our German naturalized citizens on their return to their native land had ceased to exist since the formation of the agreements.[53] The German government was praised for carrying out

51. Op. cit., 567. Mr. Davis to Mr. Fish, Aug. 23, 1875.
52. House Reports, 44th. Cong., 1st. Sess. No.96.
53. Von Bulow of the German Foreign Office, in his note of Nov.16,1874, expressed the determinationof the Office to decide in our favor every case where bona fides were apparent in the naturalization of the applicant.

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their provisions" with scrupulous honor and good faith". The remiss-ion of numerous penal sentences against German-Americans immediately after the enactment of the treaties was one evidence. Another was the German acceptance of Bancroft's interpretation of the fourth article: namely, that "the naturalized American who has the appearance of having obtained the naturalization solely to escape military service should have a right to establish his sincerity by electing to take up his residence in the United States".[54] This right had been offered to Carl Selbach and others. In all cases since 1868, Germany had recognized the necessity of some reasonable preliminary notice of an intent to put in force the provisions of the treaties. With equal judiciousness, the United States had sought to protect only those naturalized citizens who had not been guilty of military offense before leaving their native land or had not acquired American Citizenship merely to perpetrate a fraud.

Statistics bore out the effectiveness of the Treaties. The Almanach de Gotha for the year 1878 gave the number of citizens of the United States residing in Germany and counted among its population as 10,698. It was estimated that the number of Americans arriving annually from the United States in the German Empire amounted to 15,000, of whom about 13,000 returned in the same season, leaving about 1500 as sojourning or temporarily abiding in the country and about 500 added to the class of those whose residence seemed to be definite. Under

54. Foreign Affairs, op. cit., 568

the operation of this state of things there were large and steadily increasing colonies of Americans scattered throughout the German Empire. Three-fourths of the number were persons of German birth naturalised in the United States.[55] And yet with these large colonies in Germany, with a whole male population under 43 in arms, with the natural jealousy excited against those who claimed exemption, and with the frauds known to exist in obtaining this privilege of exemption, only thirty-five naturalization cases were brought to the notice of our minister in Berlin from 1868 to 1875.[56]

Further satisfaction with the working of the naturalization treaties was expressed by Mr. von Philipsborn of the German Foreign Office and Mr. Nicholas Fish, chargé d' affaires ad interim, in an interview on July 1, 1877. At this time, von Philipsborn said that although some persons in Germany had desired to denounce the treaty he did not think there was much in the wish. Mr. Davis, who was present also, remarked that so far as he knew there was no inclination in America to denounce it, but, on the contrary, a desire to extend

55. House Reports, op. cit.

56. The Constitution of the Empire of April 16, 1875 prescribed that every German owing military duty in general from his completed 20th year to the beginning of his 28th year, belongs to the standing army; the first three years to the flag, the last four years to the reserve, and the following five years to the landwehr. Lastly there was the landsturm in which they were again classed until the expiration of their forty-second year.

the treaty with North Germany so that there should be only that one treaty for the Empire.[87] This desire had been expressed in the fore-mentioned report of the Committee on Foreign Relations on February 16, 1876, which report had been occasioned by a House Resolution inquiring the expediency of giving to the German Empire a notice terminating the Naturalization Treaty of 1868. The Committee had counseled strongly against any termination suggesting, instead, the proposed extension.

87. Foreign Affairs, 1877-1878, 258. Memorandum of the interview on July 1, 1877.

The year 1877 was an exemplary one as far as naturalization cases went. In the six months from January 24 to July 24 there had been but four new cases presented for the consideration of the American Legation. Of these, three had been decided in accordance with the request of the United States' Legation, and the fourth was still pending. In addition, to the falling off in the number of cases calling for diplomatic intervention, there had been a marked diminution in the number of complaints of our naturalized citizens on the score that the local authorities failed to respect their certificates of naturalization. Comparing the January to June period of previous years with the one in 1877, the latter has the fewest number of new cases dealing with the status of naturalized citizens. As an illustration, consult the following table:

1871	1872	1873	1874	1875	1876	1877
5	5	7	6	13	11	4

Undoubtedly the local authorities were better informed as to the rights of our naturalized citizens. Moreover, the inborn jealousy of the local officials over the large number of Germans who emigrated to the United States in 1871 and in 1872 and which was expressed in the rigorous enforcement of the naturalization treaty in 1875 and in 1876 had somewhat subsided.[58]

58. Ibid, 257. Mr. Nicholas Fish to Mr. Evarts, July 24, 1877.

No noticeable rift in the operation of the Treaties of 1868 occurred until the year 1879 when the United States' Minister at the Berlin Legation, Andrew D. White, began to experience difficulties in furthering the settlement of certain naturalization cases. The circumstances were these:

On February 27, 1879 application was made to the German Foreign Office on behalf of Michael Paquet, for the remission of a military fine. No answer was received. Attention to the case was again called on June 3 and on November 26, 1879 with the same negligible result.

On March 10 of the same year, there were presented the complaints of the brothers Franz and Theobald Hess who were subjected to fines. On March 31, the German Foreign Office promised that the two cases would be investigated. Nothing further having been heard, attention was again called to them on October 3, 1879.

On November 21, application was made in behalf of Joseph Lauber, who had been fined and ordered to leave. On the 27th of that month, the German Foreign Office sent word that an investigation had been ordered. Similar replies had been received from the Foreign Office in the case of Alphonse Sester, of February 9 last; of Alois Fischer, February 12 last; and of J.P.Q. Schaug of March 20th last. [59]

59. Ibid, 1880-81, part 1, 442-3. Mr. White to Mr. Evarts, Sept.1, 1880.

Inasmuch as cases, apparently similar, arising in various other parts of the Empire were concluded in the usual time, the delay in the cases above mentioned, all of which pertained to Alsace-Lorraine, pointed to a change in policy. At first, however, Mr. White attributed these omissions to conditions in the above mentioned provinces, where affairs were not quite as stable as in the older parts of the Empire. Too, he felt that another cause for delay might easily be the many changes taking place in the personnel of the German Foreign Office in the latter part of the year 1879. Upon the death of Herr von Bulow, Minister of State and Secretary of Foreign Affairs, on October 20, the duties of the ministry were sometimes discharged by Mr. von Philipsborn and sometimes by Mr. von Radowitz. Finally the responsibility was transferred to Prince von Hohenlohe Schillingfurst who, though Ambassador at Paris, was also Minister of Foreign Affairs ad interim. But as the cases became morenumerous, and as the usual notes and interviews proved entirely ineffectual, Mr. White felt that there was more behind it. Accordingly on October 13, 1879, he sent a note to von Philipsborn asking for distinct information as to whether the principles laid down in certain circulars in execution of the Treaty of February 22, 1868, with the North German Confederation, addressed by the Prussian Minister of Justice and of the Interior on the fifth of July 1868 were to be observed in Alsace-Lorraine". 60 This request was intended to draw a declaration

60. The circular of the Minister of Justice of July 1868 read: "In concluding the treaty of the twenty-second of February of this year, agreed upon between the North German Confederation and the United States of America, respecting the nationality of emigrants, it was the prevailing intention that in conformity to the second article of that treaty the punishment incurred by punishable emigration is not to be brought to execution on occassion of a return of the emigrant to his original

country if the returning emigrant has obtained naturalization in the other country in conformity to the first article of said treaty". The circular of the Minister of Interior was similar.

from the Imperial German Government as to whether the treaty in question applied to Alsace-Lorraine.

The decision of the German Government was rendered in connection with the case of John Schehr, a native of Alsace-Lorraine, who emigrated to the United States on October 28, 1873; was naturalized on September 3, 1879; and returned to Germany the same month. Soon after his arrival, that is, on December 31, 1878, he was summoned by the local authorities to pay a fine of six hundred marks for the non-performance of military duty and was allowed only ten days to pay it. The American Legation sent a remonstrance to the German Foreign Office on October 13, 1879. On the eighteenth of October, the latter promised an investigation. October the twenty-fifth, Schehr wrote the Legation asking if he might return to America; the Legation agreeing, he left on the twentieth of December, leaving his forwarding address. No answer was received from the German Foreign Office until August 5, 1880 when the Legation was informed that the Naturalization Treaty of 1868 did not apply to Alsace-Lorraine since that province at no time constituted a part of the North German Confederation or belonged to one of the South German States.[61] Consequently Schehr must be considered as owing allegiance to Alsace until, having been absent ten years, he lost his German citizenship under the general law of Germany. A forcible protest against this

61. Meaning Bavaria, Wurttemberg, Baden, South Hesse.

decision was addressed by Mr. White to the Foreign Office on August 28, 1880 and the correspondence reported to the Department of State on September 1, 1880.[62]

In his protest to Prince von Hohenlohe, Mr. White listed the following considerations:

1. In view of the development of the North German Confederation into the German Empire and the incorporation of Alsace-Lorraine with the latter, a very strong argument could be made in support of the proposition that the Treaty of 1868 between the United States and North German Confederation became binding upon the Empire which was developed out of the said Confederation, and especially upon the new acquisition of territory made by the same controlling power which originally signed the treaty.

2. This view was announced by Mr. Bancroft at the establishment of the Empire as one which both parties agreed to and in his correspondence he declared that it was undisputed by the Imperial German Government.

3. Bancroft's construction was upheld by the Imperial Government for nearly ten years in notes on naturalization cases, bearing the dates subjoined:

a. August Mely, note of March 20, 1873.

b. Simon Weil, note of June 7, 1875.

c. Benjamin Bechker, note of March 6, 1878.

62. Foreign Affairs op. cit., 456.

63. Ibid, 445. Mr. White to Mr. von Hohenlohe, Aug. 28, 1880.

d. Joseph Wachermann, notes of June 11, August 23, 1878 and of July 24, 1879.

e. George Wehring, note of December 16, 1878.

f. Elie Bloch, notes of January 25, 1879, and of July 13, 1879.

g. Edmund Klein, notes of January 26, April 28, 1879.

h. Frank Lutz, note of January 31, 1879.

i. George Steig, note of April 9, 1880.[63]

These nine cases, with the exception of those of Lutz, Mély and Wachermann, were decided in favor of the United States and, with the exception of Mély, were presented on the basis of the Treaty of 1868. In not one of them was a favorable decision rendered on the ground of ten years' absence from Alsace-Lorraine or on the ground of a previous discharge from Alsace-Lorraine citizenship, and in not one, as far as the documents in the various cases show, was it possible to put in such a plea. Not one of these naturalized American citizens had been absent from Alsace-Lorraine for ten years.

d. The decision in regard to Mély, although decided adversely for him, illustrates that the Imperial Government considered the treaty of 1868 as applying to Alsace-Lorraine. The circuit director of Saarbuig in charge of the case informed Mély, seemingly in accordance with von Bulows' views, on March 22, 1877 that: "the treaty concluded between Germany and America on the

63. Ibid, 445. Mr. White to Mr. von Hohenlohe, Aug. 28, 1880.

twenty-second of February 1868 applies also to all persons emigrating to America and returning thence who were born in Alsace-Lorraine". 64 White possessed a copy of this communication which he sent to Prince Hohenlohe.

