

# RULE FOR CALCULATING AD VALOREM DUTIES.

Import duties payable *ad valorem* under this Tariff shall be calculated on the actual cost of the articles at the place of purchase, production or fabrication, with the addition of the cost of insurance and transportation from the place of purchase, production or fabrication, to the port of discharge, as well as commission, if any exists.

# RULE FOR THE MEASUREMENT OF TISSUES.

In determining the dutiable width of any Tissue the Customs shall discard all fractions of an inch not exceeding half an inch, and shall count as a full inch all fractions exceeding half an inch.

NOTE.—*It is understood that selvedges shall not be included in the measurement of Tissues.*

## 第二節 對 獨 交 涉

一二四 明治三六年十月十五日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

### 獨逸政府ノ態度ニ關スル件

You have been successful with British Government. I think it is also necessary to know the inclination of German Government before opening negotiation with England. Ascertain and telegraph at once.

November 6, 1893. Mutsu.

一二五 明治三六年十月十五日 青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

### 獨逸政府ノ態度ニ關シ回答ノ件

German attitude unfavorable. Therefore diplomatically unwise to approach that Government at present.

November 15, 1893. Aoki.

一二六 明治三六年十月十五日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

### 獨逸政府ノ態度内探方ノ件

Japanese Government is very anxious to ascertain definitely attitude of German Government because if it is certain that German Government is not favorably disposed to our treaty revision on principle of equal footing it might become dead-lock to treaty revision in general. You say it is unwise etc. Is it your own view or opinion ascertained of proper persons? In either case full reasons are required for guidance of our decision. Answer by telegraph at once.

November 15, 1893. Mutsu.

一二七 明治三六年十月十五日 陸奥外務大臣宛  
青木駐獨公使ヨリ(來電)

### 獨逸政府ノ態度ニ關スル件

Fraser will leave for Japan (中略). I must inform

you also that German Government are not inclined to abandon Okuma Treaty. Besides, anti-foreign movement at home call public attention everywhere.

Berlin, Nov. 15, 1893. Aoki.

一二八 明治三六年十一月九日 青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

對獨政府ノ態度ニ關スル件

Regarding German attitude, I have ascertained opinion of proper persons according to your desire. They say also that German Government may be disposed to enter into (negotiations?) and to alter treaty if we had finished the new negotiations with all other powers previously.

Berlin, Nov. 19, 1893. Aoki.

一二九 明治三六年十一月二十二日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

對獨交渉暫時見合せ方ノ件

As German Government are not disinclined after all, now the way is clear for us to open negotiations

with other powers. You should see that German Government would not think it is (?) through lack of due regard toward them that we postpone negotiations with them.

November 22, 1893. Mutsu.

一三〇 明治三七年五月二十八日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

對獨交渉全權委任ニ關スル件

The following is for your previous information. When English treaty is concluded, I intend to telegraph you full powers for German treaty. Task of translating draft into German text is entirely entrusted to you. If you find it necessary to introduce any modifications in the text telegraph me for instructions.

May 28, 1894. Mutsu.

一三一 明治三七年五月三十一日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

對獨交渉開始方ノ件

送第一二號 條約改正ニ關スル件(第二十五)

本月二十八日及電報<sup>1</sup>置候通英國政府トノ談判終結シ調印相濟候節ハ直チニ電信ヲ以テ獨逸政府ニ對スル談判全權ヲ閣下ニ御委任可相成筈ニ付右豫メ御承知置相成度候將又我提案ヲ獨逸文ニ譯シ獨逸文本文ヲ調成スルコトハ全ク閣下ニ御委任致度候間宜敷御取計相成度候

又獨逸政府ニ對シ談判ニ御着手ノ上ハ時機ヲ見計ラヒ白耳義國政府ニ向テモ開談スヘキ筈ニ有之尤白國ニ對シテハ別ニ約定税目ヲ説ケス會テ差遣置候取調表ニ掲ケシ通り最惠國條款ノ作用ニ依リテ低税ノ便益ニ均霑セシムル方法ニ有之候得共議定書第一項ノ文面モ他ノ英、佛、獨、米ノ四ヶ國即チ約定税目ヲ有スル國ニ對スル議定書第一項ノ文面トハ自ラ差別有之候義ニ候尙茲ニ同國ニ對スル分トシテ佛文條約案、和英文及佛文議定書案及佛文外交文書案各一通及御送付置候右申進候 敬具

逐テ新約案第十七條中「本條約ハ其實施ノ日ヨリ兩締盟國間ニ現存スル」ノ下「及ヒ之ニ附屬スル一切ノ諸約定」ノ上ニ獨逸國ニ對スル分ニハ「萬延元年十二月十四日即千八百六十一年一月二十四日締結ノ修好通商條約明治二年正月十日即千八百六十九年二月二十日締結ノ修好

通商航海條約」ノ文字ヲ記入シ又白耳義國ニ對スル分ニハ「慶應二年八月二十六日即千八百六十六年十月四日締結ノ附屬約書」ノ文字ヲ記入スヘキ筈ニ有之候

註 1 前掲一二八

一三二 明治三七年七月三日 陸奥外務大臣ヨリ  
青木駐獨公使宛

條約案第十八條修正ノ件

送第一九號 條約改正ニ關スル件(第二十七)  
今回英國トノ新約彌ヨ調印相濟ミ本年七月十六日ヨリ五ヶ年目即チ明治三十二年(千八百九十九年)七月十七日ヨリ實施セラルヘキ筈ニ付テハ他各締盟國トノ新約モ之ト同時ニ實施ノ運ニ相成候事最モ必要ニ有之候ニ付テハ兼テ及御送附置候獨逸及白耳義國ニ對スル條約案第十八條中ノ

