AUSTRIA-HUNGARY.

APPLICATION OF THE ADMINISTRATIVE PROVISIONS OF THE COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND GERMANY TO AUSTRIA-HUNGARY.

File No. 14867/5.

The Chargé of Austria-Hungary to the Secretary of State.

No. 1809.] EMBASSY OF AUSTRIA-HUNGARY,
Manchester, Mass., July 22, 1909.

YOUR EXCELLENCY: Referring to our numerous conferences on the subject, I have the honor, in pursuance to instructions from my Government, to inform your excellency that the latter would greatly appreciate an official declaration by the State Department to the effect that the administrative provisions of the commercial agreement concluded between the United States and the German Empire in 1907, will, as far as they remain in force during the period prescribed after such denunciation has been made, be likewise applied to Austrian and Hungarian imports.

My Government points to the fact that this would not imply a new concession on the part of the United States, but merely the continuance of an existing condition during the six-months denunciation period. It believes that it can count on an absolutely equal treatment of our products with those of the German Empire as far as the administrative provisions are concerned, for the reason that a differential treatment of Austria-Hungary would have to be regarded by it as a violation of the principle of the most favored nation, which is applied to the United States by the Austro-Hungarian Monarchy in the most faithful manner.

I am aware that the State Department will be unable to make an authoritative declaration regarding the future tariff treatment of foreign nations until the tariff now under discussion is permanently adopted. However, in view of our commercial interests, I should greatly appreciate an exhaustive and, as I hope, satisfactory answer to this note as soon as the new tariff bill becomes a law.

While having the honor to request as early a reply as possible, I avail, etc.

L. AMBRÓZY.

File No. 14867/8.

Chargé Rives to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN EMBASSY,
Vienna, September 30, 1909.

Mr. Rives says he has been requested by the minister for foreign affairs to ask that the United States customs authorities accept certificates of chambers of commerce of Austria-Hungary and extend to Austria-Hungary the same privileges, as to Germany, until enforcement of Payne bill, and requests answer by cable.

File No. 14867/7

The Acting Secretary of State to the Ambassador of Austria-Hungary.

No. 485.] DEPARTMENT OF STATE,
Washington, October 25, 1909.

EXCELLENCY: Referring to the requests of your Government, as communicated by Baron Ambrózy's notes Nos. 1809, 2010, and 2193 of the respective dates of July 22, August 15,[1] and September 3, 1909,[1] that Austria-Hungary be assured in the continuous enjoyment of the administrative provisions indicated in the diplomatic note which accompanied the American commercial agreement with Germany of April 22/May 2, 1907—which administrative provisions were gratuitously extended so far as applicable to all other nations, including Austria-Hungary, importing goods into the United States—I have the honor to inform you that the department, animated by a sincere desire to meet the request of Austria-Hungary, in whole or in part, if such a course be proper and possible under the existing laws of the United States and be consistent with the traditional commercial policy of this Government, has, as foreshadowed in its note to you of the 11th ultimo, given this question the most serious and painstaking consideration and has submitted the questions involved to the Treasury Department for investigation and determination, since that department is the particular division of the executive branch of this Government which, under our laws, is primarily charged with the administration of customs acts.

As the result of this careful consideration by both departments, this department is able to make the following assurances regarding the administrative interpretation to be applied for the present to certain provisions of the new tariff law. However, it should at the same time be observed that in giving to the Government of Austria-Hungary the assurances hereinafter set forth—assurances which this Government is most happy to be able to extend—it must not be overlooked that such assurances are in their nature entirely voluntary and gratuitous, and that the privileges thereunder are extended not because of any feeling upon the part of this Government that it is under any obliga-

[1] Not printed.

tion to make such assurances, but solely because of the deep desire of this Government to give to the Government of Austria-Hungary and to every other Government concerned every courtesy, consideration, and advantage which a due and proper regard for its own policies and laws permits it to bestow; and further, it should not pass without notice that this Government is not intending to confer, and does not confer, either by the making of these assurances or by the actual application of the administrative provisions themselves, any such right or interest in such provisions as may not, when and as soon as the exigencies of the situation may seem to this Government to demand it, be freely changed and altered or abolished without thereby giving to your Government or to other Governments, in whose favor naturally these provisions, being general, will also be extended, any just ground for objection or complaint.