Since this construction of the treaty has been acquiesced in and adopted by both parties during nearly ten years, the United States has considered it settled. Former natives of Alsace-Lorraine, innocent of any changes in policy, are apt to return there, and be arrested, fined or placed in the army, or summarily expelled. Being unprepared the detriment to their business and their families will be greater.

6. Under the same circumstances, a large number of naturalized citizens of the United States, formerly residents of Alsace-Lorraine, are liable to be subjected to great hardship by the imposition of military fines for which they are unprepared. They would thus be virtually punished by a law ex post facto in character.

7. The former construction inflicted little hardship on authorities of Alsace-Lorraine. Records of the Imperial Office show the number of cases in the last few years to be small, averaging about two cases a year, and there are no signs of increase.

64. Ibid, 446

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The Department of State strongly upheld Mr. White in his stand on the question yet his logical presentation proved of no avail. In reply to the minister's protest, Count Limburg-Stirum, Minister in charge of Foreign Affairs, said there could be no change in Germany's recent decision. However, he did indicate that the Imperial Government was ready to enter into negotiations regarding an additional treaty for Alsace-Lorraine. Arguing that the existing treaties were more to the advantage of the United States than of Germany, he suggested that the former propose the negotiations.[65]

From December 1878 to December 1879 twenty-six new cases on the status of naturalized citizens were up for decision. Seven of these were settled unfavorably for the American Legation - three justifiably so, two of the men proving to be deserters and one having committed an offense against the civil laws. The other four were decided under the new ruling of the German Government that Alsace-Lorraine was not covered by the treaty of 1868.[66] In two retro-active cases in 1880, the men were freed. One, Aaron Weill, a native of Alsace-Lorraine who had been naturalized in the United States in December 1879, had returned on January 1, 1880 to his old home at Reichshofen.[67] Shortly after that he was officially notified that in 1877 a fine of 600 marks had been imposed upon him because he did not present himself for military service,

65. House Reports, 48th Cong. 2nd Sess., Vol. I, No. 2590. Even the United States admitted that this was so. An expression of this is found in the report of the Committee on Foreign Relations in 1885.

66. Foreign Affairs, op. cit., 450. Mr. White to Mr. Evarts, Oct. 18, 1880.

67. Weill had emigrated to the United States on Aug. 22, 1872 when 17 yrs. old.

a fine which he refused to pay. On the fifteenth of June, he was further informed by the local authorities that he must either perform military service or leave the country within four weeks. Failing to do either, he was put in prison at Reichshofen. Mr. White immediately represented the case to Count Limburg-Stirum who with some hesitation finally agreed to interfere.[68] On the grounds of his having had no reason for believing that the Treaty of 1868 would not continue to apply to him, Weill was released from prison on November 3, 1880 and his fines remitted. The case of Alois Gehres, likewise originally a citizen from Alsace-Lorraine was settled similarly in that same month. These two cases seemed to indicate that the refusal to extend the benefit of the Treaty of 1868 originated in the province and had not been indorsed by the ministry of state in Berlin.[69]

A further bearing on the question was furnished by the edict on August twenty-third 1884 of the Statthalter of Alsace-Lorraine. The fore-mentioned document decreed that the utmost penalty for foreign citizens, in case they declined to resum German nationality was expulsion from the province. Moreover, unmarried foreigners would be allowed to remain during good behavior and should they marry, even their children might be allowed to remain until reaching military age. There was no sugges-tion of fine or of imprisonment as a penalty for avoidance of military obligation by emigration.[70] Yet in 1884, Charles Ludwig George, born

69. Foreign Affairs 1 op. cit., 461. Mr. H. Everett to Mr. Evarts, Nov. 22, 1880

70. Ibid, 1885 - 86, 421. Mr. Bayard to Mr. Pendleton, July 7, 1885.

68. His given reason for the hesitation was that a release depended upon the con-current assent of various authorities and that he had little power in the premises.

in Alsace -Lorraine of a father who was a naturalized American citizen and later naturalized in the United States himself, on his return to Alsace-Lorraine was arrested and thrown in prison for forty days. On his release, he was forced to pay the costs of his imprisonment, although he had been put to work at hard labor. Germany refused to recognize his American citizenship on several counts. In the first place, it was claimed that by the virtue of the French law of 1851, George was a French citizen and became a German subject by the acquisition of Alsace-Lorraine.[71] Accordingly, the law of June 1, 1870 "concerning the loss and acquisition of nationality in the North German States and in the various states thereof" applied to him.[72] George had not been absent abroad the ten years designated therein. Secondly, as the Bancroft Treaties did not apply to Alsace-Lorraine, their provisions had no bearing on his case. After much insistence on the part of the United States 'Legation, George was pardoned and his fines remitted.

That the United States did not ignore entirely the suggestion of Count Limburg-Stirum that it open negotiations regarding a new treaty was demonstrated by the Resolution of the House of Representatives (H.Res. 106) in 1888 to terminate formally the Treaty of Naturalization with the North German Union and to provide for a new treaty with the German Empire. The resolution was referred to the Committee

71. Ibid, 1886-87, 325. Count Bismarck to Mr. Pendleton, Mar. 26, 1886.

72. This law, originally applicable to the North German Confederation, was by law of January 8, 1873 made applicable to Alsace-Lorraine.

on Foreign Affairs who, deciding that the effort to negotiate a new treaty would of itself operate as a termination of the present one, submitted the following resolution with the recommendation of its passage:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, requested to take the necessary steps towards negotiating a treaty with the German Empire securing more liberal and just provisions in reference to the respective rights of citizens - native born or naturalized - of the United States and the German Empire.[73]

In 1885, the Committee on Foreign Relations in the House of Representatives submitted a similar report on H. Res. 39, introduced by Mr. Samuel Cox, as to giving notice to the North German Confederation to terminate the treaty of February 22, 1868. Maintaining that the Bancroft Treaties were "a great achievement of American diplomacy which has made a breach in an old feudal principle of monarchical states", and secured real and substantial benefits to our citizens whereas what the United States granted reciprocally was only imaginary and unreal, the Committee argued against a notice to terminate the treaties.[74] This point was quite true. Germany had recognized the right of her subjects to dissolve their allegiance to their original

73. House Reports, 47th Cong. 2d. Sess., No. 1893.

74. House Reports, 48th. Cong., 2d. Sess., No. 2590, p. 5.

states without the consent of the latter and to transfer it to the United States. Germany had bound herself to recognise such emigrants as American citizens and not to hold them for punishable emigration or evasion of military duty. As a consideration for such privileges, the United States had yielded merely that as contained in the first article of the treaty:

> "Reciprocally, citizens of the United States of America, who become naturalized citizens of the North German Confederation and shall have resided uninterruptedly within North Germany five years, shall be held by the United States to be North German citizens, and shall be treated as such."

The Committee reiterated the opinion of previous Committees of Foreign Relations (1876 and 1883) that our government should not protect young Germans, who came over here merely for the purpose of returning shortly to the Fatherland, where they would be exempt from all citizen duties. Arguing that it was obvious that the treaties intended to protect only such emigrants as emigrated without the consent of the government and sho have evaded their military duty (for those who emigrated with governmental consent after having fulfilled their duties did not need any protection), and who returned while yet of age to do military duty, the fourth article of the naturalisation treaty might be amended to read as follows:

> "If a German, who, without the consent of the Government of his native state has emigrated, owing military service to his native state at the time...and who has been naturalised as an American citizen in accordance with the

provisions of the treaty, shall renounce his residence in Germany and shall there reside longer than two years, he may be held not to have the intention to return to the United States, and that he has renounced his American citizenship:

Provided: That he has not yet consummated the 31st. year of his age, the term to which the military duty law of Germany makes German subjects liable to military duty:

And provided further, That in such cases no prosecution for unauthorized emigration shall take place, even if the emigrant shall have ceased to be an American citizen." [75]

A prolonged discussion as to the correct interpretation of Article IV of the Naturalization Treaty of 1868 arose between German and American diplomats in the year 1885. [76] In February of 1885, the Government of the United States raised a series of objections against the justice of those decisions which had been arrived at by the Imperial Government with respect to former subjects of the Empire who had returned to Germany after naturalization and a sojourn of five years in America, as well as respecting the sons born in the United States of such subjects. The case of Ferdinand Revermann, who came under the latter

75. Ibid. p. 6.

76. The article read: "If a German naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American naturalized in North Germany renews his residence in the U. S. without the intent to return to North Germany, he shall be held to have renounced his naturalization in North Germany. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country."

classification and whose expulsion from Germany had been ordered, had been made the occasion on December 31, 1884 for a declaration by the Imperial Government of two rules to be hereafter observed. These rules were as follows:

> 1. Fathers naturalized in America and returning to Germany to reside, and sojourning there for more than two years, are to be regarded as having renounced their naturalization, under the provisions of the treaty of 1868.
>
> 2. But minor children of such parents born in America will be recognized as retaining their American citizenship, uninfluenced by the father's renunciation of his naturalization; and they cannot be made to perform military service in Germany; but their sojourn in Germany may be refused, under the principles of international law, when the same may be required in the interest of public order. [77]

In connection with declaration no. 2, the German Foreign Office stated that inasmuch as the provisions of the treaties of 1868 did not extend to the minor children of persons naturalized in America, the legal status of these children should be judged by the principles of law governing in the United States. And American law, as far as the Foreign Office understood it, did not stipulate that the renunciation of American naturalization by the father act upon his minor sons also. [78]

77. *Foreign Affairs*, 1885-86, 393. Dr. Busch to Mr. Kassan, Dec. 31, 1884.

78. Revised Statutes, Sec. 2172 reads: "The children of persons who have been duly naturalized under any law of the U.S. - being under the age of 21 at the time of the naturalization of their parents shall, if dwelling in the U.S., be considered as citizens thereof."

The official protest of the United States on February 25, 1885 to the German Foreign Office against the two rulings of December 31, 1884 dealt primarily with Germany's interpretation of the "two years" clause. Admitting that the fourth article of the treaty of 1868 recognized the renunciation of the newly acquired citizenship by a total abandonment of the intention to return to the country where the new citizenship was acquired, the United States held that it did not affirm the restoration of the original allegiance. Experience had shown that there were many naturalized American citizens who resided in Germany for more than two years, with the constant intent to return to the United States. The pursuit of business or study often necessitated this residence. And such a practice had continually "served to cultivate the relation of commerce and friendship between the two countries." 79

In regard to the provision concerning the American born children of the naturalized citizens, the official protest expressed its satisfaction in the Imperial Government's recognition of the "unconditional and durable American citizenship of these children". But it deplored Germany's decision to refuse them sojourn there, and considered this opposed to the letter and spirit of other treaties. Maintaining that it was really a question of native citizens of the United States (since there can be no distinction as to them based on the national birth of the parents), Mr. Kasson referred to the first article of Treaty of 1828 between the United States and Prussia wherein it was provided that the inhabitants of the respective states "shall be at liberty to sojourn

79. Foreign Affairs, op. citl. 405. Mr. Kasson to Dr. Busch, Feb. 25, 1885.

and reside in all parts whatsoever of said territories, in order to attend to their affairs." Aliens by birth could not possibly be using their American citizenship as a means of avoiding military duty because as aliens they owed no such duty. "There could be no offense to public order in the non-performance of a service which neither the local law nor the law of nations imposed."