本條約ハ調印ノ日ヨリ少クモ五ヶ年ノ後迄ハ實施セラレサルモノトス

トアルハ

本條約ハ調印ノ日ヨリ少クモ〇〇〇ノ後迄ハ實施セラレサルモノトス

ト修改シ又

尤此通知ハ調印ノ日ヨリ四ヶ年ヲ經タル後何時ニテモ  
爲スコトヲ得ヘシ

トアルハ

尤此通知ハ調印ノ日ヨリ〇〇〇ヲ經タル後何時ニテモ  
爲スコトヲ得ヘシ

ト修改致置度左スレハ右兩國トノ新約調印ノ日ニ應シ明治  
三十二年七月十七日ヨリ新約ノ實施セラルヘキコトヲ標準  
トシテ右二ヶ處ノ空處ニ年月數ヲ書入ルヘキコトヲ致シ我當  
初ノ目的通り右明治三十二年七月十七日ヨリ各國トノ新約  
一律ニ實施セラルヘキ都合ニ可相成候

將又奧國伊國ニハ目下公使不在代理中ニ付右兩國及瑞西國  
ニ對スル提案即條約案議定書案外交文書案(一國ニ付三案  
共和英文各一通佛文各二通宛)玆ニ封入差送候間他日何分  
之義申進候迄其公使館ニ御預リ置相成度候  
右申進候 敬具

一三三 明治三十七年八月七日

在英青木公使ヨリ  
陸奥外務大臣宛

置候 You see I am already in stadium of negotiation  
with Germany 決シテ此地ニ逸居シ機務ヲ怠ルニ非ス、  
併シ已ニ貴國ニ達置候通り獨人ハ法律議論ニ偏勝シ小矢釜  
敷流義ヲ有スルニ由リ獨政府トノ商議ハ太ク困難ナリ生ノ  
微力能ク商議ノ任ニ堪ヘケン歟頗ル掛念罷在候

右ノ乘掛有之候間獨政府ト商議ヲ開ク手續ハ御掛念  
ナク一切生ヘ御委置可被下候尤全權御委任狀ハ已ニ  
御差出有之候哉如何々々又奧國伊國トノ商議ハ之ヲ  
如何ニ御開可被成ヤ伊國ニ關シテハ「マルチノー」  
ト御地ニ於テ商議有之方却テ好都合ナラン奧國ニ關  
シテハ先前已ニ建言セリ故ニ再ヒ玆ニ贅セス將又奧  
國ヘ公使派遣如何々々先日電信ヲ以テ建言候得共御  
答無之隨テ領貴意ニ由ナク候得共到底「ヘンゲルム  
ユルレル」氏ヲ御拒絶以來同國政府ノ感情ハ頗ル知  
覺相祟リ居候間速ニ我ヨリモ一公使ヲ派遣シ彼ヨリ  
モ之ヲ引受ケ當時ノ出來事ヲ忘却ニ付スル方可ナリ  
同國外務大臣ハ先年來ノ相識ニテ有之候間生迄ハ間  
接ニ直接ニ此意味ヲ表示シテ止マス又獨政府モ「ヘ  
ンゲルムユルレル」一件ニ付テハ從前云々生迄「ヒ

陸奥外務大臣時代 對獨交渉 一三四 一三五

私信

## 對獨開談ニ關スル件

(前略)生義至急伯林ニ歸任シ獨政府ト條約談判可相開云  
々御申遣相成正ニ敬承乍去已ニ先達別便ニテ申出置候通七  
月十八日ヲ經由シテ 同政府ヘ商議相開度旨申入候處其後  
ノ回答ニ同政府ハ欣然可開商議候得共其以前各省ト篤ク協  
議不致テハ不相叶(其實獨國大使ノ懇話ニ徴スレハ獨政府  
ハ頗ル狐疑スル所アリ他ナラス英政府ニシテ今回ノ如キ新  
條約ヲ締結シタランニハ別ニ秘密條約ヲ以テ竊ニ特殊ノ利  
益ヲ取付タルニ相違ナシ否シテ法稅兩全ヲ擲却スル理ナ  
シ云々トノ事ニ有之候)依テ協議相濟候上ハ生ノ歸任ヲ可  
促トノ事ニ有之候又本月六日右大使ヨリノ內信ニ今般ノ條  
約タル實ニ改基的ノ約束ニシテ事體甚タ小少ナラス故ニ商  
議相開候以前本件ヲ按シ同盟國(主トシテ奧伊ヲ云フ)  
ヘ相談致度候處生之ニ對シ不同意アルヤ如何トノ事申來  
候間生ハ之ニ答ヘ Germany ought to take once more  
initiative, I do not see any necessity for her to confer  
with friendly Powers, but I can not forbid the impe-  
rial Government to execute their intention 云々申途

ント」ヲ與ヘ候事有之候間此際更ニ公使ヲ交換シテ  
中直リ致候方萬々好都合ナリ御英斷有之度候  
先ハ麻痺腕ヲ奮ヒ 但シ真正ナル 中風ニハ非ス 如此謹啓  
二十七年八月七日

陸奥 盟兄

周 藏

一三四 明治三十七年八月三十一日

陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

## 全權委任ニ關スル件

No. 671 (37) Will send by next mail full powers  
for Treaty revision with Germany. I intend to intrust  
you with Vienna negotiations also. Telegraph me  
whether for that purpose you do not think it is ad-  
visable for that purpose you to that Court.