Concerning those provisions of the diplomatic note which were not general in their nature but specific (that is, points E and F of the note) and which, as to point F, the department was pleased, upon special request of the Austro-Hungarian Government, dated June 19, 1907, to extend to Austria-Hungary, the department begs to state that it is of opinion that the American customs officials may continue for the present to extend to Austria and Hungary the privileges provided in those sections, and that for the present the certificates of value as issued by the chambers of commerce of those countries will, pursuant to the understanding above referred to and as specified in point F, be received by American customs appraisers as competent evidence of the value of the imported goods wherever such evidence is relevant to the question under investigation.

Concerning the other provisions contained in the German note, it was, as your excellency is aware, made clear by this department at the time the provisions were extended to Austria-Hungary and other nations that points A to D, inclusive, were general in their character; that is, that they were merely administrative statements as to modifications to be thereafter uniformly and generally applied in the administrative interpretation of the customs laws of the United States at that time in force. Moreover, as your excellency is also doubtless aware, those provisions were, as a matter of fact, thereafter uniformly applied by American customs officials to imports from all nations without reference to the existence or nonexistence of any specific conventional agreement to this effect between any of such nations and the United States, and, indeed, were actually applied to the imports of all countries without any such conventional agreement, except in the case of Germany and the Netherlands. In other words, these provisions were mere administrative rulings upon the meaning of an existing law, and while they were made part of the commercial agreement with Germany, they were applied independently of it. It should also be recalled, as was fully understood at the time, that the extension of these privileges by this Government to other nations than Germany was not made because of any belief or feeling upon the part of this Government that such other nations could claim these privileges as matters of treaty or other right, but solely because this Government, considering that the privileges resulted from mere interpretations of an existing law, and were not, therefore, necessarily a matter of treaty stipulation and bargain, was sincerely desirous of treating, as far as

the law and our commercial policy would permit, all nations upon a basis of exact commercial equality.

But, inasmuch as these privileges were thus in their essence the result of mere interpretations of law, obviously they must, so far as a strict legal and logical aspect of the case is concerned, fall when the law to which they appertain ceases longer to have any force or effect. Therefore, the Dingley tariff law, having been repealed, it is impossible for the Government of the United States to continue the administrative interpretations of that law.

However, this department, anxious to encourage the friendly commercial intercourse which has always existed between itself and the Government of Austria-Hungary, is of opinion that it will be possible for the Government of Austria-Hungary still to receive for the present, as administrative interpretations of the new tariff law, the advantage of all those general provisions which were set forth in points B to D, inclusive, since there have been incorporated into the new tariff law provisions either identical with or substantially similar to those provisions of the old law to which these particular points relate.

In accordance with this view, it would seem that, inasmuch as section 8 of the old customs administrative act has been reenacted as subsection 8 of section 28 of the new tariff law, there would appear to be no reason why the interpretation placed upon the language of the old act, as provided in point B of the diplomatic note, should not be for the present continued as the interpretation of the provisions of the new law.

As to point G, which provides that in reappraisement cases the hearings shall be open and in the presence of the importer, it will be observed that the substance of this provision of the note has been incorporated in the new tariff law as a part of subsection 13 of section 28, which in terms provides that in reappraisement cases "hearings may, in the discretion of the General Appraiser or Board of General Appraisers, before whom the case is pending, be opened, and in the presence of the importer or his attorney." For this reason it would seem that there could not be any serious difficulty concerning this point.

Finally, as to point D, there appears to be nothing in the new law which would prevent for the present the continued enforcement, as to matters involved therein, of the consular regulations provided for in that section as they have been heretofore administered.

It therefore appears that the substance of all the provisions of the diplomatic note above referred to, from B to F, inclusive, can for the present at least be continued in practically an unmodified form.