The German Foreign Office replied to the American protest in its note of May 16, 1885. Denying that the note of December 31, 1884 had implied that the expiration of two years residence would have the effect of restoring the former allegiance, Count Hatzfeldt stated that the position of the German Government was rather that the persons to whom Article IV applied were to be regarded as neither American nor German citizens.[80] In other words, they possessed no nationality. But in this contingency, Count Harzfeldt continued, as former subjects of the Empire, they would still not be free from military duty in Germany. On the contrary, they were subject to this duty under Section XI of the Imperial Military Law of May 2, 1874. While relying on the optional language of the third clause of Article IV of the Treaties, the note expressed assurance that the German authorities, in the application of the treaty, would allow "all reasonable consider-

80. The actual wording of the note in this connection was: "As regards the father of such sons, no doubt can exist that they are to be regarded as having renounced their naturalization by a longer sojourn than one of two years, pursuant to the treaties regulating nationality of 1868, concluded with the United States".

ation to prevail". As to the contemplated expulsion measures against the sons of naturalised Germans, the note argued that it was an internationally recognized right of every state to remove foreigners from its midst when their further sojourn in the country appeared to be undesirable. This right was not abolished by such provisions as Article I of the Treaty of 1828 which was common to most treaties of amity and commerce then in force. Furthermore, in recognizing the American nationality of the sons in question when the Father had lost his American nationality, the German Government had come in conflict with the legal view, long inherent in its legislation, that minor children under parental control share the nationality of the father. In other words, the note inferred, the United States should be thankful for such a concession. [81]

This German view on the right of expulsion was upheld by Count Kalnoky, the Austrian premier, in a speech made before the Austrian Chamber on November 10, 1886. Questioned as to the number of Austrians recently driven out of Germany, he remarked that the Prussian Government had assured the Cabinet of Vienna that the utmost indulgence would be exercised towards Austrian subjects liable to expulsion. "For the rest", said Count Kalnoky, "we have endeavored

81. Foreign Affairs, op. cit., 417. Count Hatzfeldt to Mr. Coleman, Berlin, May 16, 1885.

to find a legal ground for protest against these expulsions, but have found none. Every state is free to deal with foreigner according to its own municipal laws, and treaties of commerce do not in any way curtail this liberty. We are sorry for these expulsions, but cannot see that the Prussian Government has in any way violated international obligations." 82

An article in the Berlin Staatsburger Zeiting of Sunday, November 15, 1885 was significant in its expression of the views taken by many Germans of the power of expulsion. These views strongly supported those of the government. 83

To quote:

> "Young German-Americans are usually given the choice, either to return to America or to perform the duties here of a German subject, if they draw special attention to themselves. The so-called Bancroft Treaty which regulates this subject, provides that the German who has become an American citizen and then returns to Germany shall be considered an American citizen for two years, but afterwards shall be held to be a German subject again. This provision, clear as it seems to be, is subject to question, and has given rise to differences of opinion as to its meaning. Whilst Germany claims that the native German who

82. Extract from the London Times, Nov. 11, 1885.

83. The German press was controlled to a great extent by the government.

acquires American naturalization becomes again a German after two years. America asserts that even after the lapse of two years there is needed some especial indication of his surrender of his American citizenship, and out of this spring up many differences. But they have always in some way been reconciled. That a young German, who shortly before he is required to enter the army, leaves Germany and returns immediately after the lapse of five years, which are necessary for American naturalization, to snap his fingers in the face of the Government, should be held either to perform his military duty here or to return to America, even the American newspapers find entirely right. They are not mild in their judgment over those who wish to enjoy the rights of citizenship in two nations, and to perform the duties of citizenship in neither. They have no sympathy with those of whom they with right declare that they would be just as ready to claim German protection if it would avail to screen them from the performance of a duty to the United States."

The problem of the status of American naturalized citizens in Germany did not change materially from 1868 to 1898. The German government adhered to its denial of the application of the naturalization Treaties of 1868 to Alsace-Lorraine.[84] Nor did it abate in

84. Foreign Affairs, 1892-'93, 193 Mr. Coleman to Mr. Blaine, Feb. 20, 1891. This denial was reaffirmed in 1891 in the case of Charles E. Heintzman.

its vigorous enforcement of the "two years' residence clause" where a man of military age was concerned. German police authorities began in 1888 to require passports of all foreigners who remained in that nation for more than a few weeks.[85] Due to the attempts of some of our naturalised citizens, residing in Germany, to secure these passports from the American government for fraudulent purposes, such as the releasing of their minor sons from compulsory military training, there were frequent interchanges of diplomatic correspondence on the matter between the two nations in the years from 1888 to 1898.[86] Any real difficulty on this one point was avoided by the established practice of the United States to grant passports only when the applicants produced evidence of their intention to return and to reside in the United States.[87]

The majority of the cases which were brought to the attention of our Legation in Berlin in the period from 1885-1898 were military ones. However, there was an interesting exception to this in 1888.

85. Ibid., 1888-89, 616 Mr. Pendleton to Mr. Bayard, Feb. 22, 1888.

86. A case of this kind occurred in 1888 when Solomon Ulmer, a naturalised citizen of the U. S. who had subsequently resided for thirty years in Bavaria, applied for a passport application for himself and his son, the latter born in Germany. The son was 19 years old and would soon be liable for military training. The plea of Ulmer was the intention to return to the United States in the course of one or two years." The application was denied.

87. Foreign affairs, 1894, 245 - Mr. Gresham to Mr. Runyon, Nov. 1, 1894.

A Mrs. Honey, the wife of an American in Rhode Island, was temporarily residing at Frankfort-on-the-Main with her daughter, on the income she received from her husband, which income was derived from properties in the United States; the German government levied an income tax. After due investigation, the tax was discontinued and the amounts collected returned when it was ascertained that Mr. Honey paid taxes in Rhode Island on the source of her income.[88]

The question of income taxes had arisen before the case of Mrs. Honey. In 1874, several American naturalized citizens, residing in the German Empire, disputed the right of the German government to impose such a tax upon them, particularly when this income was derived from investments in the United States. Having protested in vain to the German authorities, these individuals wrote to Mr. Davis soliciting his aid in avoiding the tax. This minister, although not in sympathy with their stand, wrote to the Secretary of State, Hamilton Fish, for instructions on the matter.[89]

The latter's reply was judicious and direct stating that "the power to impose taxes is an attribute of sovereignty". He reasoned that an income tax might be properly assessed against an alien resident in Germany. The United States had done much the same thing in the act of March 2, 1867, wherein it was provided:

88. Ibid, 660. Mr. Reves to Mr. Pendleton, Oct. 20, 1888.

89. Ibid, 1873-1876, 479. Mr. Davis to Mr. Fish,
October 13, 1874.

"That there shall be levied, collected, and paid annually upon the gains, profits, and income of every person residing in the United States or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax . . . . . ."

Inasmuch as the parties complaining were all residents of Germany (by their own admission) and as the tax was uniform in its application and not by any means an unfair imposition, Fish advised Davis that no successful or consistent repres entation could be made to the German government in their behalf. The Secretary of State did not admit that an income tax could be collected from non-resident aliens, (like Mrs. Honey) but he did determine that the status of a naturalized citizen of the United States would not exclude an individual residing in Germany from paying an income tax. And at that, the matter stood for the duration of the century.

90. Ibid, 489. Mr. Fish to Mr. Davis, Nov. 21, 1874.

III

COMMERCE

The rise of commerce as an issue in the diplomacy of Germany and the United States in the last three decades of the nineteenth century was one of the innovations of that century. Earlier commercial relations between Prussia and the United States had been based largely on sentiment; both were agrarian nations and contact between the two was so remote as to necessitate little else. The first commercial treaty negotiated by the two had been the Treaty of 1785, sometimes called "the beautiful abstraction" because of its proclamation of the then fanciful doctrine of "free ships make free goods".[91] It was the only one, of the four commercial treaties secured by our young nation by 1785, to support so fully the rights of neutrals. Decidedly impractical, one of its provisions decreed the abolishment of privateering which at that time was most important to the United States as a means of national defense. This treaty was ratified in 1786 and continued in force ten years.

The Treaty with Prussia of 1799, concluded at a time when the United States was dangerously near a war with France, although omitting to include the principle of "free ships make free goods" was equally idealistic.[92] The two countries proposed "after the return of general peace, to agree, either separately between them-

91. Mr. Fish, "German-American Diplomatic and Commercial Relations Historically considered", Review of Reviews, March 1902, 323.

92. President Adams had tired of trying to maintain this principle when Great Britain and France recognised it only at convenience.

selves or jointly with other powers alike interested, to concert with the great maritime powers such arrangements and such permanent principles as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars". A second new feature of this treaty was the insertion of a list of goods, which the parties had agreed upon, as contraband in war-time. In this connection, it is interesting to note that Prussia refused naval stores on the grounds that she manufactured them and that they were not on the Prussian code of contraband. The Prussian minister suggested instead that, if contraband goods were to be enumerated, the list contained in the Anglo-Russian treaty of 1766 be adopted. Adams reluctantly agreed to this in view of the fact that Prussia had relinquished the point of "free ships make free goods".[93]

The first of the reciprocity treaties with the German states was the Treaty with Prussia of 1828. The main feature of this treaty, as well as of all the so-called "Clay Commercial treaties", was the incorporation of the new principle of absolute reciprocity of tonnage dues. Whereas the pendulum of tariff legislation in America had swung, since 1789, from tariff for revenue only to protection, the trend regarding tonnage duties had been from discrimination to reciprocity, first as regarded direct trade (1815) and then later (1826) as regarded both direct and indirect trade.[94]

93. Fish, op. cit., 324.

94. The culmination of this movement was exemplified in the "Tariff of abomination" of 1828.

Remaining in force throughout the 19th century, the Prussian-American Treaty of 1828 became important in German-American Commercial relations because of two Articles whose meaning came to be much disputed. Those articles were V and IX.

Article V, which was later incorporated in many of our commercial treaties, appeared for the first time in Prussian-American regulations. It was positive in character, stating that:

> "No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Prussia, and no higher or other duties shall be imposed on the importation into the kingdom of Prussia of any article the produce or manufacture of the United States than are or shall be payable on the like article being the produce or manufacture of any foreign country."

Article IX, found in most of our commercial treaties and in all our commercial treaties with Prussia, read as follows:

> "If either party shall hereafter grant any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, when it is freely granted to such other nation, or on yielding the same compensation when the grant is conditional."

Article IX, the most favored nation clause, was thus highly conditional. Opportunity was undeniably offered for a contracting party to claim concessions by virtue of the former article without taking into consideration the conditional character of the latter one.

