argued on its merits in the Senate, it would seem that one or both of two issues would present themselves. In the first place, it may be debated whether the new protocol actually does constitute an acceptance of the Senate's five reservations, together with a plan of procedure for their application in practice. In the second place, assuming that it is argued that the protocol does not constitute an acceptance, it may be debated whether, notwithstanding this fact, the protocol gives adequate protection to the interests of the United States which the Senate desired to safeguard. Answers to these questions are to be found in Secretary Stimson's letter of November 18, referred to above.

PHILIP C. JESSUP.

TARIFF RELATIONS WITH FRANCE

The State Department has recently published the correspondence relative to the happy settlement of the serious tariff controversy with France.[1] The cordiality of our relations with our first friend and recent ally had already been somewhat ruffled by the irritation aroused over the Debt Settlement and over the drastic application of the Volstead Act, which suddenly cut off the importation of French wines. Then came the high rates of the Fordney Tariff of 1922, adopted at the very moment when war-burdened Europe was expected to repay its indebtedness. The result was no little bitterness, especially in France. In view of the well-recognized liberty of every sovereign state in the matter of tariff, no protest was possible. But when the United States obtained the benefit of the minimum rates under the Franco-German Treaty of Commerce of August 17, 1927, without any apparent reciprocal benefit to French exporters, France by a presidential decree of August 30, 1927, established a discriminatory régime against American exports to date from September 6, 1927.

This brought a prompt protest from the United States. In the correspondence which followed, the two governments stated their respective views with force and some acerbity. The controversy between the two states involved an important difference of doctrine. The United States considers that tariff regulations are entirely a matter of domestic concern, provided that there be no discrimination against the imports of a particular state. Consistently with this view, the United States advocates the adoption of the unconditional form of the most-favored-nation clause, the effect of which is to give to all those who come under the stipulation the full benefit of any concession made to a third state. But France includes in her tariff, minimum and maximum rates, and looks to the conclusion of reciprocity treaties with particular states to determine the rates she will apply within

[1] Press release Nov. 20, 1929, covering correspondence of 1927, 1928 and 1929. See also press releases of October 3, 1927 and May 25, 1928.

these limits. In this way she believes that she holds a weapon to secure fair treatment from states that impose excessive tariff.[2]

In the *memoire* presented September 19, 1927, the American Government objected that France discriminated against the trade of the United States "by applying to many categories of American goods rates in some cases four times as high as upon similar articles imported from Germany and other countries competing with the United States in the French market." "Absence of discrimination" was declared to be "a cardinal principle of clean cut and friendly trade relations." The principle of general most-favored-nation treatment in its broadest form as the basis of commercial treaties was, the United States pointed out, unanimously recommended by the members of the Economic Conference held in Geneva, as a principle to be followed, and it had been endorsed by the members of the French delegation to the conference. The *memoire* concluded:

> The policy of the American Tariff Law makes no discrimination whatsoever between articles imported from different countries. Furthermore discrimination in world trade against the United States has practically ceased. It is France alone, at the present time, which seriously discriminates against American products. Article 317 of the present American Tariff Law gives the Executive the right to impose additional duties on goods coming from a country which discriminates in its tariff against the trade of the United States. The American Government is very loathe to increase its tariff on articles imported from France which is clearly at the present time practising serious discrimination as contrasted with its treatment of similar goods imported from other nations which are competitors of the United States.

In reply, on September 30, 1927, France argued against the American doctrine in regard to the most-favored-nation clause, and remarked that the efforts of the Geneva Economic Conference had been to secure the lowering of "excessive tariffs by common agreement." She was not, she said, "complaining of being discriminated against by the United States," but of being subjected, together with other states, to a "restrictive régime," which, in view of the character of her production, was more prejudicial to her than to other nations.