The new law does not, however, seem to permit the continuation of an unmodified and mandatory application of point A, since the law defines, so far as its own provisions are concerned, the meaning of "market value," in cases contemplated in that point, in a way which may not at times be in harmony with the definition given to that term in point A of the diplomatic note. You will understand in this connection, as has been already pointed out, that while the Executive authority of this Government may, and indeed must interpret the meaning of the laws relating to customs duties, yet this authority can but interpret; and, therefore, whenever the law itself specifically

defines the meaning of a term, it is not possible for the Executive to change or alter such definition. Since in this matter, therefore, the law has by its very terms and clear intention nullified, at least in part, the administrative provisions of section A of the German agreement, and while as to Germany and the Netherlands those provisions are nevertheless continued for a limited time under their specific agreements in accordance with the express provisions of the new tariff law as to the date of expiration of these and other agreements, the voluntary extension of similar benefits to other nations with whom no specific agreements have been negotiated must (where, as here, inconsistent with the terms of the new law) cease and determine from the moment the old law falls and the new law goes into effect; and however willing the Executive of this Government might be to continue to extend to all countries the full benefits of all portions of the administrative features of the German commercial agreement, and however much the department may regret its inability to give assurances to this effect as desired by the Government of Austria-Hungary, the express provisions of the new law are of such a clear and direct character as to render such a course impossible.

It may, however, be observed that while subsection 11 of section 28 of the new tariff act provides that in no case shall the market value "as defined by law" with reference to goods imported into the United States under circumstances contemplated by the provisions of point A of the agreement, be less than the American wholesale price, yet, as you are well aware, the same subsection also provides that in determining the dutiable value which shall be placed upon such goods, there shall be deducted from the American wholesale price when so applied certain necessary expenditures and commissions incurred in connection with the importation of such goods; and it would appear that wherever the question of the real value of the goods and the amount to be deducted as provided in this section is under discussion and investigation "the market value," as defined in point A of the diplomatic note, might still be pertinent and admissible evidence upon the question of the real value of the goods and would receive consideration by the Treasury officials in their determination of the amount that should be deducted from the American wholesale price as an allowance for the necessary expenditures contemplated by the statute. Although, as is obvious, such evidence could not under any view be regarded as conclusive upon the questions involved in the determination of this dutiable value, it would certainly appear to be strongly persuasive now as formerly upon the point of the market value in the producing country. Concerning this point it may be remarked that if the new law operates as did the old one, it will doubtless be found that the certificates of the chambers of commerce contemplated in point F will be of particular value in connection with the determination of the foreign "market value" under this provision of the new law as just discussed; and in this connection I beg to suggest for your consideration the fact that as the old law and the administrative provisions applying thereto were administered, these certificates were not considered decisive upon the question of the "market value," as defined by point A, and they were not, as a general rule, introduced as evidence unless a reasonable doubt had arisen as to the correctness of

stated values and upon the demand of consular or appraising officers, or at the request of shippers or importers who desired to verify invoice values and to corroborate their evidence. It would seem that this might, in considerable part, be the position and value of such certificates under the new law.

The department desires that in connection with this whole matter it should not be overlooked that questions regarding importations formerly affected by the provisions of point A of the German agreement and now and hereafter by the stipulations of subsection 11 of the new tariff law, are relatively unimportant, since it would seem from the records of the United States Customs Service that heretofore such importations have been all but negligible; and if this be true, it would appear that the questions now under discussion, ought not and could not, under any fair and reasonable attitude, appreciably affect the commercial relations of the two Governments. It would therefore seem that all apprehension that the new law will inflict upon the commerce between the United States and Austria-Hungary, any substantial injury by reason of its effect upon importations falling within the purview of point A of the German agreement, should be removed, and this view finds emphasis in a consideration of the fact that the general provisions regarding the determination of the market value of imports into the United States are, under the new law, substantially similar to those under the old law, as will be seen by reference to the provisions of subsection 18 of section 28 of the new law, which provides that under the circumstances named in that section the actual market value of an article shall be held to be the price at which such merchandise is freely offered for sale to all purchasers in the foreign markets in the usual wholesale quantities, such being the price which the manufacturer or owner should have received and was willing to receive for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities.

Since these assurances as to the essential portion of the administrative provisions included in the German agreement appear to be of a character to meet substantially the requests made by your excellency's Government, it would seem that nothing remains as to this phase of the matter but to express to your excellency the satisfaction it affords me to be able thus to comply with the requests of your Government.