The culmination of Germany's economic union in the formation

of the Zollverein - a tariff union including by 1834 practically all the states of the German Empire - seemed to make advisable the negotiation of a new treaty.[95] The Zollverein, although modifying the "free trade" Prussian tariff of 1818 by the imposition of heavier duties on iron and textiles, maintained a fiscal system not far removed from free trade.[96] Mr. Henry Wheaton, a distinguished writer on international law, was sent as representative to the various German states with the special duty of obtaining from the Zollverein a modification of its import duties on tobacco and rice. Unable to obtain these desires without making any concessions, Secretary Webster directed him, in 1843, to negotiate a treaty in which modifications of the American import duties were to be offered in return for the concessions granted by the Zollverein. A treaty, generally considered favorable to American interests, was signed Mar. 25, 1844. It was, however, shelved by the Senate on two counts: ("that it involved a change in revenue laws and that hence the right of initiation belonged to the House of Representatives; and (2) that the concessions were too dearly

95. The beginning of the Zollverein usually is dated from Prussia's treaty with Hesse - Cassel in 1828. In 1834 the South German States entered and gave it European significance. Some of the smaller principalities organized a union of their own, the Stenerverein, under the leadership of the Kingdom of Hanover.

96. The Prussian tariff of 1818 had allowed raw materials free or at a nominal figure and manufacturers were taxed 10%.

bought. The real reason, no doubt, was the proximity of the next Presidential campaign, an inopportune time, politically, to touch the tariff.[97] This compact was the first example of a modern reciprocity treaty negotiated by our government.

In 1846 the United States concluded with the state of Hanover a very favorable commercial treaty. It was achieved partly through the untiring efforts of A. Dudley Mann, sent in 1846 to Germany, Hungary & Switzerland as a "confidential minister" of the United States, for the purpose of procuring as many satisfactory trade agreements as possible with these countries and the individual German states and principalities. The treaty with Hanover contained liberal provisions as to the toll on the rivers Elbe and Weser as well as abolishing the import duty on raw cotton, and the transit duties on tobacco, rice, cotton and other American products.[98] The restricted reciprocity in regard to tonnage duties, found in the treaty of 1840 with Hanover, were extended to include all indirect trade, as was the case in the treaties of 1827 and 1828 with Hansa and Prussia. This commercial agreement was acceded

97. Fish, op. cit., 325. This reason was reported to be given by Secretary Calhoun in a private letter to Mr. Wheaton.

98. Charles Evans, Imports and Exports 1867-1883 (Washington: Government Printing Office, 1884), 214. The first exports from U. S. to Hanover as given in his table of exports from 1790 to 1850 were in 1847, being $6,469 worth.

to, with slight modifications, by the duchies of Oldenburg and Mecklenburg O Schwerin.[99]

As we have seen, favorable commercial relations with several of the German states and principalities were established before the Civil War. In spite of the inroads of the war on our foreign trade, these "relations" were soon resumed. Our trade with Prussia in 1865 was "very great", albeit a little one-sided. According to Mr. Wright, Minister to Prussia, the United States purchased, in 1865, five times the amount of Prussia that she did of us.[100] Lines of communication between the two were constantly improving. On April 1, 1866, the Hamburg Steamship Company commenced running a weekly line to New York. In addition, at this same time, the Bremen line was sending an extra steamer every month, giving the United States seven steamers per month from these two ports. On the first of January 1867, the Bremen Company was to begin its weekly line, thereby bringing into being a semi-weekly line to New York. Increased emigration to America was directly responsible for this enlargement of transportational facilities, but both cause and effect served to stimulate German-American commerce in the first few years after the Civil War.[101]

99. A treaty with Wurtemberg had been signed by the United States on April 10, 1844.

100. Foreign Affairs, 1865-66, part 3, 64. Despatch to Mr. Seward on Oct. 25, 1865.

101. Ibid, 1866-67, part 2, 9. Mr. Wright to Mr. Seward, Mar. 7, 1866.

In 1866, there was an immediate increase in our export trade with Germany. For example, in 1865, the total value of the American products shipped to German ports had been $19,994,560; in 1866, these figures had leaped to $26,398,700. In 1867, our exports there were valued at $27,041,609 and in 1868 - at $39,448,763. Successive years, with the exception of a lull from 1875 to 1881, continued to show an encouraginggain, as the table compiled by Charles Evans shows.*

The first commercial agreement negotiated between the German Imperial Government and the United States was the consular convention of December 11, 1871, respecting trade-marks and consuls.[102] Its purpose was to facilitate the carrying-on of trade between the two nations, defining the powers of the respective consuls and the rights of "examination and search". In operation, it was a distinct success. The only dispute, arising in connection with it in the latter half of the 19th century, occurred in 1880 when Germany protested against the arrest without a previous notification to the German Imperial Consul-general in New York of a cook on the steamer Mosel for the violation of American revenue laws.[103]

102. This was made possible, as far as the United States was concerned, by the law of July 8, 1870.

103. In this case, the deck officers of the German vessel had given their consent to the search of the vessel.

Evarts, our Secretary of State, replied that no discussion of the interpretation of the convention was necessary and that, thereafter, the proper German Consular office would be present at all searchings of German vessels.[104]

The most important event in the 1870's in relation to its effect on German-American commercial relations was Bismarck's breach with free trade in the year 1879. Heretofore, the commercial policy of Germany, dating back to the formation of the Zollverein, had been non-protective. Up to the seventies, German agrarions were interested economically in supplying England with enormous quantities of farm products, especially wheat, and of obtaining, in return, cheap manufactured goods. Hence, free trade was desirable. But with the great industrial unity and expansion which followed rapidly in the wake of the political unity of 1871, there came a gradual curtailment in the amount of agricultural produce available for export. With the influx of population into the cities, there were more people to be fed and less labourers on the farms to raise the food. Moreover, the United States, aided by improvements in its transportational facilities in the 1850's & 1860's, began to ship wheat, in large quantities, to England, and even invaded the German market. By 1878,

104. Foreign Affairs, 1880, part 1, 462. Von Schlozer to Mr. Evarts, Feb. 25, 1880.

Germany was the third largest importer from the United States - the United Kingdom being first and France, second.[105]

To rural Germany, the early years of the Empire represented a time of growing anxiety. The modest Zollverein duties on cereals had lapsed in 1865. Neighboring nations, as Russia & Austria-Hungary, were taking advantage of the non-tariff protection to flood the German market with agricultural produce. Accordingly, food prices began to decrease at an alarming rate. Political inequalities added to the rural discontent. When the right of combination was conceded to the urban worker in Prussia in 1869, it was withheld from the farm labourers who were too timid to turn Socialist, and who were effectively excluded from all political influence by the three-class franchise and the practice of open-voting. Even when the system of State-aided insurance was introduced, the rural labourer tardily and incompletely shared in its benefits. The plight of the agricultural worker appealed to Bismarck, himself the owner of two estates. In regard to this he said: "I am an Agrarian not because I am a member of a class, but because I see in the decline of agriculture one of the greatest dangers to our permanence as a state."[106]

105. Report upon the Commercial Relations of the United States with Foreign Counties for the year 1879, (Washington: Government Printing Office, 1880), 187.

106. Bismarck, Vol. II, 327.

Another factor, influential in causing the breach with free trade, was the industrial depression which, for five or six years preceding 1879, had burdened the Empire.[107] Everything had been reduced to the severest commercial requirement, production being brought within the circle of absolute demand. Expenses were cut down to the lowest living rates - capitalists and workmen sharing proportionately in those reductions; old stocks were disposed of even at a loss, if necessary. This had brought the country to that sensitive condition where the slightest improvement would be immediately felt. To illustrate, when the increased demand from the United States for iron and leather goods poured in upon Germany in the latter part of 1789, the entire industrial interest of the country awakened.[108]

The leaders of public opinion in Germany attributed the depression to her former free trade policy. They pointed out that surrounded, as Germany has been by nations which protected their own manufactures and excluded hers from their market, she was, under her free-trade policy, deluged with foreign manufactures which made German manufactures unprofitable. England, alone, was free to German manufactures; but as German competition in the English market was impossible, this "free market" availed her

107. Report, op. cit., 102.

108. The production of pig-iron, for example, in Germany in 1879 reached the highest level since 1865 and exceeded its export that year (433,674 tons) that of the following five years.

nothing, while England was able to stock the German market with British manufactures.

On the other hand, a large class in Germany believed that while the protective tariff of 1879 would help some branches of trade and manufactures it would destroy others, and that, on the whole, the evil effects would counterbalance the good.[109]

In her protective policy, Germany went further almost than any other country. German agriculture having shared in the general depression, and the cause of this depression being assigned to the competition of the United States and Russia in breadstuffs, the government considered that a tax levied on the importations of breadstuffs and provisions would enable the German agriculturists to reap some profit from the cultivation of the soil. The great consuming classes of Germany, however, protested against taxing their food supplies, which were already as high as their means would justify, but their protests and wishes were disregarded. The arguments advanced in support of the taxation of breadstuffs could be easily miunderstood. In this connection, Consul-General Lee wrote:

> "It is officially argued, in behalf of the duties which have been levied upon breadstuffs, that the agricultural industry of the country has arrived at such a languishing state that protective measures had to be resorted to in order to

109. J. A. Ford, The Correspondence of William I and Bismarck (London: William Heinemann, 1903), vol. I, 200.

save it from utter prostration. The present depression of agriculture is attributed to the superior powers of production of other countries, and their unrestricted competition with the German agriculturists. As an effect of the duties, the government confidently anticipates a gradual decrease in the imports and a corresponding increase in the production of agricultural staples. The apprehension that the duties will increase the cost of living of the producer is met by the assurance that there will surely take place at the same time an advance in wages. Moreover, rye and buckwheat, the standard breadstuffs of the poor, are not taxed, and, as for meat, the laborer, it is said, does not eat meat.

We are to understand, therefore, that the duties on wheat and on beef are intended as taxes on those who are able to pay them; in other words, that wheat, wheat-flour, and beef are not considered necessary to the German laborer."[110]

The imports into Germany during the fiscal year 1879 ending September 30, showed an increase of about $500,000 over the preceding year, while our exports thereto for all of 1879 showed an increase of $2,200,000 over the preceding year. Since the increased trade from the United States did not manifest itself until the latter part

110. Report, op. cit., 103.

of 1879, it is not included in the first estimate.

	Imports into Germany		Exports from Germany	
	1875	1878	1875	1878
U. S.	$49,466,000	$64,810,000	$40,247,000	$34,790,000

The new German tariff of July 15, 1879, although highly protective and embracing a variety of articles, was not discriminatory or prohibitory against American articles.[111] This information was furnished in a report by the Chief of the Bureau of Statistics in reply to a letter of the Secretary of the Treasury, dated December 27, 1881 "as to the duties imposed by Germany, France, and Mexico upon commodities imported into those countries from the United States." The Senate on December 21, 1881 had passed a resolution inquiring about the rates imposed by the German Government on cotton and cotton fabrics, iron and manufactures of iron, leather and leather goods and wool, including animal hair not elsewhere mentioned, and manufactures thereof. No discrimination in favor of the same articles imported from Great Britain was found to exist.

The Tariff of 1871 was followed by a great industrial revival which brought little relief to the farmer. In 1885, the duties on rye and wheat were trebled in alarm at the growing competition of the United States, the Argentine, and Russia.