Aug. 31, 1894. Mutsu.

一三五 明治三十七年九月十日

陸奥外務大臣ヨリ  
青木駐獨公使宛

## 全權御委任狀送附ノ件

送第二五號 條約改正ニ關スル件(第一)

去月三十一日電信(三七)ヲ以テ申進候通獨逸帝國政府ノ新條約締結ニ關スル全權御委任狀閣下へ御授與相成候ニ付及御送附候間御受領可有之候

右申進候 敬具

(御委任狀ノ日附ハ九月四日ナリ)

明治三十七年九月十日發遣

註 1 前掲一三四文書

2 御委任狀寫ハ省略ス

一三六 明治三十七年九月四日

青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

交渉開始ニ對スル獨政府ノ意向申報ノ件

(1) While greatly amazed at our success in London, German Government inform me in spite of my presentation to be unable to open negotiation before arrival of reports of German Minister in Japan charged to state his opinion concerning state of things there. Bearing in mind the difficulties I mentioned before, convince German Minister in Japan of urgent necessity of speedy negotiation with his Government and persuade them through him to abandon that idea.

Meanwhile I will use all efforts and proceed to Vienna to ascertain Count Kalnoky's disposition, but absolutely necessary to give him the assurances I already referred to.

(Via Peters.), Sept. 4, 1894. Aoki.

Tokio, „ 6, „ .

German Government desire to open negotiation after receipt of report from Baron Gutschmid who is charged to express his opinion on the present state of affairs. Therefore I hope you will immediately see the Baron and talk with him on the subject to obtain his assistance.

Received, Sep. 6, 1894.

此ハ九月六日接青木在獨公使來電(一)ヲ修改セシメシテ獨國公使ヘ示ス爲メ之ヲ作ヘリ九月九日林次官外務大臣ノ命ヲ倚テ日光ナル獨公使ノ許ニ赴キ此電信ヲ示シテ晤談スル所アリタリ

一三七 明治三十七年九月五日  
陸奥外務大臣ヨリ  
西駐露公使宛(往電)

第三條第一項ニ關スル件

(11) Nissi. In French text of draft treaty in Paragraph 1 Article III, strike out the words "terrains qui en dependent" and insert in their stead "edifices dependents" and Paragraph 2, strike out the words "et terrains" and insert "magasins et boutiques" instead. In case adoption of text of new English treaty is insisted upon, remember that word premises used in Article III of that treaty means edifices but not laud, and translate into French accordingly. Inform Aoki and Sone.

September 5th 1894, Mutsu.

註 青木ハ駐獨公使會藏ハ駐佛公使ナリ

一三八 明治三十七年九月十日

陸奥外務大臣ヨリ  
青木公使宛(往電)

獨逸公使ノ口吻ニ關スル件

No. 724 (5) German Minister in Japan has not yet received instructions regarding treaty revision. Therefore he has no authority to say anything, but in his personal opinion he is very favorable toward it and will report favorably by Canadian mail (of) September 11, 1894. Mutsu.

tember 14th. If he receives instructions, he promised to inform me of it and may find occasion to telegraph his views to his Government. His despatch of August 1st must be in the hand of German Government from which they may gather general state of things. In any case, I place implicit reliance upon your exertion to conclude German negotiation by the end of this year. As to Austria, you may assure Count Kalnoky of appointment of Watanabe's successor in future. You will be sent (to) Vienna in due time on special mission to conclude treaty, so also with Switzerland. But as speedy communication of draft of treaty is desirable, don't you think it better to let Oyama do that portion only of the work with Austria and Switzerland? As to Belgium, communicate draft immediately because I have already informed Belgian Minister in Japan that negotiation will be taken up. Do not forget to alter all draft according to my telegram of September 5th. Full power for Belgium by Canadian mail of September 14th.

September 11, 1894. Mutsu.



一三九 明治三十七年九月五日

在獨青木公使ヨリ  
陸奥外務大臣宛

## 對獨國開談其他二關スル件

(私信)

本年八月六日ノ私信此境へ歸任後正ニ領收申候嚮ニ日英間ノ條約商議相調候以來電信並書狀ヲ以テ度々慰勞ノ懇諭ニ接シ汗顔ノ至ニ御座候小生ヲシテ本件ヲ結了セシメタルハ一モ二モナク老兄ノ偉大ナル勳功ナリ小生ノ一臂豈奏功ノ名ヲ博スルヲ得ン恐縮々々

右私信並去月三十日ノ貴電信ニ據レハ改正談判ノ爲メ小生ヲ獨國へ兼任セシムルトノ御内意ニ有之候處已ニ伊國へ專任公使高平氏御派遣相成候故小生兼任ノ事ハ獨國ノ満足スル所ニ有之間敷依テ右商議ノ爲メナランニハ a special mission (但シ大使ト云ニ非ス尋常ノ特派公使ナリ)ノ名ヲ以テ小生ヲ獨國へ御遣有之度建言申出候都合ニ御座候要スルニ各國間ニ於テ占領スル獨國ノ位置ハ遙ニ伊太利ノ右ニ居候而已ナラス獨國ノ左置スルハ獨國ノ感覺ニ觸ル、如キ兩國間ノ情交有之候間此段深御含ノ上至當ノ御處分有之度候(中略)小生ノ之ヲ續テ其任ニ當ラハ昨年中已ニ申上