Inasmuch, however, as in your excellency's note of July 22, 1909, your excellency has thought it necessary to invoke in support of your requests the doctrine of the "most favored nation" treatment as that doctrine appears to your Government, it seems advisable, in order that there may be no misapprehension concerning the position of the Government of the United States upon that question as it affects the present matter, that some such discussion of this general principle should be herein incorporated as would sufficiently set forth the American doctrine upon this question.

As your excellency's Government is doubtless aware the Government of the United States advocates and maintains that the general treaty clause stipulating for most favored nation treatment should be interpreted as meaning that under it one contracting power may demand as of right, freely and without compensation, all privileges

and favors which the other contracting power, freely and without compensation, grants to a third power; but that where the third power secures from the one contracting power exceptional and unusual rights or privileges for a price or compensation paid therefor by such third power, that in that event the one power is under no obligation to grant such exceptional and extraordinary rights and privileges to such other contracting power, except upon payment by such power of a price or compensation which is the same or equivalent to the price or compensation paid by the third power. This has been the uniform doctrine of the United States upon this question. In the present case, however, the Government of the United States is not, in order to support its present contentions, under the necessity of relying upon this general principle of interpretation as adopted by this Government, since, as your excellency is fully informed, the commercial treaty of 1829 between the United States and Austria-Hungary is most explicit upon this very question; for while article 5 specifies that no higher or other duties shall be imposed on an importation into the United States of any article of produce or manufacture of the dominions of Austria than are imposed upon the produce and manufacture of any other foreign country article 9 provides specifically "That if either party shall hereafter grant to any other nation any particular favor in navigation or commerce it shall immediately become common to the other party freely, where it is freely granted to such other nation, or on yielding the same compensation when the grant is conditional." In view of this latter provision of the treaty your excellency will at once perceive that even had it been necessary under the new tariff law for the Government of the United States wholly to withdraw from the Government of Austria-Hungary the administrative privileges guaranteed to Germany in the German commercial agreement, still it would not be possible, under article 9 of the treaty just quoted, for your Government to regard the United States as thereby infringing upon any of the rights which Austria-Hungary possessed by reason of this "most favored nation" clause, because the privileges of the administrative provisions having been granted to the German Government for a compensation paid by that Government, the Government of Austria-Hungary would not, under the treaty, be entitled as of right to such privileges except in case of the payment of the same compensation as that paid by the German Government.

The question of the interpretation of these provisions of the treaty has already been the subject of a considerable correspondence between the two Governments, in the course of which the contentions of the United States upon the question were quite elaborately set forth in a note dated November 5, 1832, addressed by Mr. Livingston, then Secretary of State, to Baron Lederer, then the Austrian consul general, in which Mr. Livingston discussed the matter in the following clear and comprehensive manner:

There is no rule of construction better settled either in relation to covenants between individuals or treaties between nations than that the whole instrument containing the stipulations is to be taken together, and that all articles in part materia should be considered as parts of the same stipulations. The five articles of the treaty in question, from the fifth to the ninth, inclusive, bear on the same matter—they profess to regulate the footing in which their respective vessels are to be mutually treated in relation to duties and other impositions.