The changes instituted in the act of May 22, 1885 to amend the Customs Tariff Act of 1879 were of considerable importance and attracted no little attention in the United States since the new

111. Senate Documents, 47th Cong, 1st Sess., no. 52, 2.

act was a further expression of Germany's recent adoption of the protective policy. The vote in the Reichstag for the Tariff of 1885 stood 187 to 139. The conservatives, the Reichspartei, the majority of the center, the deputies from Poland and the minority of the National Liberals voted for the increase of duties. The majority of the National Liberals, the Freisinnisen, the Social Democrats and the People's Party were against it. The duty on wheat and rye was raised to three marks per 100 kilograms (71.4 cents.) The tax on oats became 1.50 marks, on corn - 1 mark, on barley - 1.50 marks, on buckwheat, 1 mark. Cotton-seed was admitted free. The duty on petroleum, however, was not disturbed. Mineral lubricating oil, formerly free, was listed at $2.38 per 100 kilograms; spirituous liquors increased from $11.42 to $19.04; fresh and prepared meats from $2.85 to $4.76; mill products from $.71 to $1.78½; oysters, lobsters, etc. from $5.71 to $11.90; lard remained unchanged.[112] These rates not proving prohibitive enough, in 1887 the German tariff was amended again.

In the years 1885 and 1886, an occasion arose for the German diplomatic Office to appeal to the conditional nature of Article IX of the Prussian-American treaty of May 1, 1828. The immediate cause for the argument was the United States' shipping Act of June 26, 1884 "to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes." Section 14 of the Act (referring to tonnage tax) provided

112. House Miscellaneous Documents, 49th Cong., 1st Sess., no. 39, 664. Report of Consul-General Raine of Berlin on the Act to amend the Customs Tariff Act of July 15, 1789, approved May 22, 1885.

that vessels which sailed from a port in North or Central America, in the West Indian Islands, the Bahama, Bermuda and Sandwich Islands to a port of the United States should pay in it, in place of the previous tax of 30 cents per ton a year, only 3 cents per ton and not more than 15 cents per ton a year.[113] Section 14 also authorized the President of the United States to suspend the collection in our ports from any vessels arriving from any port in the Dominion of Canada, Newfoundland, the Bahama Islands, the Bermuda Islands, the West India Islands, Mexico, and Central America down to and including Aspinwall and Panama of so much of the duty at the rate of 3 cents per ton as might be in excess of the tonnage and lighthouse dues, or other equivalent tax or taxes imposed on American vessels by the Government of the foreign country in which such port was situated.[114] Subsequently, upon adequate investigation, this 3 cent tonnage tax was suspended for the Dominion of Canada, the West India Islands, Nicaragua, Columbia, Porto Rico, Panama and Aspinwall.[115]

No sooner had this been done than there came official protests from the Government of Belgium, Denmark, Portugal, Sweden, Norway, Italy, and Germany claiming for themselves the privileges of Section 14 of the Act of June 26, 1884.

113. Vessels from other foreign ports had to bear a tax of 6 cents per ton.

114. House Executive Document, 49th Cong. 1st Sess., no. 132, 1-5.

115. By proclamations of Presidents Chester Arthur and Cleveland: Jan. 31, 1885; Feb. 26, 1885; April 7 and Sept. 9th, 1885.

Mr. von Alvensleben of the German legation at Washington opened the correspondence with our Government in his note of August 3, 1885 requesting that German shipping might as soon as possible participate in the unconditional favor of an abatement of the tonnage tax to three cents. The German minister based his claim on Article IX of the Prussian-American treaty of May 1, 1828 which he said had figured lately in the correspondence between the cabinets of Berlin and Washington concerning the petroleum railroad rates, as well as the Spanish-American treaty concerning the trade of Cuba and Puerta Rico and had therein been successively asserted by both Governments to be valid for all Germany. The same provisions were to be found in our agreements with the Hanse cities, Oldenburg and Micklenburg. In accordance with the purport of these, von Alvensleben maintained that Germany had an immediate claim, without making any concession in return, to be included in the enjoyment of the tonnage tax abatement to three cents per ton.

Mr. Bayard, Secretary of State, answered the German protest on Nov. 7, 1885, with the information that the entire subject had been entrusted to the judgment of the Attorney General. The decision of the Department of Justice was as follows:

> "The descrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the Act and entered in our ports is, I think, purely geographical in character, inuring to the advantage of any vessel of any power that may choose to fetch and carry between this country and any

port embraced by the fourteenth section of the Act. I see no warrant, therefore, to claim that there is anything in "the most favored nation clause" of the treaty between this country and the powers mentioned that entitled them to have the privileges of the fourteenth section extended to their vessels sailing for this country from parts outside of the limitation of the Act."

In answer to this, the German Government replied that the geographical interpretation was a most unusual one and would render "the most favored nation clause" purely illusory. On the same ground it would be quite possible to justify, for instance, a privilege granted exclusively to the South American States, then one granted also to certain European nations so that finally Germany, alone, might be excluded from the benefits of the Act. This note of February 16, 1886 did admit that in certain restricted local zones, advantages may be claimed of third states not on the ground of a most favored nation clause. In several international treaties, these zones were limited to a distance of 10 kilometers from the frontier. From this point of view, the contention of the United States could not be justified. The law granted definite advantages to entire countries, among others to those situated at a great distance from the United States. In regard to the decision of the Attorney-General, von Alvensleben pointed out that the Secretary of the Treasury in an opinion on this subject to the Secretary of State under date of May 11, 1885, said that vessels sailing from Portugal to the U. S. were

entitled to the privileges granted by Section 14 of the Sluppig Act on the "most favored nation clause". Moreover, Germany collected no tonnage tax on foreign vessels.

Mr. Bayard promised consideration of the matter in his note of March 4, 1886. He observed that it was sufficient for the present that Germany admitted that neighborhood and propinquity justified a special treatment of intercourse which might not be extended to other countries under the favored nation clause in treaties with them and only appeared to question the distance within which the rule of neighborhood was to operate.

Direct action in the matter was taken three months later when Congress passed the Act of June 19, 1886 entitled "An act to abolish certain fees for official Services to American vessels and to amend the laws relating to shipping commissioner seamen, and owners of vessels, and for other purposes." Section 12 of this act invited Germany to cooperate with the United States to the end of reducing tonnage and equivalent dues on navigation. Accordingly, on the twenty-fifth of August, 1887 the charge'd'affaires of the United States at Berlin, Mr. Coleman, acting under instructions from his government, invited the attention of the Imperial Government to this Act of Congress approved June 19, 1886. In the letter which he addressed to Count Berchem, then acting imperial secretary of state for foreign affairs, Mr. Coleman pointed out that the provisions of the said act were broad enough to cover either a reduction or a complete abolition by reciprocal action of tonnage and equivalent charges on navigation and that it was open to any foreign country in all or any of whose

ports a less charge was made than that now imposed in the ports of the United States, to obtain a reduction of the charge in the United States on vessels coming from such port or ports to an equality with that levied in the port or ports designated. As an example of the intention of the United States, the charge 'd' affairs cited the arrangement lately entered into between the Government of the United States and that of the Netherlands, whereby complete exemption from tonnage dues was secured to all vessels, of whatever nationality, entering posts of the Netherlands, in Europe or from certain named ports of the Dutch East Indies.[115] Mr. Coleman pointed out that this invitation extended equally to all countries, both those having ports within the geographical zone, to which under the shipping acts of 1884 and of 1886 the rate of 3 to 15 cents applied, and to those whose ports were not included in the geographical zone.[116]

Mr. von Alvensleben, of the German legation in Washington, in his dispatch of Jan. 24, 1888, assured Mr. Bayard, Secretary of State, that no tonnage or light-house dues, or any equivalent tax or taxes were imposed upon American vessels entering the port of Germany. Consequently, the Imperial Government, asked that the President of the United States issue a proclamation suspending the collection of the duty of 6 cents per ton, not to exceed 30 cents per ton per annum

115. This was made known in the President's proclamation of April 22, 1887.

116. Foreign Affairs, 1888-87, Part 1, 570.
Mr. Coleman to Count Berchem, Aug. 25, 1887.

(as imposed by section 11 of the Act of Congress of June 19, 1886) from German ships entering our ports. Mr. von Alvensleben also requested that tonnage duties levied since June 19, 1886 be refunded.[117]

On January 26, 1888 came the desired proclamation by Grover Cleveland, who expressed himself as satisfied that Germany did not impose the dues in question on American vessels.[118] The proclamation was not to apply to ships sailing from German ports but owned by another foreign country where fees were collected.[119] The suspension therein declared was to continue as long as the reciprocal exemption of vessels belonging to citizens of the United States and their cargoes should be continued in the said ports of the Empire of Germany.[120] On the twenty-fifth of February, 1888, the Imperial German Legation in Washington notified the State Department that tonnage dues were still being levied on vessels of the North German Line arriving at New York from Bremen via Southhampton. An assurance that this line stopped at the last-named harbor only to embark mail

117. Ibid, 669. Mr. von Alvensleben to Mr. Bayard, Jan. 24, 1888.

118. On July 9, 1887, Mr. Bayard, Secretary of State, had instructed Mr. Coleman to obtain reports from the American Consul residing in Germany as to any discrimination there with respect to tonnage dues on American ships.

119. Ibid, 674. By this, the ships of Great Britain, France, Denmark, Holland, Sweden, Norway, Belgium and Portugal were excepted.

120. Ibid, 671-2.

and passengers, this difficulty was soon adjusted.[121] The controversy over American pork and German sugar dominated German-American diplomacy from 1883 to 1898. An evidence of the birth of commercial rivalry between the United States and Germany, it was a direct outgrowth of Bismarck's adoption of the protective policy. The controversy had its beginning in the Imperial Decree of March 6, 1883 prohibiting the importation of American pork into Germany.

Rumors of the future prohibition of the importation of American pork and swine into Germany were current throughout Germany in the fall of 1882. Newspapers, under governmental control, had constantly reiterated the danger of buying American hogs and had exaggerated the extent of trichinosis in the United States.[122] Representatives of Agrarian interests had promulgated the same ideas. The Government published, as its reason for wishing to pass the measure, the unsanitary methods employed in most American stockyards. That served all very well as an excuse but it did not hide the real motives of the government. Several Berlin newspapers came out in December, 1882 with articles exposing the false pretense of the German accusations.[123] The Berliner Tribune stated that according to official reports from 1877 to 1879 there had been an average of 33 deaths from trichinosis, and that the average had increased since then, yet there had not been proven to be one case of death, or even disease, from eating

121. Ibid, 673-4.
122. House Miscellaneous Documents, 47th, Cong.,2d.Sess. No.39,3. Consider reports on commerce, manufacture, etc. January 1883.
123. The Berliner Tribune, December 30, 1882 - a powerful organ of the Progressives; the national Zeitung, December 31, 1882.

American pork. Rather were they traced to freshly slaughtered German, Russian, or Hungarian pork. Many Germans, particularly the Saxons, preferred to eat the meat raw, thus exposing themselves readily to trichinosis.

The true explanation for the policy lay in the cheapness of the American product. For instance, in January 1883, a pound of American pork could be sold in Berlin for ten pfenning less than the home product.[124] To the great landed proprietors, designated politically as the Junkers, this was a raid on the pocketbook. If the move of keeping out the half a million cwts. of American pork imported into Germany yearly, could succeed, they they could fix prices to suit themselves. If the price of pork rose 5 pfenning per pound, a hog of 300 pounds would gain 15 marks in value on present prices and the result would be that the large farmers who slaughtered yearly from 500 to 1000 head would have a gain of 7500 to 15,000 marks. What did it matter if the cost of living for the laborer would be higher.[125] There existed no real reason for the government to aid the agriculturists at that time for the year's harvest in Germany had been remarkably abundant whereas American crops and exports to Germany had decreased, thus relieveing the German farmers of much competition. These conditions would not be changed until the harvest of 1883.