ラス其他政事家モ小生ノ所説ニ賛成シ遂ニ we will be a good friend of Japan without to be enmity of China ト迄明言シテ開戦及接戦ノ妨ヲ爲ササルニ決セリ是亦老兄當時小生ヲシテ即答並ニ決答ヲ爲サシムルノ位置ニ立シメタレハナリ尙詳細ノ報道可差出候得共五月下旬來右部ノ瘦腕ニ麻痺ヲ感シ裁書ニ便ナラス候間暫ク御猶豫是祈

二十七年九月五日

在伯林 周

藏

陸奥 盟 兄

尙々倫敦駐劄我公使ハ何時迄モ兼任ト申譯ニ成間敷候處追テ何分ノ義生ヨリ申上候マテ只今ノ儘ニ被成置度候

註 1 見當ラズ 2 一三四ナリ

一四〇 明治三十七年九月三日

青木駐獨公使ヨリ  
陸奥外務大臣宛

## 獨逸へノ歸任遷延ノ件

別信第拾號

十月二十二日到

本年七月二十二日貴電信ヲ以デ本官義伯林府へ歸任シ獨政府ニ對シ條約改正ノ談判ニ取掛ルヘキ旨御訓令有之候處本官ハ當時ノ形勢何分英國ヲ離ル、ノ不得策ナルコトヲ信シ

陸奥外務大臣時代 對獨交涉 一四〇

置候通獨國外務次官並通商局長トノ Confidential under-standing 有之候間商議甚不難事ト被察候特ニ在維納瑞西公使ハ小生十四五年來ノ舊友ニ候間老兄ノ御考次第瑞西ト

ノ商議ハ維納ニ於テ同公使トノ間ニ行爲スル方甚便理歟ト被存候獨政府及「ワシントン」政府ハ調印濟ミ翌日即七月十七日在倫敦其大使ヲ經テ小生ノ confidential information about the conclusion of the new treaty ニ接シタリ故ニ獨政府ハ從前ノ不快ナル行掛有之ニモ拘ハラス小生ノ希望及請求ヲ認可シ商議可致事ニハ頓ニ決心罷在候ヘ共定規ノ手續ヲ墨守シ御地在勤ノ「グウトシユミット」男ヨリ意見書到來スル迄ハ開商議コト不出來ト申居候依テ倫敦ヨリ歸任ノ翌日前獨公使「フオン、ホルレーベン」氏ニ懇談ヲ開キ最高ノ場所ヨリ大喝一聲ノ命令相下リ候様骨折試居候最初ヨリ申上タル如ク獨政府ハ輕忽ニ我請求ヲ容レス實ニ大骨折サスル事ト覺悟ナカラ小生ハ苦心罷在候朝鮮一件ニ付テハ金玉均變死前ヨリ不計モ英外務大臣及次官補ニ對シ同國ニ關スル日本ノ利害及清政府ノ unreliable-ity ト同氏等ノ清國ヲ「高買」スルヲ排斥シ強情ニ勝手ケ間敷理屈主張致候處開戦前後ニ至リテハ嘗ニ右兩氏ノミナ

タリ其所以ハ朝鮮事件一方ニ於テハ猶ホ日支兩政府間ノ談判ニ係リ他ノ一方ニ於テハ日支ノ兵隊已ニ京城牙山間ニ對陣セル際ニテ本官ハ朝夕英外務大臣ト交渉シテ和戰ニ關スル外交上ノ措置ヲ商議罷在候故ナリ依テ翌二十三日電信ヲ以テ本問題ニ就キ外務大臣「キンペルレー」伯ハ本官ニ對シ一方ナラサル信用ヲ措キ候ニ付當時英京ヲ出發スルハ舉動甚タ穩當ナラストノ旨申置候事ニ有之候其他同月十六日即チ新條約調印ノ當日英外務大臣ト協議ノ上其翌十七日獨、米、兩國ノ大使ハ日英新條約ノ寫ヲ交付シ各自ヨリ其政府へ調印濟ノ旨通知シ及該政府ニ於テモ速ニ新條約締結ノ商議ヲ開候様獎諭有之度云々依頼候處先日書翰ノ寫差上候通米大使ハ翌十八日本官ヲ逆旅ニ訪問シテ日英新條約ノ成功ヲ非常ニ贊美シ自分モ大ニ日本國ノ爲ニ喜フトノ旨開陳セリ而シテ獨逸大使モ亦本官ノ逆旅ニ來訪シ先ツ笑テ今般日英新條約ノ結了セルニ付テハ察スル所必ス別ニ之レニ對スル秘密ナル代償立約アル可シ願クハ竊ニ展讀ヲ許サレヨ杯談話シ非常ニ我成功ノ意表ナリシヲ歎賞シ且直チニ獨逸政府ハ本官ノ依頼ヲ通知スル旨ヲ約シテ歸リ申候其後數日アリテ該大使ハ口頭ニテ獨政府ハ日英新條約ヲ基礎トナシ