They must all then be taken together and if the fifth article provides, as it does in substance, that the duties levied on merchandise imported by them mutually shall be the same with those paid by the most-favored nation. The ninth explains fully what was the intent of the parties by declaring explicitly that if the future favor to the third nation shall be freely granted it shall be freely enjoyed by the contracting party, but on payment of the same compensation if it were granted conditionally. This is the plain, common-sense construction of the agreement; any other, as has been shown, could not reasonably be supposed to have been the intent of the high contracting parties. Did they mean that that which was paid for at a high price should be enjoyed gratuitously? Did they mean to preclude each other from making any advantageous arrangement with other nations, for such would undoubtedly be the effect of the construction contended for by the Austrian Government, a construction that may in future contigencies be much more injurious to their interests than it is in this instance to those of the United States; or did they intend to establish as a rule between them the plain and equitable principle that each was to pay the same price that other nations paid for any advantage they might receive—a rule that would leave each free to pursue its own interest without injury to the other contracting party? For what is more equitable than that, if the advantage is to be enjoyed, the price at which it was obtained should be paid; what more unjust than the pretension to enjoy it without an equivalent? The construction contended for by the United States therefore puts the contract on the foundation of justice and equity; that of the Austrian Government would make it the means of inequality, and therefore the rule applies that in doubtful cases that construction is to be adopted which will work the least injustice. Observe, sir, that I am far from contending that the mere inconveniences resulting from your interpretation of the treaty are conclusive reasons that it is not the true one; I acknowledge that although the stipulation should be inconvenient it must be fulfilled if it be explicit. But the scope of my argument is to show that if the case were as doubtful as I think it clear, the inconveniences would be such as ought to persuade us that your construction can not be conformable to the intent of the parties. I have said that the case appears it to be entirely clear from all obscurity if there is no contradiction between the fifth and the ninth articles, and if the latter applies to the former there can be no doubt.

There is no contradiction between the two articles. The fifth article stipulates that no higher or other duties shall be paid on any article of the product or manufacture of Austria than are or shall be imposed on the like articles proceeding from any other country. The ninth article confirms instead of contradicts this. Its language is in substance this: The same duties shall be paid, and if we lessen those duties in favor of another nation yours shall be placed on a perfect equality with such nation; if we give it gratuitously to him we extend it in the same manner to you; if he gives an equivalent, you shall give one, but we can expect no greater consideration from you than from him. In this way the fifth article is complied with, otherwise it would not be. Suppose there should be another nation from whom you take cotton and who in return takes your wines, and suppose the quantities equal in value and the duties imposed by each nation to be also equal. If such nation should agree with you to abrogate the duty on your wines in consideration of a similar abrogation of your duty on their cotton, could the United States in that case claim a right to introduce their cotton into Austria, duty free, under the fifth article? I apprehend not. We should in that case be told, and told with reason, the ninth article is as much a part of the contract as the fifth; it does not contradict but confirms it, for (we should further be told) the nation whose cotton we should agree to receive without duty, in appearance, really pays us the same duty as it did before, but it has taken off a duty equivalent in amount from our wines; for our mutual convenience we have dispensed with the actual collection, but the duty is still substantially paid; if you are willing to pay the same price for the arrangement you have a right under the fifth article to do so; we should be guilty of a breach of faith if we denied it, but until you have complied with the condition you have no right to enjoy the advantage. To this answer we should find it difficult to frame a reply that would sustain our right to the advantage without paying the price which was given by the nation which purchased it.

You seem to think that the expression used in the ninth article, which designates the advantage intended to be made reciprocal as a "*particular* favor in navigation or commerce," can not refer to any future change in rate of duties,

and you say the word *particular* means *peculiar* not *general, special* not *ordinary.*" Admitting the correctness of this definition, it points out clearly the object of the article to have been that for which I contend. The fifth article had provided for all *general* and *ordinary* cases. If we reduced our duties generally for other nations they must be reduced for Austria. But another case must be provided for, a particular favor, to another nation not a *general,* not an *ordinary* one; what is to be done in that case? The article answers it shall be enjoyed by the contracting parties. But how? Freely if freely granted, performing the same condition if there is a consideration. Thus all the parts of the treaty are in harmony, the ordinary advantages are enjoyed on the ordinary terms, the special advantages on paying the price at which they were purchased by the other party.

It will, I trust, be thus evident to you that this Government might, under the express provisions of this treaty, and in strict accord with the very terms of the most-favored-nation clause included therein, wholly withdraw from the Government of Austria-Hungary the benefits of the administrative provisions of the German commercial agreement without giving to the Government of Austria-Hungary any just or tenable basis whatsoever upon which to rest complaints against this Government for such action. The Government of the United States, however, having in mind the liberal commercial policy invariably pursued in recent years by the Government of Austria-Hungary toward the United States in all that concerns the application to American products of the conventional tariff of Austria-Hungary, has been not only disposed to grant to Austria-Hungary those advantages which Austria-Hungary might demand as a matter of treaty right, but has been vigilant to discover a means by which it might extend to Austria-Hungary, so far as was possible, advantages and considerations which it has extended to other nations in order thus to express in an appropriate and substantial manner its appreciative sense of that liberal commercial policy which has heretofore been shown by the Government of Austria-Hungary toward the United States, and which it is the earnest hope of the Government of the United States shall always characterize the relations between the two Governments.

