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Memorandum of conversation of Mr. Baer of the German Embassy and Mr. DeWolf of the Department (18.11.1928)

Protokoll

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Formalia:

Typoskript

Regest:

In der hier präsentierten Quelle wird deutlich, dass Handelsdiskriminierungen längst nicht nur auf der Ebene der "großen Politik" erfolgen konnten, sondern ihren Ausdruck in alltäglichen Geschäftspraktiken fanden. Bezeichnenderweise stellen beide Gesprächspartner am Ende einmütig fest, solche Praktiken würden weder gegen die Bestimmungen des Berliner Vertrages vom August 1921 (dem Friedensvertrag zwischen beiden Ländern) noch gegen den Handelsvertrag zwischen Deutschland und den USA vom Dezember 1923 (und der darin gewährten unbedingten Meistbegünstigung) verstoßen.

DIVISION OF WESTERN EUROPEAN AFFAIRS

November 13, 1928

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Dr. Baer of the German embassy called and discussed informally certain aspects of discrimination in this country against goods of German origin. He stated that he had studied the question rather closely and had classified these indirect discriminations against foreign goods, which of course include German goods, as follows:

1. Purchase by the Federal Government of materials, etc., for construction where preference is given to home products.
2. Purchases by states, municipalities and counties where preference is given to home products.
3. Exercise of police power by municipalities, counties and states directly giving preference to home products.

Dr. Baer cited instances where building codes by being drawn up in a certain way make it impossible for local builders to use any but home products. He stated that he had discovered six regions where the Bessemer interests were particularly active and had been able to[2] have building codes enacted which made it practically impossible for local builders to use other than Bessemer steel products.

4. Direct propaganda by chambers of commerce and trade organizations to influence private and public bodies to use only home products.

5. General propaganda in newspapers to buy at home either on the ground that home products are better or that by buying at home the general prosperity of a country will be increased.

6. Agreements between unions and their employers whereby the latter are prohibited in using any foreign goods.

Dr. Baer cited an instance in St. Louis where under a proposed agreement between a labor union and its employers the latter were forbidden to use any foreign products, in this instance German products, in the manufacture of stained glass windows.

Dr. Baer wished me informally and personally to confirm his belief that none of the above mentioned instances could very well be held to violate Article 8 of the treaty between the United State and Germany.¹[3]

This Article reads as follows:

"The nationals and merchandise of each High Contracting Party within the territories of the other shall receive the same treatment as nationals and merchandise of the country with regard to internal taxes, transit duties, charges in respect to warehousing and other facilities and the amount of drawbacks and bounties".

This Article clearly has in view only certain enumerated[sic!] instances in which the merchandise of one party shall be assimilated to the merchandise of the other. None of the instances listed by Dr. Baer would seem to come within the prohibitions of the above quoted treaty provision. Referring to No. 6, namely the agreement between a labor union and its employers, Dr. Baer suggested that such an agreement might violate federal legislation prohibiting restraint of trade. He added that should the federal authorities concerned fail to prosecute in such a case, the situation might be similar to that of a Government refusing to take steps to protect an alien who was in danger of life or property. I pointed out to Dr. Baer that it was well established under international law that an alien was entitled to protection but that I was unaware of any principle of law which required one country to prevent discrimination – in the shape of agreement between private individuals or preferences by purchasers - against[4] foreign goods in the absence of specific treaty provisions. The question whether or not prosecution should be instituted for a violation of our municipal laws in cases coming under No. 6 is a matter for the discretion of the Department of Justice. A failure to take steps to prosecute, however, could not, in my estimation, constitute a violation of existing principles of international law and could certainly not be considered a violation of Article 8 of the treaty. Dr. Baer agreed with me that there was no doubt that governmental bodies as well as individuals in this country had a perfect right to give preference to the home market and that their action in so doing in no wise constituted a violation of the treaty or of international law.

Dr. Baer stated that he was writing to Foreign Office and advising it to discourage as far as possible any retaliatory measures in Germany such as the enactment of building codes which in disguise would be a means of giving preferential treatment to home products. He believed that the best way of eliminating such objectionable features was through persuasive arguments show-[5]ing the ill effect of such measures upon the foreign trade of the country. Dr. Baer concluded by saying that the talk had been entirely informal and that the German Embassy did not contemplate writing us any formal communications in the matter.

Schur[?]

1 Bezug wird hier genommen auf den am 8. Dezember 1923 zwischen den USA und Deutschland abgeschlossenen Handelsvertrag, der beiden Seiten unbedingte Meistbegünstigung gewährte.