Opposition to the high tax on American pork broke out in the

124. House Miscellaneous Documents, op. cit., 2.

125. House Miscellaneous Documents, 49th Cong., 2d Sess., No.169,607. America was the only practical source of cheap meat for Germany at that time. The government preferred to import expensive English lamb.

Reichstag where Herr Richter, the distinguished leader of the Progressives, strongly attacked it.[126] He denied the soundness of the reasons and also the power of the federal council or Bundesrath to make the prohibition without the sanction of the Reichstag. (The proposition was then pending in the Bundesrat, where it was to be effected by a simple order or decree of that body.) The power claimed by the Bundesrath to do so was attributed to article II of the tariff laws of July 1, 1869 which read:

> "Exceptional measures may be temporarily adopted under extraordinary circumstances for the prevention of dangerous contagious diseases, or for other sanitary or precautionary reasons, for a part or the whole district."

There was little chance that the Bundersrath would not issue the decree for this body was peculiarly under executive influence.[127]

The total exportation of American pork into Germany in 1880 (fiscal year ending June 30) was 96,949,780 barrels; 1881 - 107,928,086 barrels; 1882 - 80,477,466 barrels; 1883 - 62,116,302 barrels. The effectiveness of the prohibition was very marked.[128]

That this discrimination against American pork as well as American products in general was greatly resented in the United States is a foregone conclusion. Moreover, such discrimination would not long be tolerated. On February 23, 1883 a resolution was

126. The new measure was supposed to offer new powder for the guns of the Social Democrats.

127. Op. cit. 37.

128. Evans, 170.

submitted to the House of Representatives by a Mr. LeFevre which read as follows:

"RESOLVED, In view of the continued proscription of American pork by Germany, the recent imposition of additional duties on wheat and rye imported from the United States, and certain measures now threatened hostile to American petroleum, that the Committee on Foreign Affairs be, and are hereby, instructed to enquire into and report whether the interests of the United States do not demand the adoption of like discriminating measures against such principal articles imported from the German Empire as are grown or manufactured in the United States."[129]

The resolution was referred to the Committee on Foreign Affairs who decided that the action of the German authorities had been unfavorable to the introduction into the German Empire of several of the products of the United States as pork, wheat, rye and petroleum. The Committee in turn recommended the adoption of the following resolution:

"RESOLVED, That it is the sense of the House of Representatives that the President of the United States be requested to take immediate steps to secure to the United States equal benefits in the German Empire with othernations as to all articles of commerce of the United States, under the most favored nation clause of the treaty of 1828, made with Prussia

129. House Reports, 48th Cong., 2d. Sess., No.2682

and now in force between the United States and the German Empire."

On the 29th of November, 1887 a further campaign against American pork on the part of the German government was evidenced by an imperal decree prohibiting the importation of hogs and of hog meat, including pork sides and sausages from Denmark, Sweden, and Norway. The newspapers had been repeatedly announcing the prevalence of a pestilence among hogs in Denmark. Articles such as the following which appeared in the Berlin Zeitung of December 1, 1887, were current:

"Not less than one hundred and fifty persons in Unterhainsdorf, near Reichenbach, have been attacked by trichinosis, and, alas, nearly all of them must die after endless sufferings. With greatly swollen bodies, earth-colored faces, lamed in all their members, the unhappy ones await their release. Among the few who escaped the contagion is the teacher of the village, who strenuously insisted on the examination of the meat, which the host, who had slaughtered the hogs, refused, because he did not believe in trichina. The last victim up to this time (the thirty-third) is the tradesman, Seifert in Unterhainsdorf. He was persuaded on leaving the Mala Hotel to buy a small sausage for 12 pfennings, because it was delicate, followed the advice and ate death in the sausage."[130]

130. Foreign affairs, 1888-'89, part 1, 585. Translation of article sent by Mr. Pendleton to Mr. Bayard.

Emphasis on the scare of a wholesale trichina epidemic as well as the decree to exclude was being used by Germany to persuade Denmark to prohibit the importation of American pork. Inasmuch as the Danish export of pork to Germany amounted to about $5,330,000 annually, the loss of which would be felt, Bismarck had nothing to fear.[131] The governments of Sweden and Norway, likewise influenced by Germany, were threatening to prohibit the importation of Danish pork if Denmark refused to exclude American pork.[132] The acquiescience of Denmark was but a matter of time. On March 10th, 1888 she issued the order prohibiting the admission of American pork.[133]

The American answer was not long in forthcoming. President Cleveland in his message to Congress on March 27, 1888, recommended that legislative measures be taken to prevent the importation of swine and products of swine from France and Germany inasmuch as, according to reports of the American envoy in Berlin and the American Consul at Marseilles, a disease prevailed among the swine in those countries. The receipt of this news in Germany brought a response in the Berlin newspaper, the National Zeitung of March 28, 1888, which presented an interesting light on the German viewpoint:

> "In Germany it is not known that the danger from trichina - and this alone can be intended - has increased lately. On the contrary, the microscopic examination for

131. Ibid, 479. Mr. Anderson (At the American Legation in Copenhagen)

132. Ibid, 483. Mr. Anderson to Mr. Bayard, February 3, 1888.

133. In December 1890, an imperial decree removed the prohibition of Danish, Swedish and Norwegian pork in Germany.

trichina increases more and more. One can see that the proposal of President Cleveland has rather to do with the establishment of reprisals against the prohibition of American products of swine-breeding than with a sanitary regulation. So far as German prohibition is concerned, whilst in the beginning in America it was referred to the protective tariff system tendencies, with time even these judges have come to admit that the manner of slaughtering in America for exportation has offered good grounds for it. Even in the technical works of Germany, concerning the agricultural competition of North America, a while ago mentioned by us, there are descriptions of that slaughtering, which support the supposition that, with this wholesale business, sick or dead swine are worked off for food. By the abolition of this evil the Americans will sooner effect the removal of the German prohibition than by the threats of reprisals. The German exportation to America consists mainly in the finer kind of sausages, and in their manufacture in Germany the greatest care is taken."[134]

A German attack on the policy of the German government toward American pork took place in the Reichstag in January 1891. The Liberal party, backed up by the National Liberals, opened the debate. The occasion was a resolution pertinent to a section in an appropriation bill, then pending, introduced by Dr. Barth, a leading member of the Liberal party. The resolution was to the effect "that the chance-

134. Op. cit., 629-30. Inclosed in dispatch of Mr. Pendleton to Mr. Bayard, April 2, 1888.

llor be requested to withdraw the order of March 6, 1883 which forbids the importation of swine, swine flesh, and sausage of American production." [135]

Dr. Barth referred to the origin of this policy of exclusion as an aftermath of Germany's adoption of the protective system. His inference that the policy of exclusion was one of protection and not of sanitation was earnestly denied by von Boetticher, vice-Chancellor, speaking for the government. Dr. Barth pointed out that the American swine was eaten in the United States and in England without harm. [136] Moreover, the United States had passed a measure intended to make so thorough an examination of the animal and its product as to remove any ground for apprehension as to its healthy condition. [137] The arguments of von Boetticher on this occasion were the usual ones employed in the past by his government in explanation of their prohibition of American pork. He vouchafed that he was willing to give the people cheap food but he wanted it to be good food. Criticising American methods of slaughtering, he claimed that the English and Dutch used our meat with impunity only because they never used it in uncooked form. He further went as far as to doubt the effectiveness of the inspection act of August 1890 basing his prejudice on statements of certain American journals and on the fact that some new sanitary

135. Ibid, 1891, 503. Mr. Phelps to Mr. Blaine, January 24, 1891.

136. Although still not admitted into France, the French Academy of Medicine had declared American pork to be healthy and the great French Exposition of ____ had given it its highest award in competition with other countries.

137. The Act of August 30, 1890 providing for the inspection of meats for exportation.

measures had since been introduced into our Congress, which action virtually admitted the defects of the present law.[138] At this point, von Marschall, the minister of foreign affairs, volunteered the information that a careful investigation was being made of the facts of the case and of the efficiency of the Act referred to above.

Windthoist, the leader of the Central or Catholic party which controlled a solid hundred votes, remarked that he was ready to remove the restriction when there was satisfactory assurance of the non-injuriousness of the product. The vote was 106 for the resolution and 133 against it.[139]

The decree repealing the decree excluding American pork was signed by the Emperor of Germany, William II, on September 3, 1891. Representing the culmination of eight years of untiring effort on the part of the State Department, the repeal was made directly possible in 1891 by a combination of factors and of preceding events. The publicised reasonfor the removal of the prohibition was Germany's satisfaction in the new sanitary inspection act of cattle and of hogs passed by Congress on March 3, 1891.[140] Under its provisions, inspection of the swine was to be compulsory throughout the United States before and

138. The authenticity of the American articles mentioned is very doubtful. Mr. Phelps felt that their decry against sanitary methods in the United States was due to local jealousy.

139. Foreign Affairs, 1891, 502. Mr. Phelps to Mr. Blaine, January 24, 1891.

140. Germany had expressed disapproval of the Act of August 1890.

after slaughter; products were to be marked and identified through all stages of preparation. So strict were the stipulations of this Act that the German government could not possibly adhere to its former contention regarding American pork.[141] A copy of this Act was sent immediately by the State Department to the German foreign office with the suggestion that, since American meat processed under the new regulations would be ready for export by September the first, that would be a proper date for the removal of a restriction which the United States had long since considered unfair to itself.[142]

So much for the apparent explanation of Germany's revocation of policy. A far more vital motive was the McKinley Tariff Act of October 1, 1890 which not only imposed highly protective tariff on imports, but gave the President of the United States powers of retaliation against foreign governments. Section 3 of the McKinley Bill authorized the Executive, if he believed that any nation exporting sugar, molasses, coffee, hides, etc., imposed duties upon American products which duties were reciprocally unequal, to remove these imports from the free list and to impose on them the duties prescribed by law. Germany, whose export of sugar to America was

142. op. cit., 515. Mr. Phelps to Freiherr von Rotenham, July 6, 1891.

141. In fact, the Act exceeded the regulations of Denmark, Norway and Sweden, whose pork was sold in Germany, as to inspection.

tremendous, became immediately concerned.[143]

Offers to admit American pork into Germany were coupled with the desire for assurance that the President would not exercise his newly designated power. The President, however, could not see at first how the revocation of the meat prohibition should be made to depend upon his action under section 3 of the Tariff Act in that the German Government had persistently maintained that the origin and continuance of its pork prohibition was based on the absence of, or imperfect inspection of swine in America which, it was alleged, exposed German consumers to disease. If the Imperial government was to recognise the sufficiency of present inspection, why should the United States purchase the revocation by a promised concession of duties on sugar. But the chief executive did offer to treat with the German government respecting commercial reciprocity, under section 3 of the Tariff of 1890, adding that the prompt action of that government regarding pork inspection would have its due weight in determining the terms of the reciprocity arrangement.[144]

On August 22, 1891 declarations were exchanged at Saratoga between Mr. von Mumm, the Imperial charge' d' affaires ad interim, and Mr. John W. Foster, especially empowered by the United States.