Referring to the unsatisfactory condition of her trade with the United States, she declared "it is impossible not to recognize that the restriction is due to the excessive elevation of the American tariffs affecting the principal French products. . . . Coming to another cause of complaint, the *memoire* declares:

> Moreover, French exports encounter obstacles, not only by virtue of restrictions resulting from the new American tariff, but also by virtue of the methods of its application not only in America at the moment of customs clearance but also in France itself, where, with a view of this clearance, the American customs administration asserts its right to

[2] See French *aide-memoire* of Sept. 30, 1927, press release of Oct. 3, 1927.

resort to practices which the French law forbids to the French Government itself.

In addition to the tariff and customs formalities there exists a series of regulations of a sanitary or phyto-pathological nature which are often completely fatal to agricultural exports from France.

In regard to the argument invoked by the American Government to the effect that it could make no concessions nor enter into any treaty of reciprocity, the French Government replied that it had never envisaged the negotiation of a reciprocity treaty; but it did not believe that concessions were impossible under the American law. Section 315 of the Fordney Act, it was pointed out, gave the President the power, after investigation by the Tariff Commission of the differences in the cost of production, to change the classification and the rates of duty on certain articles in order to equalize the cost of production. Concessions of such a nature, it was pointed out, were necessary before France, in accordance with its unchanging laws and doctrines, could grant to America the most-favored régime accorded to other countries. Some way might also be found, it was intimated, to alleviate the injurious effects of the sanitary regulations which the French Government declared to bear with particular severity upon her agricultural exports.

The French Government expressed regret that the American note had mentioned Article 317 [retaliatory provision] of the American tariff act, "whose application would be in conformity neither with the common desire for agreement on economical (errata, *economic*) questions nor with the still too recent memory of the struggles which our two countries waged upon the grounds of international justice." Recognizing that the two governments could not expect to reach an agreement upon the basis of principle, the French Government—relying upon the mutual good will of the two countries—thought that an agreement might, however, be reached through the adoption of practical measures which would obviate the injuries suffered by each.

The attitude of the American Government was favorable to these suggestions. In the conciliatory reply of October 11, 1927, the United States asked that "pending the negotiations, the American products to which the general or discriminatory rates of the tariff measure of August 30, 1927, have been applied, should at once be given the minimum rates of duty of the French tariff." It was explained that sanitary and other regulations affecting agricultural exports from France were imposed "to safeguard plant and animal life against the introduction of pests which might do great harm." Attention was drawn to the interference of similar French regulations with American exports, and a promise was made to examine "in the most friendly spirit whatever complaints under this head the French Government may submit, assuming of course that the French Government will likewise examine the complaints of American exporters which it will submit."

Because of existing tariff legislation, the French Government did not find

it possible, even as a provisional measure, to give to all American products the benefit of the minimum tariff. It could not, it said, grant "prior to negotiation, a régime which in itself must be the result of a negotiation and an agreement." It intimated that it would wait upon the results of the investigations under Section 315 of the American tariff law to ascertain whether it would be possible to agree upon a commercial treaty containing the application of its minimum tariff.

Similarly, the granting to the United States of general and unconditional most-favored-nation treatment must depend upon the advantages to French exports secured by the treaty. The same was true of the abolition of the "differential régime" to which, "before the decree of August 30th, a large part of American exports were subjected."

Subject to these reservations, France offered the return to the situation prior to the decree of August 30, 1927. This would give the United States, because of certain changes since made in the nomenclature and rates, a more favorable treatment than existed prior to the decree. But the United States could not expect the return to this "ameliorated *status quo ante*" without giving in exchange effective guarantees in anticipation of the prospective subsequent negotiations.

In order to avoid every possibility of misunderstanding, the French *memoire* carefully formulated the stipulations which the protocol should contain. In addition to the examination under Article 315 and the examination of the sanitary regulations, the abolition of the countervaling [retaliatory] duties applied on October 7th to certain French products should be withdrawn. The third stipulation which, it was declared, the protocol should contain was: "That the interference of the American customs on French territory will come to an end."