Accept, etc., HUNTINGTON WILSON.

The Secretary of State to Chargé O'Shaughnessy.

File No. 14867/7.

No. 374.] DEPARTMENT OF STATE,
Washington, November 1, 1909.

SIR: I inclose for the embassy's information copy of a note[1] to the ambassador of Austria-Hungary concerning the continued enjoyment by Austria-Hungary of the administrative provisions indicated in the diplomatic note which accompanied the American commercial agreement with Germany of April 22–May 2, 1907.

I am, etc.,

P. C. KNOX.

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[1] Supra, note of October 25.

File No. 14867/17.

Chargé O'Shaughnessy to the Secretary of State.

No. 993.] AMERICAN EMBASSY,
Vienna, November 10, 1909.

SIR: I have the honor to acknowledge the receipt of your dispatch No. 374, dated the 1st of November, 1909, in which is inclosed, for this embassy's information, the copy of a note addressed by the Hon. Huntington Wilson, Acting Secretary of State, to the Austro-Hungarian ambassador in Washington, concerning the continued enjoyment by Austria-Hungary of the administrative provisions indicated in the diplomatic note which accompanied the American commercial agreement with Germany of April 22–May 2, 1907; and to report that the action of my Government in voluntarily and gratuitously granting this courtesy to Austria-Hungary has been received in this country with satisfaction, several members of the staff of the foreign office having expressed to me personally their appreciation.

I am, etc., NELSON O'SHAUGHNESSY.

FORM OF CERTIFICATE TO BE USED BY SUBJECTS OF AUSTRIA-HUNGARY BECOMING NATURALIZED AMERICAN CITIZENS.

File No. 19913.

The Chargé of Austria-Hungary to the Secretary of State.

No. 1396.] AUSTRO-HUNGARIAN EMBASSY,
Washington, June 4, 1909.

YOUR EXCELLENCY: By direction of my Government I have the honor to call your excellency's attention to the fact that in the certificate of citizenship issued on October 18, 1900, by the Court of Common Pleas, Fairfield County, Conn., to the former Hungarian subject, Victor Vrecenak (Vreczenyak), of Bridgeport (which is inclosed with the request that it be returned), the said person is designated as a "subject of the Sovereign of Austria," a form which does not take into account the political status of the Austro-Hungarian monarchy and is not in accordance with the notes exchanged some time ago with the State Department (see department's note of July 7, 1896, No. 121,[1] to Prince Wrede and the memorandum under date of June 22, 1896).[2]

I therefore beg to request your excellency's good offices in bringing the purport of the former memorandum again to the knowledge of the competent American authorities and to kindly endeavor to prevent errors of this nature from recurring in future in the issuance of certificates of naturalization.

Please accept, etc., L. AMBROZY.

[1] See Foreign Relations, 1897, p. 24.
[2] Not printed.

File No. 19913/2–3.

The Acting Secretary of State to the Chargé of Austria-Hungary.

No. 457.] DEPARTMENT OF STATE,
Washington, July 23, 1909.

SIR: Referring to your note of the 4th ultimo, in which the department's attention was invited to an error in the certificate of naturalization issued by the Court of Common Pleas in Fairfield County, Conn., to the former Hungarian subject Victor Vrecenak (or Vreczenyak), whereby he is designated as a "subject of the Sovereign of Austria," a form which, as you point out, does not take into account the dual character of the Austro-Hungarian monarchy, I have now the honor to advise you of the receipt of a letter on the subject, dated the 12th instant, from the Acting Secretary of Commerce and Labor, to whose department a translation of your note was sent with the request that it be brought to the knowledge of the competent authorities, in order that similar errors may not be made in the future.