143. The value of sugars imported into the United States from the German Empire was more than $15,000,000 annually.

144. Foreign Affairs, 1891, 511. Mr. Wharton to Mr. Phelps, June 15, 1891.

which had on the one part the importation of German sugar into the United States in view, and on the other the importation of American pork into Germany. The United States made as the basis of these declarations the admission, free of duty, of German sugar pursuant to the Tariff Act of October, 1, 1890. Thus came into being what was known as the Saratoga Agreement.

The reciprocity treaty with Germany, under the McKinley Act and known as one of the Caprivi treaties, went into effect February 1, 1892. Similar to the ones that Germany had concluded with Austria-Hungary and Spain, the rates on agricultural products were reduced considerably, still, however, remaining above the Bismarckian standard of 1879. In exchange, the United States agreed to let in at free or reduced rates German hides, sugar, tea and coffee.[145]

The Caprivi Treaty, just as the non-exclusion of American meat products, represented a diplomatic triumph for the United States. Admittedly, the United States benefitted more from it than did Germany. But cheap food had become a political necessity in Germany. Sheltered behind the tariff walls of 1885 and of 1887, agricultural prices in Germany had risen above world prices. The growing populations of the towns and of the cities were clamoring for a lower cost of living. Caprivi, the successor of Bismarck as German Chancellor, and a man

145. An additional duty of 1/10 of a cent a pound was imposed on sugars above the No.16 Dutch standard. As only about one seventy-fifth of the German sugar export to the United States came under this classification, the effect of the duty was comparatively light.

without landed property, thoroughly believed in this policy. Supported by the National Liberals, he negotiated her reciprocity agreements. His arrangement with Russia in which he secured a reduction of the duties on German manufactures in return for a reduction of the tariff on Russian rye, aroused the ire of the Agrarian conservatives and he lost his chancellorship in 1894 as a direct result.[146]

Agitation in Germany against the Caprivi Treaties was so intense that in 1893, a great agricultural league, Bund der Landwerte, was formed. It soon controlled the entire conservative party and gradually gained influence with the government, even dictating its policies at the end of the century. Bismarck, before his death in 1894 had taken part in the fight against his successor. Analysing the effect of his resignation on Agriculture, he wrote:

> "In the domain of agriculture, the removal of the Agrarian pressure which I was supposed to exercise, chiefly benefited diseased swine and the cattle plague as well as those higher and lower officials to whose lot fell the task of combating in parliament and in the country the lying party-cry about raising the price of food. The disposition to yield in this domain and the facilities given to French communication with Alsace ..... are to my mind the common expression of a cowardice which is ready to sacrifice the future for a little more comfort in the present. The desire of obtaining cheap

146. The Kaiser's Memoirs, (New York: Harper and Brothers, 1922),54.

pork will be no more permanently furthered by any lax treatment of the danger of contagion." 147

The examination of American hog and cattle products in the manner designated in the Meat Regulation Act of 1891, imposed a heavy financial burden on the government of the United States. For instance, the cost of inspecting the pork sold in 1893 to Germany and France alone was $172,367.08. The sanitary inspection of cattle shipped to Europe averaged, during this same year, 10 3/4 cents per animal. 148 As early as June 1873, the State Department began approaching the German Government with an application for waiver of the expensive microscopical examination required by her and by France in regard to Americ an pork. This waiver was justified, it was contended, on the ground of the conclusive proofs of the healthfulness of American meats and in view of the measure's burdensome restriction on Americ an trade. It was further suggested by our diplomats that the legislation then pending in Congress (the Wilson Tariff Act) might induce the Imperial Government to adop a "more liberal and enlightened policy. 149

Such a threat frightened Germany not at all. After much delay the German Government presented her opinion. Claiming that the advantages gained by her under the action of the President of the United States pursuant to Section 3 of the Act of Congress of October 1, 1890

147. Bismarck, Volume II, 227-228

148. Message of the President to Congress, December 3.

149. Foreign Affairs, 1894, part 1, 226, Mr. Gresham to Mr. Runyon, February 1, 1894.

were acquired for a consideration given by her to the United States these advantages would be protected accordingly in any new tariff legislation. As to the microscopical examination of hog products exported from the United States to Germany, the latter claimed that it was undertaken voluntarily by our government as one of the considerations for, and a condition of, removing the prohibition. All of which wastrue.

The Wilson Tariff Act, abrogating all agreements under the McKinley Tariff Bill of 1890, went into effect on August 24, 1894. The new tariff, still highly protective, included one most vital change. 150 A tax of one tenth of a cent per pound was imposed on <u>all</u> sugars coming from bounty paying countries. 151

151. The Tariff of 1890, it is to be remembered, imposed a tax of 1/10 of a cent per pound only on sugars above No. 16 Dutch Standard, which did not effect German Sugar exporters to any great extent. The effect of the additional duty would be that an importer would not take the more highly distable German sugars till other sugars, not taxed, had been absorbed.

150. <u>Senate Reports</u>, No. 707, 53rd Congress, 2d Session, No. 707, 1

In the course of the negotiations which took place in Congress in connection with the tariff question, the Imperial Government pointed out that such a measure was a differentiation whereby the exportation of German sugar to the United States was more unfavorably treated than that of several other European countries. This proposed tax would fall more heavily on the German nation since the bounty, which was to be discontinued entirely in the year 1897, was no means as high as that of Austria and of France and did not even approximately compensate the exporter for the loss entailed upon him by the additional duty.[151]

A comparison of the respective bounties paid by Germany and by the Austro-Hungarian Empire and by France to their exporters to benefit the sale of sugar abroad, did not support the above statement.[152] The tax on beet-roots in Germany in 1890 was twenty cents per 220 lbs. The consumption tax on all sugars consumed in the Empire = $3.00 per 220 pounds. The export bounty on raw sugar containing at least 90% of sugar was $2.12 per 220 pounds. On refined sugar containing at least 90% of sugar and not more than 98%, the bounty was $2.50 per 220 pounds. On sugar containing at least 99½% of sugar, the government paid $2.63 per 220 pounds. The Austrian consumption tax was much higher being $5.30 per 220 pounds but the export bounties were much less. France, in

152. Memorandum of the Imperial German Embassy on the Additional Duty on sugar, July 18, 1894.

153. This information had been ascertained by William F. Wharton, acting Secretary of State, in reply to a resolution of the House of Representatives on January 16, 1890. Germany admitted this in connection with her objections to the duty on sugar in tariff of 1877.

1890, had a bill before the French Parliament to modify the sugar duties particularly the bounty provisions. This was done the following year.[154]

The legal aspects of the German opposition to the sugar tax of 1894 involved the consideration of Articles V and IX of the Prussian-American Treaty of Commerce of 1828.[155] According to the German Government, the new tariff violated these two stipulations which placed commercial intercourse between the two countries on the most favored nation basis - the first, by providing that the duties should not be higher than "on the like articles being the produce or manufacture of any other foreign country", the second by providing that any particular favor granted by either party "to any other nation" should "immediately become common to the other party". In other words these stipulations gave either party the right, special engagements of reciprocity being excepted, to take the duties levied by the other on articles the produce or manufacture of any other country and to demand the same treatment for its own products and manufactures. It was no answer to this to say that certain discriminating duties, levied by one party on the products or manufactures of the other were not confined to the latter alone but applied equally to other nations in the same category. When there were some countries exempt from the duty, as in the case of the sugar bounty, the requirements

154. House Executive Document, 51st Cong., 1st Sess., No. 191, 1-2

155. As contained in the official protest of the German Ambassador on August 28, 1894.

of the treaty were not fulfilled.

This same reasoning had been applied formerly by the State Dept. in regard to the interpretation of the second article of the commercial convention between the United States and Great Britain of July 3, 1815, which article was almost identical in language with the Article V in question. In 1836, Great Britain had in its general customs act of 7 William IV, Section 60, provided:

> That the duty upon rice, rough or in the bush, imported from the "west coast of Africa shall be per quarter, one penny".

Under this act the general duty on the same kind of rice (paddy rice) was 25.6d per bushel. The British board of trade argued that the discrimination was not inconsistent with the forementioned Article II since it gave an advantage not to the produce of any particular country but only to articles of commerce shipped from a particular place.

Against this contention, the United States had protested. In a note to Lord Palmerston, of February 1, 1841, Mr. Stevenson, the Minister of the United States in London said:

> "If it be admitted, as it must be, that, by the provisions of the existing law, all rice, wherever produced (and, of course, that of Africa), can be imported into British ports at the low duty of a penny per quarter, upon what principle can it be maintained that Africa is not thereby placed upon the footing of a favored nation, with advantages given to her produce which the treaty intended equally to secure to the United States? Can the stipulation of the

treaty be defeated or evaded by Great Britain allowing Africa to import from her coasts not only her own rice, but that of other nations"?

The result of this protest had been that the British Government equalized the duties on rough rice imported from the United States and from the western coast of Africa.[156]

The Secretary of State, W. G. Gresham, in his note of October 12, 1894 to President Cleveland admitted that the situation in 1836 and the one in 1894 were parallel.[157] He also said that the German bounty on sugar could not possibly be conceived as a discrimination against the United States, but was, as the German Government maintained, purely " a domestic affair".[158] The United States had, itself, in 1813 authorized the payment of a bounty on all exported pickled fish that were derived from the fisheries of the United States.[159] This, in view of the past, United States (in its present dispute with Germany) was inconsistent on two points: (1) that the tariff on sugar was not discriminatory against Germany; (2) and that the German bounty discriminated against us.

Inconsistency in the interpretation of the most favored nation clause was not confined to the United States alone. In 1888, Count

156. House Executive Document No. 2, 27th Congress, 2d Session, 47-57.

157. Foreign Affairs, 1896, part 1, 238, Mr. Gresham to the President, October 12, 1894.

158. Proponents in Congress of the duty on sugar in the tariff of 1894 in Congress had claimed that the German bounty was a discrimination against us.