改正談判ヲ開クニ躊躇セス然レトモ開議前本件ニ關シ内國諸官衙ト協議スルノ必要アリ故ニ何月日ヲ期シ本官獨逸ヘ歸任スヘシトノ事ハ追テ更ニ通知ス可キ旨ヲ申聞候故ニ本官ハ匆卒伯林ヘ歸任ノ必要ヲ感セサリシノミナラス加之倫敦府ニ於ケル新條約反對說ノ萌芽ハ早已ニ調印前ニ發生セルヲ以テ本官ハ豫メ不慮ノ變ヲ慮リ調印ノ翌日ヲ期シ英皇ノ批准ヲ領シ直チニ條約書ヲ日本ヘ郵送有之度旨當時「キンベルレー」伯ニ請求致置候處（尤モ此事ハ本官ト英外務大臣及次官補 Mr. Hon. Bertie トノ間ニ限レル談話ニ有之候）果シテ調印後數日ヲ經テ倫敦府中ノ或ル商人部分ニ於テ新條約ハ英國ノ商業ニ不利ナリトノ議論起リタル旨倫敦府知事ヨリ竊ニ通知シタリ勿論批准相濟タル結約ニ關シ英政府躊躇スル等ノ事ハ萬々有得ヘキトモ思ハレトモ英政府ノ慣習トシテ公議輿論ヲ重スル流義ニ有之候故之ヲ放鬆ニ付シ難ク隨テ外務次官迄ハ云々抗辯ヲ費候事モ有之候此又滞在必用ノ一源因ニ有之候尋テ朝鮮ニ於テ英國領事ニ關スル一件及運搬船高陞號擧沈一件相起リタルヨリ英外務省ノ意嚮頗ル面白カラス當時電信ニテ申進置候通時宜ニ由リテハ批准交換ヲ猶豫スルモ料リ難キ現況ニ立至候又一方ニ於

テ必要トスルコト無之ニ由リ即日英國ヲ發シ翌九月一日伯林府ニ歸着致候歸任ノ翌日ハ日曜日タルヲ以テ翌々三日ヲ俟テ獨逸外務大臣及次官ニ面會シ改正ニ關スル談判ノ開始ヲ促シタリ然ルニ第壹號電信ニテ申進シタル通大臣及次官齊シク我政府ノ倫敦府ニ於テ收メタル成功ニ對シ大ニ驚歎シ種々ノ贊辭ヲ陳フルト同時ニ於テ東京駐劄獨逸公使ヨリ本件ニ關スル意見書ヲ領收セサル以前ニ在テハ談判ヲ開始スルコトヲ得サル旨ヲ返答致候此事タル獨外務省ノ職制上ヨリ言ヘハ不得已ル手續ニ有之別ニ不好意思ヲ表セル譯ニハ無之候乍併東京ヨリノ報知ヲ俟テ開議スルコトニ決セハ之カ爲メ時日曠過ノ都合タルヲ以テ今般ハ特ニ成規ノ手續ヲ省略シ便宜ニ就キ迅速商議ニ取掛ルコトヲ希望スル旨及露、佛、米等早已ニ我請求ニ應シ商議シツ、アルヲ以テ事遷延ニ涉ラハ獨逸ハ先例ニ違ヒ其極歐洲大陸ニ於ケル先導權ヲ失スルニ立至ルヘク又遷延ノ舉ハ我帝國ノ財政ニ不利ナリ云々鄭重反覆獎諭候へ共大臣并ニ次官共何分成規ニ拘泥シ臨應ノ處置ヲ爲スニ意ナク候ニ付一方ニ於テハ閣下ヘ電信（ヲ）差出シ在東京獨逸公使ヲ勸諭セラレンコトヲ希望シ他ノ一方ニ於テハ前在東京公使フオン、ホルレーペン氏ヘ

テハ單ニ本官ノ調印ノミヲ濟マシタル條約ヲ提携シテ伯林府ヘ歸任スルモ別ニ珍事ニ無之何トナレハ獨逸ハ往年我ト調印濟ノ條約ヲ持腐ラシ心中釋然タラサルノミナラス豫メ日英新條約ノ成功ヲ期セス竊ニ本官ノ渡英ヲ嘲笑セルコトモ有之候ニ付此際獨逸政府ノ信用ヲ博センニハ批准御交換濟ノ後遂事（fait accompli）ト云フ廉ヲ以テ談判ヲ催促スルニ如カスト考候等總テ英國ヲ去ルニ遲々セル原因ニテ有之候然ルニ八月二十五日ニ至リ電信ニテ御批准濟ノ御通知並ニ英外務大臣ニ對シ閣下ノ謝意ヲ陳述スヘキ御訓令アリタルニ付別紙甲號ノ通書翰ヲ認メ身躬ヲ之ヲ持參シテ外務大臣ニ對面シ口頭ニテモ謝辭ヲ陳候處外務大臣曰ク今般條約ノ効果タル日本ニ取テハ甚小ナラス朝鮮ニ於テ支那ノ大兵ヲ擊卻クルヨリモ其効力ハ寧ロ遠キニ達スルト謂フモ過言ニアラス而シテ此偉大ナル效果ヲ得タルハ全ク貴子爵ノ誠意ト勉強トニ因ルナリトテ兩手ヲ以テ本官ノ手ヲ握リ猶ホ祝意ヲ陳候此ニ於テ該外務大臣トハ改正上ノ談判ヲ結了致候

同月三十一日ニ至リ外務大臣ヨリ前顯甲號ノ投書ニ對シ回答ヲ差送りタリ時ニ朝鮮ノ件ニ付テモ目下特ニ本官ノ滯英

通牒シ至高ノ邊ヨリ至急談判ヲ開始スヘキ命令ニテモ下リ候様周旋センコトヲ希望スル旨打合置目下袖手無爲ノ姿ニテ事ノ轉變スルヲ相待居候將又本件ニ關シテハ奧、瑞、白、三國ヲモ輕視シテ左位ニ置ク可カラス云々貴第三號電信ノ旨ハ固ヨリ御同感ノ外無之依テ可成丈ケ速カニ右三國政府トノ交渉ニモ着手致度考ニ候へ共奧國ニ對シテハ既ニ內信ヲ以テ申上置キタル如ク先ツ外交上至當ナル形式ヲ維持若クハ挽回スルコト必用ト考候ニ付閣下ノ敏速且至當ナル決裁ヲ希望致候要スルニ各國間ニ於テ占領スル奧國ノ位置ハ遙カニ伊國ノ右ニ出ルノミナラス政略上ノ關係ニ由リ奧國輕侮セラル、時ハ獨國モ間接ニ不快ヲ感スルノ實アリ此段深ク御含置有之度候而シテ何ヨリ先キニ獨、白、奧、並ニ瑞西國政府トノ商議ニ必要ナル全權御委任狀ヲ御寄送有之度候左ナクテハ何分公然談判開始ノ成式ニ闕如スル處有之頗ル不都合ヲ感申候故ニ第四號電信ヲ以テ其旨申進置候間疾クニ御裁決相成候義ト存候右申進候也