The Acting Secretary's letter calls attention to the fact that the said Victor Vrecenak (or Vreczenyak) was admitted to American citizenship on October 18, 1900, or prior to September 27, 1906, the date when the naturalization act of June 29, 1906, which conferred upon the Department of Commerce and Labor administrative control over naturalization matters, became effective in toto.

Mr. McHarg adds that since September 27, 1906, his department has required that in cases of Austrian subjects renouncing allegiance to their sovereign in order to become American citizens the designation in the certificate of naturalization shall be "Francis Joseph, Emperor of Austria," and in the case of Hungarians, "Francis Joseph, Apostolic King of Hungary."

The certificate of naturalization inclosed with your note is herewith returned, as requested.

Accept, etc., ALVEY A. ADEE.

File No. 19913/4–7.

The Chargé of Austria-Hungary to the Secretary of State.

[Translation.]

No. 2330.] AUSTRO-HUNGARIAN EMBASSY,
Manchester, Mass., September 25, 1909.

YOUR EXCELLENCY: In your esteemed communication No. 457, of July 23 last, your excellency had the kindness to inform me that the Department of Commerce and Labor had, since September 27, 1906, adopted a new wording of the renunciation clause contained in American certificates of citizenship, in which the title of His Imperial and Royal Apostolic Majesty now reads "Francis Joseph, Emperor of Austria," in the case of the naturalization of an Austrian, and "Francis Joseph, Apostolic King of Hungary," in case of the naturalization of a Hungarian.

I brought the contents of said note to the knowledge of my Government and am now instructed to call your excellency's attention to the contents of the note, of which an English translation is in-

closed, which was sent to Secretary of State Olney on June 8, 1896, by Prince Wrede, at that time Austro-Hungarian chargé d'affaires, and which was made known to the American authorities concerned by means of the memorandum of the State Department under date of June 22, 1896,[1] of which a copy is likewise inclosed.

From this correspondence it is to be seen that the only form of oath that will take into account the political status of the Austro-Hungarian Monarchy will be one which, on the one hand, recognizes the fact of a separate Austrian and Hungarian citizenship, and which, on the other, recognizes the fact that the ruler to whom the Austrian or Hungarian citizen renounces his allegiance unites both the States of the Monarchy under his scepter in common.

Just as in 1896, my Government still considers it to be of the greatest importance that the title of His Imperial and Royal Apostolic Majesty should always read "His Majesty the Emperor of Austria and Apostolic King of Hungary" in American naturalization certificates, regardless of whether the person being naturalized is an Austrian or a Hungarian citizen.

While taking the liberty of requesting your excellency's kind offices in communicating the foregoing to the Department of Commerce and Labor and in having the latter resume the practice which prevailed from 1896 to 1906 with regard to the form of the renunciation clause, I beg of your excellency to kindly notify me of whatever steps you take in this matter and the results thereof.

Please accept, etc.

L. AMBRÓZY.

File No. 19913/4–7.

The Acting Secretary of State to the Chargé of Austria-Hungary.

No. 483.] DEPARTMENT OF STATE,
Washington, October 7, 1909.

SIR: I have the honor to acknowledge the receipt of your note of the 25th ultimo, in which, with reference to the department's note of July 23 last, you invite attention to the fact that your Government considers that in certificates of naturalization issued in the United States to former Austrians and Hungarians, it is of the greatest importance that the title of your Sovereign should always read "His Majesty the Emperor of Austria and Apostolic King of Hungary," regardless of the circumstance whether the person naturalized was an Austrian or a Hungarian subject.

In reply I have the honor to advise you that, pursuant to your request, it has afforded the department pleasure to communicate the contents of your note to the Secretary of Commerce and Labor, who has been asked to bring the matter to the attention of the proper officials of his deparment in order that they may take due note of the Imperial-Royal style hereafter to be used.

Accept, etc., ALVEY A. ADEE.

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[1] See For. Rels., 1897, p. 24, for note re memorandum.

ARBITRATION CONVENTION BETWEEN THE UNITED STATES AND AUSTRIA-HUNGARY.