The United States did not recognize the necessity of entering into a formal protocol, as suggested by France. The same result was, however, effected through the carefully considered exchange of explanatory *memoires* back and forth until there was a clear understanding of the definite terms of the compromise covering the following points:

1. The temporary tariff régime to be applied by the two countries.
2. The procedure under Article 315 relative to the changes of rates after the investigation of the Tariff Commission.
3. Mutual examination of sanitary regulations.
4. Removal by the United States of the countervaling or retaliatory rates imposed on French imports.
5. Withdrawal of the United States Treasury agents making investigations in France.
6. Agreement to enter upon the negotiation of a general treaty of amity and commerce.

Finally, when an understanding in regard to all points of difference had been reached, the French Government, in the note of November 16, 1927, de-

clared that the régime promised for American importers would be put into effect on November 21, 1927, by means of a decree which would appear in the *Journal Officiel*.

This *modus vivendi*, reached as a result of arduous negotiations, did not, however, effect a permanent settlement of the controversy relative to the activity of American customs agents in France. French merchants believed that their exports were at a disadvantage, and urged that the agents be permitted to return. The French Government yielded to this pressure; and in a *memoire* of January 27, 1928, recognized the desirability of agreeing upon a procedure to permit the Treasury agents to check the declaration of value made by French exporters, if this could be done without disregard of French law or offense to French susceptibilities.

It was proposed that the Treasury agents should be attached to the American consulate; and that in case of doubt they should verify the invoices of merchants coming to the consulate for a *visa*. In such a case the exporter might either produce the relevant papers, or submit the invoice to expert accountants or technical experts, to be chosen by the American authorities from a list drawn up by the French Government. If the reciprocal rights of the French agents to the enjoyment of similar privileges in the United States were recognized, the French note expressed the belief that "the very delicate question of the control of the exporter's declaration of value" might be settled to the satisfaction of both countries.

After a careful study of the French proposal, the United States on October 19, 1928, replied that its agents would willingly examine any documents submitted by experts; but that according to our laws, the weight to be given documents and the investigations of agents abroad was a matter for the appraiser, acting under oath and fulfilling the duties imposed by Section 500 of the Tariff Act of 1922. The verification of documents submitted to consular authorities would not be sufficient.

As to reciprocity for French agents, the American note assured the French Government that the United States would "interpose no objection to the activities of French agents on lines similar to those on which American Treasury agents may be authorized to operate in France." Attention was drawn to the fact that Canada, South Africa, and Australia maintained customs agents in the United States with duties "substantially similar to those of American customs agents in foreign countries." Regretting that the proposed procedure could not be accepted, the American Government promised to give its attentive consideration to any alternative procedure which might be suggested.

On March 6, 1929, the French Government communicated a draft agreement. In reply to this, the American note of July 26, 1929, entered at some length into a very careful explanation of the purpose of the investigations by Treasury officials. The value for customs was explained to be either the value in the country of exportation (foreign value) or the export value, which-

ever was the higher. If neither of these could be ascertained, the value of similar goods sold in the United States (United States value) was used. This last value was usually higher than either the foreign or export values. When it was impossible to ascertain this also, the "cost of production" was the value used. When there was an opportunity of verification at the source, it was pointed out, the necessity of using "United States value" very seldom arose. It arose only in those very rare cases when the appraiser was unable to ascertain to his satisfaction the foreign value of imported merchandise. The note explained that,

> In such cases the American law affords the person manufacturing, producing, selling, shipping, or consigning the merchandise an opportunity to make available to officers of this Government information which may assist the appraiser in ascertaining the foreign value or export value. The exporter, in these cases, is requested to permit a duly accredited officer of the United States to inspect his books and records pertaining to the market value of the merchandise in question. In the rare cases in which this request is made, it should be realized that its purpose is two-fold in that it furnishes the appraiser information which will assist him in ascertaining the value of the merchandise in question and at the same time affords the exporter opportunity to make this information available in order that it will not be necessary for the appraiser to use the United States value or other basis of value as provided for in the law in case neither the foreign value nor export value can be satisfactorily ascertained.