明治二十七年九月十三日

在伯林府

特命全權公使子爵 青木周藏

外務大臣 陸奥宗光殿

註 12 夫々一四 一五 3 一一一 文書

45 夫々一二三附屬書一及二 6 一三六 文書

一四一 明治三十七年十月五日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

橫濱在留獨逸人ノ建議ニ關スル件

No. 832. (10) Secret meeting was held by German residents in Yokohama and forwarded a representation German Government soliciting them not to conclude such disadvantageous treaty as Anglo-Japanese treaty. (下略)

Sent Sept. (Oct. ?) 5, 1894. Mutsu.

一四二 明治三十七年十月八日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

獨逸公使ト會談ノ件

No. 846. (13) Had a long interview with German Minister in Japan on October 8th. He said he enter-

tember 29th.

Sent Oct. 8, 1894. Mutsu.

一四三 明治三十七年十月十日 陸奥外務大臣ヨリ  
青木駐獨公使宛

獨逸公使ト會談ノ件

附屬書一 獨逸公使質問書

二 獨逸公使ノ質問ニ對スル説明書

送第三〇號 條約改正ニ關スル件(第四)

獨逸政府ニテハ我國ノ情況ニ付其意見ヲ申立ル様帝國駐劄同國公使ヘ訓令セシ由ニテ右報告到達ノ上ナラテハ開談難致旨申居候ニ付速ニ談判ヲ開始スルノ必要ナルコトヲ本大臣ヨリ直チニ同公使ヘ勸促スル方宜カルヘキ旨九月六日貴電(一)接到致候處獨逸公使ニハ其頃日光地方ニ避暑中ニ付林外務次官ヲ其旅行先ヘ差遣シ閣下ヨリノ來電ノ趣旨ヲ述ヘ懇話爲致候處同公使ヘ條約改正事件ニ付テハ本國政府ヨリ未タ何等ノ訓令ヲモ受ケ居ラサレハ何事モ公然ノ資格ニテ陳述スルコトハ難出來モ一個人ノ意見トシテハ甚タ賛成ノ方ナリ故ニ其事ハ次便ニテ本國政府ヘ稟報可致又該件ニ付本國政府ヨリ何等訓令ヲ接受セシ節ハ其旨通報可致又

陸奥外務大臣時代 對獨交渉 一四三

tains favourable opinion on the subject of treaty revision. Instructions were given to him to report upon the conditions of Japan from time of Okuma Treaty down to the present date. The report will be far-reaching and therefore voluminous and can only be sent home in beginning of November. He also put to us some questions about new English-Japanese treaty and which were answered by adding that all points of details will be adjusted at the actual negotiations. Regarding representation of German residents as stated in my last telegram he said that he has forwarded it to German Government as his duty demands him to do so, but he thinks German Government will take it as no more than reference. Besides, he also reminded leading persons who have signed that document to take care not to show it to other countrymen as it is designated to German Premier. I hope you will lose no opportunity of opening negotiations with Germany. But if you think there will be further delay, would it not be better to approach Belgium, Austrian Government or Switzerland? Full powers for these countries were mailed on Sep-

機會モアラハ其所見ヲ電信ニテ本國政府ヘ可申立旨申居候ニ付同月十一日其旨及電報(五)置候義ニ有之候

其後本月ニ至リ同公使ヨリ日英新條約ニ關スル疑義トシテ別紙甲號ノ通質問有之候ニ付乙號ノ通説明書ヲ製シ置キ去ル六日林次官同公使ニ面晤シ之ニ據テ遂條致説明候處或點ニ付我ニ於テ彼ノ意味ヲ誤解致居候處有之候ニ付其點ニ付テハ傍ニ在ル朱字和文ノ通相答置候又八日電信(十三)ニテ申進候通同日本大臣ハ同公使ト長時間ニ渉ル談話ヲ交ヘ其内條約改正問題ニ付同公使ヨリ談話ノ大要ハ左ノ通ニ有之候

大隈伯條約締結ノ頃ヨリ今日迄ノ日本ノ國狀ニ付詳細ナル報告ヲ差出ス様本國政府ノ訓令ヲ接候處此報告ヲ編製スルニハ其區域ノ廣大ナル爲メ餘程ノ時日ヲ要シ隨テ餘程大部ノモノニ可相成ニ付所詮來十一月ノ初旬ニ無之テハ本國政府ヘ郵送スルノ運ニ不到トノコトニ有之又去ル五日及電報(一〇)置候橫濱在留獨逸國人ヨリ日英新條約ノ彼等ニ取リテ不利益ナルコトヲ訴ヘタル建議書ノ義ニ付テハ同公使ノ言ニ據レハ其職掌上右建議書ヲ轉達シタルモ本國政府ニ於テハ只タ一ノ參考トシテ之ヲ見ルニ過キサルヘタ尙右建