Signed at Washington, January 15, 1909.
Ratification advised by the Senate, January 20, 1909.
Ratified by the President, March 1, 1909.
Ratified by Austria-Hungary, April 17, 1909.
Ratifications exchanged at Washington, May 13, 1909.
Proclaimed May 18, 1909.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an Arbitration Convention between the United States of America and Austria Hungary was concluded and signed by their respective Plenipotentiaries at Washington on the fifteenth day of January, one thousand nine hundred and nine, the original of which Convention, being in the English, German, and Hungarian languages, is word for word as follows:

The President of the United States of America and His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary, signatories of the Convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July, 1899;

Taking into consideration that by Article 19 of that Convention the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment, have resolved to conclude the following convention and for that purpose have appointed their Plenipotentaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary, Baron Ladislaus Hengelmüller de Hengervár, Grand Cross of the Orders of Leopold and Francis Joseph, 3rd Class Knight of the Order of the Iron Crown, His Majesty's Privy Counselor and Ambassador Extraordinary and Plenipotentiary to the United States of America;

Who after communicating to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I.

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the High Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899; provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the High Contracting Parties, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defined clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure.

It is understood that such special agreements on the part of the United States will be made by the President of the United States by and with the advice and consent of the Senate thereof.

Such agreements shall be binding only when confirmed by the governments of the High Contracting Parties by an exchange of notes.

ARTICLE III.

The present Convention shall be ratified by the High Contracting Parties, and the ratifications shall be exchanged as soon as possible at Washington.

The present Convention shall remain in force for five years from the fifteenth day after the date of the exchange of the ratifications.

In testimony whereof the respective Plenipotentiaries have signed this Convention and have affixed thereto their seals.

Done in duplicate at Washington the 15th day of January, 1909.

ELIHU ROOT [SEAL]
HENGELMÜLLER [SEAL]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the thirteenth day of May, one thousand nine hundred and nine;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this eighteenth day of May in the year of our Lord one thousand nine hundred and nine, [SEAL] and of the Independence of the United States of America the one hundred and thirty-third.

WM. H. TAFT.

By the President:
P. C. KNOX,
Secretary of State.

ABUSE OF NATURALIZATION PAPERS.

File No. 1271/469.

The Department of State to the Embassy of Austria-Hungary.

Aide memoire.

DEPARTMENT OF STATE,
Washington, December 20, 1909.

With reference to the recent visit to the Department of State of the ambassador of Austria-Hungary, on which occasion His Excellency made inquiry touching the question of the abuse of naturalization papers by Austrians who have taken out American citizenship papers merely for purposes of protection in their native country, the Department of State begs to invite attention to the fact that the cases mentioned by the ambassador seem to come within the purview of the second paragraph of section 15 of the naturalization act of June 29, 1906. This law is quoted on the first page of the circular instruction to the diplomatic and consular officers of the United States, dated April 19, 1907, and entitled "Reports of Fraudulent Naturalization." A copy of that circular is sent herewith.[1]

It appears from the records that the Department of State has referred to the Department of Justice, under the provision of this law, three cases of persons who acquired permanent residence in Austria-Hungary within five years after their naturalization. Two of these cases were reported by the consul at Trieste and the other by the consul at Prague.

Attention is also invited to the second section of the expatriation act of March 2, 1907, which is quoted on the first page of the circular instruction of April 19, 1907, entitled "Expatriation."[2]

These two laws clearly show that it is not the desire of the Government of the United States to extend its protection to persons who obtain naturalization fraudulently without an intention of residing in this country, or to persons who, although they may have been lawfully naturalized, have expatriated themselves by prolonged foreign residence. There are, no doubt, many naturalized American citizens of Austrian or of Hungarian origin who have been residing in their native lands for many years. It is difficult, however, for the diplomatic and consular officers of the United States to obtain information and furnish reports in regard to these persons, since they do not make known the fact of their American naturalization until, for some reason, they desire to obtain the intervention of this Government in their behalf.

It may be added that the Department of State has been informed by the Department of Justice that there is a case now pending in one of the courts which involves the question as to whether section 15 of the naturalization act of June 29, 1906, is retroactive.

The question of the retroactivity of section 2 of the expatriation act of March 2, 1907, is receiving the reconsideration of the law officers of the Department of State.

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[1] See Foreign Relations, 1907, p. 8.
[2] Ibid., p. 3.