It was, the American note said, erroneously supposed in some quarters that, after the withdrawal of the customs agents in accordance with the desire of the French Government, all French imports had been appraised according to United States value. This, it was declared, was not the case; but that, with the passing of months, the available information in regard to the foreign value of French exports became obsolete in regard to certain articles. It then became necessary for the appraiser to apply the United States value since he could not obtain satisfactory information as to the value of French merchandise. While any purpose of employing retorsions was politely denied, the implication nevertheless was that the absence of the customs officials from France had to a certain degree had that unintentional effect.

Referring to the French proposal that the Treasury agents attached to the consulates should determine the exactitude and sincerity of the invoices of merchandise, it was pointed out that the values or prices stated in invoices would have in general little to do with the question of whether or not such stated values or prices were the actual foreign value or export value of the merchandise at the date of exportation. After all, the function of the Treasury agents was not to fix values, but to supply confidential information to customs appraisers in order that they might appraise the value of the imported merchandise upon its entry. However, if the information con-

tained in such reports were "verified from the best sources by customs officers well versed in our law and court decisions," it was "usually conclusive although not binding." No objection was raised to having the American agents attached to the consulate in some manner, and earnest attention, it was promised, would be given to the problem of determining in what way it might be possible to meet the wishes of the French government.

In regard to the retaliatory provisions of the Tariff Act the note stated:

> . . . In deference to the wishes of the French Government and in an effort to arrive at a satisfactory solution of the present situation, the Department of State and the Treasury Department have recommended to the Congress of the United States the repeal of Section 510 of the Tariff Act. In that section provision is made, which is mandatory upon the Secretary of the Treasury, to prohibit the importation of merchandise from any foreign manufacturer or shipper who refuses, upon request of a representative of the United States Treasury Department, to give the latter necessary information in order that the appraising officer in the United States may be able to find foreign value or export value. The French Government will find that this section has been eliminated from the pending tariff bill as it was passed by the House of Representatives.

The American note continued:

> If it is agreeable to the French Government to permit the return to France of agents of the United States Treasury Department, the Government of the United States will be happy to assure the French Government that such agents will be officers of long standing and experience, fully versed in the French language and who will be in every way acceptable to the French Government.

The French Government in its note of August 9, 1929, expressed its approval of these explanations. The instructions to be given to the new agents, along with the care taken in their selection would, it was felt, make of them "collaborators" with the French exporters and "render their activity acceptable in every way to the French Government."

The promise of the American Government to work for the repeal of Section 510 imposing a penalty upon exporters who refused to give information was repeated textually, and the effect of the repeal, it was understood, would limit the rôle of the Treasury agents "to offering their services to the French exporter in order to give the latter, by furnishing the information required by the American customs administration, the opportunity of claiming the benefit of the foreign value or export value of his merchandise."

In view of the abrogation of Section 510 and the assurance contained in the American note, the French Government declared that it saw no objection to the return of the agents to France. It was, however, desired that they should be officially accredited and that the American Government should, in accordance with its proposal, consent that representatives of French customs in the United States be invested with identical powers.

The French note concluded:

> It remains understood that the present agreement would become null and void if, in the event that Congress should have reënacted the former Article 510, the Administration of the United States would have recourse to the reprisals there envisaged.

The American note of October 28, 1929, expressed entire agreement with the French explanation, and noted that in the event that Section 510 should be retained and it should become "necessary to make application of the provisions of that section in respect of any French products, the present agreement will become null and void should the French Government so desire and so notify the Government of the United States." The following day the recognition of Mr. James F. O'Neil, the highest ranking Treasury official in Paris, as Treasury Attaché to the American Embassy was requested, with a promise to accord a similar recognition to a French attaché to the French Embassy in Washington acting in a like capacity.