議者ノ重立クル者ニ向テハ充分之ヲ秘密ニ爲シ置キ決シテ他國人ニ示ササル様可致旨ヲモ申含置候旨申居候  
前述ノ如ク同公使ヨリ獨逸政府ヘ可差出報告ハ十一月初旬ニ非サレハ郵送スルコト能ハストノコトニハ其獨逸政府ニ到達スルハ十二月ノ中旬ニ可相成就テハ若シ獨逸政府ニテ到底右報告ヲ落手スル迄開談ヲ肯セサル次第ナレハ是亦致方無之義ニ付其間ニ他ノ國即チ埃國瑞西若クハ白耳義政府ニ向テ御開談相成候様致度左スレハ一國ニテモ談判ヲ速結スルコトヲ得條約改正ノ全事業ニ向テ歩ヲ疾ヤメ候コトイ可相成候  
右申進候 敬具

註 一三六六六六 一三六六 一四二 一四二

# 附屬書 I

甲號 獨逸公使質問書

Der Englisch-Japanische Vertrag enthält zahlreiche Unklarheiten gerade in den Punkten, die der deutschen Regierung besonders wichtig erscheinen.

1. Kann der fremde Grundeigenthum in Japan erwerben?

houses, Hafenordnung etc.)?

7. Wie steht es mit dem Abschluss einer Markenschutz-Konvention?
8. Wie steht es mit dem Abschluss eines Konsularvertrages, welcher die Materien der Nachlass Regulierungen, Eheschliessungen p.p. in befriedigender Weise regelt?

## Notiz:

Bei einen Vertrag, der auf gegenseitiger *gleichberechtigung* beruht, muss deutschen Reichsangehörigen der Erwerb von Grundeigenthum in Japan gestattet werden, ebenso wie Japaner in Deutschland Eigenthum am Grund und Boden erwerben können.

甲號英書 獨逸公使質問書英譯文

The Treaty between Japan and Great Britain contains numerous obscurities even *in* (?) the points which appear to be especially important as regards the German Government:

1. May foreigners obtain landed property in Japan?

2. Wie steht es mit der Befugniss zur Anlage und zum Betriebe von Fabriken, Besitz von Aktien, Betheiligung an Eisenbahn und Bergwerksunternehmungen etc.?
3. Auf wie lange Zeitdauer werden die "leases" ertheilt und welche Garantie bietet die japanische Regierung dafür, dass nach Ablauf des neuen Vertrages nicht Gesetze mit rückwirkenden Kraft erlassen werden, durch welche solche "leases" wieder aufgehoben werden?
4. Der mit England verabredete Tarif deckt deutsche Importe nur zum Theil. Die deutsche Regierung erwartet, dass Japan sich auch für eine Reihe von Warengattungen, die speziell Deutschland interessieren, sich binden werde.
5. Hinsichtlich der Inkorporation der Fremdenniederlassungen (Artikel XVIII des Englisch-Japanischen Vertrages): welche Sicherung bietet Japan für die wohlverworbenen Rechte deutscher Reichsangehöriger?
6. Wie steht es mit Vereinbarungen über sogenannte trade regulations (bonded warehouses, etc.)?
2. How stands the right of establishing factories, engaging in manufacture, possessing stocks, partaking in railway and mining enterprises etc.?
3. The leases are granted for a long period. What guarantee do the Japanese Government offer that on the expiration of the new Treaty a law having retrogressive force may not be enacted by which such leases shall be cancelled?
4. The tariff agreed with England covers German imports only in part. The German Government expect that Japan will find *themselves* (?) also in respect to a series of articles in which the German Government are especially interested.
5. In regard to the incorporation of foreign settlements (Article XVIII of the new treaty) what guarantee does Japan offer for the right properly obtained by German subjects?
6. How stands the agreement as to the so-called "Trade regulations" (Bonded warehouse, Harbor regulations etc.)?
7. How stands the conclusion of a convention for

the protection of Trade Marks ?

8. How stands the conclusion of a treaty as to Consular functions by which matters concerning bequests, marriages etc. may be regulated in a satisfactory manner ?

Note :

In a treaty based on reciprocity and equality German subjects must be permitted to obtain landed property in Japan just as Japanese subjects in Germany may obtain such property.

## 結語第二

ニ對シ 國際公法ノ範圍ニ屬スル諸問題ニ對シ

The Imperial Government are unable to concur in the view that the Treaty recently concluded between Japan and Great Britain contains numerous obscurities upon important points. It is in nearly every clause a reproduction of existing Treaties. In the event, however, the Treaty should unfortunately be found to be open to the charge of vagueness, advantage may very properly be taken of the negotiations with other powers, to remove all ambiguities. If any un-

certainly exists regarding the exact meaning of the Anglo-Japanese compact it would be obviously out of place for His Imperial Majesty's Government to advance at this time and independently of Her Britannic Majesty's Government, an interpretation of those clauses which it has been suggested, lack precision, but the same necessity for reserve does not attach in respect of the Proposals made by the Imperial Government to the other Treaty Powers.

Accordingly the Imperial Government are happy to be able to make the following replies to the questions propounded by His Excellency the German Minister :

條約ノ得失ヲ論ズルコトハ談判委員ノ相談并議スルニ非ナ  
ク無條約ナレバ今日口ハ唯曰英條約ニ付テ日本政府ノ意  
見ハ如何ト云罷シヨリテ御座ベキト云々

1. At the present time foreigners have not the right of owning landed property in Japan. To extend to them that right some express concession, either by Treaty or domestic law, would be essential. As the depending Proposals are silent on the subject, it follows that it is not

conventional obligations, find it necessary five years hence, to reserve to her subjects rights which may properly be so reserved, it would of course at this time be impossible to say. It may be pointed out that the proposed stipulations bearing upon this point, were chiefly drawn from the Treaty of 1879 between Germany and Hawaii.