159. This was the act of July 29, 1813 - Section 2.

Hatzfeldt, of the German Foreign Office, at the international sugar conference in London, had announced that parties could prohibit bounty fed sugar without violating the "most favored nation" clause. This declaration was upheld by Great Britain also.[160]

Sugar was not the only article in regard to which Germany claimed that the Wilson Tariff Bill violated the "most favored nation" clause. Section 608 of this act exempted salt from its former duty if not imported from a country which imposed a duty upon salt exported from the United States. A subsequent order of the Treasury Department refused to exempt German salt. Germany immediately protested that she did not actually levy a duty upon American salt. True, on foreign salt entering by land or rivers, this was a duty of 12 marks and 80 pfennigs per each 100 bilograms; by way of sea only 12 marks. But this rate of 12 marks constituted the equivalent of the assessment of the corresponding salt taxes of the German States levied upon the domestic salt industry. Also, 12 marks per 100 bilograms. In other words the rate in question was no real duty - only an internal tax.[161]

What appeared to be German retaliation was not long in forthcoming. On October 27, 1894 there was issued a "Proclamation Relating to the Prohibition of the Importation from America of living beef cattle and fresh beef "to go into effect on October 28th. The asserted reason for the decree was the alleged discovery of Texas fever in two recent

160. Foreign Relations, 1897, 179. Mr. Sherman to Mr. von Richonan, September 22, 1897.

161. Ibid, 1894, part 1, 240. Baron Saurma to Mr. Gresham, October 13, 1894.

shipments into Germany. To the American contention that the only cattle which could communicate the Texas fever were those from a well-defined district in the South, from which district export was not permitted, the German Foreign Office was adamant in its belief in the necessity of the proclamation. The latter, it was to be understood, was merely a veterinary measure - not one of retaliation.[162] Pressure being brought to bear by the large cattle interests, the American Government hastened to announce that even more rigid measures of inspection and control of cattle and dressed meats for exportation had been taken in hope of the German Government speedily revoking its prohibitory orders.[163]

With the enactment of the prohibition of the importation of American cattle into Germany, sentiment in favor of the repeal of the differential duty on bounty sugar became extensive in the United States. President Cleveland in his message to Congress on December 3, 1894 advocated such an abrogation, saying:[164]

> "If with all the favor now accorded the sugar-refining interest in our tariff laws, it still languishes to the extent of closed refineries, and thousand of discharged workmen, it would seem to present a hopeless case for reasonable legislative aid."

Runyon, our American Ambassador in Berlin, informed Gresham in 1895 that

162. In this connection it is to be noted that Caprici had been overthrown and a new chancellor, Hohenlohe, who was a strong supporter of the Agrarian party, put in his place.

163. Ibid, 233. This was in November 5, 1894.

164. Ibid, XXXIX. Message of the President.

there was danger of the two countries drifting into a tariff war if the sugar tariff was not repealed. In proof of his statement, he pointed to the speeches in the Reichstag of Count Kanitz, a leader of the Agrarian party, and to those of Baron Marschall von Bieberstein, Imperial Secretary of State for Foreign affairs, wherein these men advocated the imposition of a higher German tariff on food products.[165]

The efforts of the State Department to induce Germany to remove her restrictions on American beef proved unsuccessful. Seemingly in answer, the Imperial Government had proceeded to double its precautionary measures. For instance, December of 1894, it forbade the importation of brown (a mixture of cooked beef and pork put up in hermetically sealed cans) unless accompanied by a certificate of healthfulness. Also, on this product a duty of 20 to 60 marks per 100 bilograms was often charged in direct conflict with the tariff laws of Germany which prescribed only 17 marks per 100 bilograms with "treaty countries". On February 7, 1895 it was decreed that hog products and sausages of American origin would be allowed to be imported into the Empire only when the shipments were accompanied by the designated special certificates.[166]

In 1896, Baron von Thielmann of the German Legation in Washington informed Secretary of State, Olney, that it was impossible for the German Government to remove this prohibition. The interests of German cattle

165. Ibid, 1895, 510. Mr. Runyon to Mr. Gresham, January 5, 1895.

166. The Department of Agriculture in its meat inspection used two different stamps: one showing that it was inspected by veterinarians at the abattoris and the other reserved for that to be exported - showing further microscopic inspection.

* The sugar Differential Repeal Bill passed the House of Representatives in February 1895, but did not become a law.

breeding dictated its maintenance. Moreover, inasmuch as the United States must admit the right of others to do the same.[167] Texas fever still existed among American cattle, Baron von Thielmann asserted, and in proof of this he mentioned that Kentucky had in 1895 found it necessary to close their territory against the importation of southern cattle for nine months a year. Similarly the state of Colorado in a quarantine proclamation dated February 13, 1896 affirmed the presence of Texas fever in the southern states.[168] The prompt denial by the Secretary of Agriculture of any reason for the non-importation of American cattle altered the German position not at all.

On December the third, 1896 came the revocation by the President of the United States of the exemption of German ships from tonnage dues.[169] Germany took this as a supposition that America no longer believed its vessels to be tax exempt in German ports and that the so claimed channel upkeep tax was really a duty tax.[170] The month before, the United States had refused the application for the removal of the duty on German salt, reiterating her belief that the salt tax levied in Germany was an import duty, and not an excise tax, as the latter claimed. This move made the occasion for the proclamation by the Prussian-American Treaty of 1828 so that it applied only to Prussia and was not operative as far as the Empire was concerned.[171]

168. Foreign Affairs, 1896, 164. Baron von Thielmann to Mr. Olney, August 7, 1896

169. The exemption had been proclaimed on January 26, 1888 in response to the protest of the Imperial Government.

170. Op. cit., Mr. Olney, December 4, 1896.

171. Ibid, 208. Mr. Olney to Baron von Thielmann, November 25, 1896.

The Dingley Tariff Act of 1897, passed at the height of the protectionist period in our tariff legislation, exercised a greater restraint upon foreign imports than had the McKinley Tariff of 1890. Also, its reciprocity provisions were much weaker. Under the act of 1897, Section 3, which was intended primarily for the benefit of France and Germany, entitled the President to negotiate reciprocity agreements by reducing the tariffs on argols, crude tartar, wine lees, brandies, spirits, champagne, wines, vermouth, paintings and statuary. Section 4 permitted the President to negotiate such treaties with any country, admitting imports free of duty at rates more than 2070 below those concessions granted to American exports.

France, Italy, Portugal and Switzerland hastened to take advantage of these provisions. Thereupon Germany, without offering any considerations in return, applied for concessions equal to those granted to France. Her right to these she based on the fact that the United States already enjoyed her minimum tariff rates.

Germany also objected strenuously to the imposition in the new tariff of a counter duty on sugar equal to the "net bounty" paid in the e exporting country.[172] Her protest as in 1894 rested upon the following two grounds: (1) That "this discriminating treatment of German sugar

172. Sugars, the product of any country which paid directly or indirectly, a bounty on its exports were to pay, apart from the actual duty established in 1897, an additional duty equal to the export bounty so far as this bounty exceeded the internal tax collected upon such sugars or upon the raw materials used in their manufacture.

is incompatible with the most favored nation rights that are secured to German productions by the treaties in force as regards the duties to be levied on them when they are imported into the United States", and (2) "that it is incompatible with the provision of the Saratoga agreement of August 22, 1891 "The United States depicted the first contention and in answer to the second point declared that the tariff act of 1894 had abrogated the Saratoga agreement.[173] The total value of the exports from Germany to the United States for the quarter ending September 30, 1897 was $14,839,459.73 as compared with $26,233,467.41 for the same quarter of 1896. An analysis of this decrease ($11,394,007.68) showed that more than one-half the amount ($6,591,917) was in the article "sugar" alone. From the consular districts of Bremerhaven, Brunswick, Hamburg, Magdeburg, Slettin, and Breslau, the value of the sugar exported to the United States in the third quarter of 1896 was $6,662,951 while in the quarter justended it had been only $78,034. However, just before the change in the American tariff (that is, in the fiscal year ending June 30, 1897), German exports to the United States had increased in value over the preceding year $21,219,779.81 - the whole amount being due to an increase in exports from the 6 districts mentioned above. Thus, a prior overstocking of the American market, rather than the effect of the Dingley tariff may have been responsible for the decrease in the trade immediately apparent after the enactment of the Act of 1897.[173]

173. Foreign Affairs, 1897,178. Mr. Sherman to Mr. von Richenan, September 22, 1897.

174. Ibid. 179. Mr. Jackson to von Bulow, October 27, 1897 from reports of the American Consular officers in Germany.

Tariff difficulties between Germany and the United States were still unsettled at the beginning of the Spanish-American war. The year 1898 witnessed the restriction of the entrance into Germany of American fruit, fresh and dried, on the plea of its infection with San Jose' scale.[175] It wasn't until 1900 that the desired reciprocity agreement was reached between the two nations. Therein the German government granted to the United States the same tariff rates as it had accorded to six neighboring countries and annulled the regulations providing for the inspection of American fruit in return for favorable duties on certain articles of German manufacture.

Commercial relations between the United States and Germany in the period from 1885-1898 were, as we have seen, complicated by basic differences as to the interpretation of the existing treaty of commerce - the Treaty with Prussia of May 1, 1828. Germany felt that Article IX, the "most favored nation" clause, entitled her to enjoy whatever commercial privileges the United States granted to other nations, without offering any concessions in return. This claim came into opposition with a long established doctrine of the United States that the "most favored nation" clauses of our treaties with foreign powers did not forbid any internal regulations necessary for the protection of our home industries, and permitted commercial concessions to a country which were not gratuitous, but were in return for equivalent concessions, and to which no other country was entitled except upon rendering the same

175. This decree was modified in February, 1899.

equivalents. Thomas Jefferson, when Secretary of State in 1792, stated that treaties, exchanging the rights of the most favored nations, left each party free to make what internal regulations she pleased and to give what preference she found expedient to native merchants, vessels, and productions. In 1817, Mr. John Quincy Adams, acting in the same official capacity, took the stand that the "most favored nation" clause covered only gratuitous favors and did not touch concessions for equivalents, expressed or implied. Mr. Clay, Mr. Livingston, Mr. Evarts, and Mr. Bayard when at the head of the Department of State, each gave official expression to the same view.

The persistence of Germany in this matter led the United States in the late 1890's to assume a new position toward the Treaty of 1828, without necessarily dropping the old. The Attorney-General of the United States in his opinion, of November 13, 1894 on the legality of the duty on German salt asserted that the tariff of 1894 was a statute later than the treaty and, "so far inconsistent with it, is controlling". [176] On November 25, 1896, Mr. Olney, Secretary of State, informed Baron von Thielmann of the German Legation in Washington that the treaty concluded with Prussia in 1828 was no longer operative as concerned the whole German Empire. [177] Employing the same reasoning that she had objected to in the case of the application of the naturalization treaties to Alsace-Lorraine, the United States was determined to preserve her commercial integrity, at the cost of being inconsistent.

176. Foreign Affairs, 1897, 178. Mr. Sherman to von Reichenan, September 22, 1897.

177. Ibid, 1896, 208. Mr. Olney to Baron von Thielmann. November 25, 1896.

TABLE OF EXPORTS UNITED STATES TO GERMANY 1865-83 (fiscal year ending June 30)

	Prussia	Hamburg	Bremen	Lubech	North German Union	Germany	Total
1865	—	$ 6,978,772	$13,015,788	$	$	$	$19,994,560
1866	$ 67,540	13,440,087	12,891,073				26,398,700
1867	611,955	11,026,700	15,402,950				27,041,605
1868	949,138	15,190,798	23,284,467	24,360			39,448,763
1869	2,178,033	12,951,452	24,742,329				39,871,814
1870	2,904,060	9,978,777	28,658,924				41,641,761
1871					34,610,021		34,610,021
1872						40,144,642	40,144,642
1873						61,767,997	61,767,997
1874						64,344,622	64,344,622
1875						52,517,913	52,517,913
1876						51,107,147	51,107,147
1877						58,192,511	58,192,511
1878						54,111,249	54,111,249
1879						56,519,426	56,519,426
1880						56,292,106	56,292,106
1881						68,858,571	68,858,571
1882						52,790,056	52,790,056
1883						64,340,490	64,340,490

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