In agreeing to accept the ranking Treasury official in Paris as an attaché to the Embassy, the French Government gave evidence of an especially conciliatory attitude and made it possible for our government to adhere to the terms of the Act of January 13, 1925, which provides that customs attachés "shall, through the Department of State, be regularly and officially attached to the diplomatic mission of the United States in the countries in which they are to be stationed. . . ." When these officials were first appointed, one of the principal objections to the reception of the customs attachés was understood to have been the feeling that the diplomatic status should be reserved for those who dealt with the relations of state to state. While the activity of the Treasury agents is immediately concerned with the evaluation of the goods of individual exporters, it is nevertheless true that the mode of their activity is a matter of concern to the two states, as the event in France so clearly demonstrated. An important consideration which led to the adoption of the Act of 1925 was the desire to bring the foreign Treasury representatives or agents under the general supervision of the chief of the diplomatic mission in accordance with our administrative policy abroad. This would give them an analogous status to commercial attachés. A diplomatic status is also of considerable practical advantage in avoiding the unjust pretensions of certain European states to tax the salaries and official supplies of foreign agents, including consuls. A diplomatic attaché is immune from such annoyances and is able to pursue his technical investigations in any part of the country. He has another advantage over a consul in that he may communicate directly with the central authorities of the government.

In regard to the retaliatory Section 510 of the Tariff Act, it is little wonder that France objected most strenuously to what she regarded as an attempt to enforce a claim to investigate the affairs of French merchants through the prohibition of the entry of the goods of those firms that refused. It will be remembered that the United States made a vigorous protest

in the Cutting Case at what we regarded as Mexico's infringement of our sovereignty, and when, during the World War, Great Britain blacklisted firms doing business in the United States and enforced penalties by holding up their goods, great indignation was aroused. Yet the requirements of international commerce make it necessary that states should not be too stiff in their attitude about sovereignty, and that they should coöperate by facilitating the reasonable activity of foreign agents within their jurisdiction. France, it is seen, wishes to attribute these activities to officials of the regularly established and officially recognized consular missions, whereas the United States would be less formal and give tacit permission for the presence of foreign agents so long as they were under the general supervision of the diplomatic mission and their activity was regarded as unobjectionable. This latter course may, on the one hand, give rise to misunderstandings and difficulties in regard to the status and activities of these minor departmental representatives, but, on the other, it is more flexible and allows rapid adjustments in regard to the numbers and functions of foreign agents.

In the settlement of this controversy in regard to the respect of sovereignty, and in that relative to the reasonableness of the respective tariff régimes, an admirable spirit of compromise has been shown. The future will no doubt bring forth other differences in regard to the application of the governing principles to new situations, but every reasonable compromise is of assistance as a precedent in building the foundation upon which ultimately a rule of law may be formulated.

ELLERY C. STOWELL.

THE PROGRESS OF COÖPERATIVE DEFENSE

Remarkable as was the development in the scope of international law during the second half of the nineteenth century and the opening years of the twentieth, it is significant that the fundamental basis upon which the law rested remained much as it had been at the close of the Thirty Years War. New rules had come into being relating to matters of common convenience and regulating the lesser interests of the nations, and these were on the whole effectively observed in spite of the absence from the international community of any system of sanctions. But in respect to the graver interests of states, in respect to the somewhat vague field including matters of national policy, each nation determined its own line of conduct and recognized no authority higher than its own will. Each nation was at once the judge in its own case and the enforcement officer of its own claims.

Foremost among these graver interests of national policy was, of course, the protection of the state against attack. Here each state was the keeper of its own gates, the guardian of its own territory. As such it could count only upon its own resources, unless indeed it was conscious of the weakness of its resources and concluded an alliance with one or more of its neighbors. Alli-