3. The Imperial Government consider that the Leases granted by them exhaust all the pledges which they can properly give on the subject. Those Leases are complete in themselves and independently of the Arrangements under which they were issued they guarantee the full right of property. If the eventuality foreseen by this question is a possibility, no assurances of the Imperial Government on the subject would be of any value.

2. The privileges of foreigners in Japan and of Japanese subjects abroad, will, no doubt, in some of the directions indicated under this heading, be less than those belonging to native subjects. It is understood that in some of the particulars mentioned, all Powers draw distinctions between subjects or citizens and foreigners. The proposed Treaties are to be eventual and how far Japan may, having in view her

此借地ハ居留地外ノ借地ヲ云フナリ日本人ハ土地ヲ  
所有シ得ル故借地ハ短期ニテヨケレ共外國人ニ土地  
所有ノ權ナシトスレハ永久借地ノ期限ハ成丈ク永シ

爲ササレハ製造所等ノ資本マートンコト能ハス云々  
答フ是等ノ制限ハ國法ヲ以テ定ムルノ外今條約ヲ以  
テ擔保スルノ意ニハ非ス

4. It is estimated that between 60 and 65 percent of British imports will be covered by the Anglo-Japanese Conventional Tariff. The Proposals presented by Japan to Germany contemplate bringing the same percentage of German imports within the operation of the Conventional Schedule.

5. It is thought that the answer to the third inquiry supplies a full reply to this question also.

居留地借地ノ地稅ノコトヲ問フナリ

答フ地稅ハ地券面ニ定ムル通りナリ然シ地方稅ハ其  
外トス

6. When the existing Treaties cease to have force, the subsidiary arrangements then in operation, such as the Trade, Habor and Bonded Warehouse Regulations, will be replaced by domestic enactments.

7. If Article XVI of the proposed Treaty, coupled

一四四 明治三十七年十月六日

青木駐獨公使ヨリ  
陸奥外務大臣宛

交渉開始ニ對スル獨ハ、埃、瑞、白政府ノ

態度ニ關スル件

別信第拾壹號

十一月二十六日到

本月九日別紙第十三號閣下ノ電報接到御來示ノ趣致承知候  
獨逸國ハ勿論壤地利國白耳義國及瑞西國ニ對シ條約改正ノ  
商議ヲ開始スル時機ニ就テハ豫テ本官ニ於テ深ク注意罷在  
候ニ付苟モ機會到來セハ之ニ乘シテ開談ニ及フヘキコト勿  
論ニ候處昨年以來公信及內信ヲ以テ屢々報告致置候如ク獨  
逸國ニ對スル條約改正ハ決シテ容易ノ事ニ無之英國政府ト  
ノ商議幸ニシテ既ニ好結果ヲ奏シ得タレハ速獨逸國政府ノ  
我ニ對スル狀勢ハ毫モ之ニ依テ左右セラルヘキニ非ス是レ  
蓋シ獨逸國ハ我政府ニ對シ一種ノ感情ヲ挾ム所アリテ然ル  
ナリ其原因如何ニ至リテハ今更茲ニ贅言ヲ要セス閣下ニ於  
テモ疾ク御推知ノ事ト存候

日清交戰事件ニ就テハ獨逸國ハ我ニ對シ良好ノ感情ヲ抱ク  
ニ因リ安リニ英政府ノ利己主義ニ左袒セスト雖モ抑モ從來  
帝國カ歐洲諸大國ニ對スル措置ヲ顧ミレハ假令故意ニ出サ

with the engagement contained in Section 3, of the Anglo-Japanese Protocol, is insufficient to secure the desired protection to Trade Marks, the Imperial Government would not be indispensed to amplify the provisions of that clause.

獨逸國ハ萬國聯合條約ニ加入セサル故別ノ取極ヲ要  
ス

8. The Imperial Government would also be willing to conclude a Consular Convention with the Government of Germany.

Note. The Imperial Government do not understand that adhesion to the principles of reciprocity would require them to accord by Treaty the privileges respecting the ownership of land, which Germany has granted by domestic legislation. Exact reciprocity would in their opinion be secured, by allowing Japan to deal with the question by means of her own laws. 數年ノ後條約實施頃ハ日本人ノ意向變シ外人ニ土地所有ヲ許スノ法ヲ立テルコトヲラストモ定メ難ケレトモトニカクニハ國法ヲ以テ定ムルコトニテ條約ニハ因ラサル者トス

ルモ往々彼ニ厚フシテ是ニ薄ク隨テ其均等ヲ失シタルノ嫌  
尠シトセス彼ノ軍艦製造一件ノ如キ即チ其一例トシテ見ル  
ヘキモノト存候素ヨリ我政府カ歐洲ニ於テ軍艦ヲ製造セシ  
ムルニ方リ各國ヨリ請負入札ヲ徵シタル後之ヲ英國ニ於テ  
スルモ將タ佛國ニ於テスルモノニ我政府方寸ノ内ニ存スト  
雖モ獨逸國造船會社ノ請求ヲ左置シ該社ヨリ請負入札  
タモ徵セサリシ事實ハ獨逸政府并ニ臣民ヲシテ「日本政府  
ハ獨逸ノ工業ヲ惠顧スルニ意ナシ」トノ感情ヲ惹起セシメ  
且引續此感情ヲ維持セシムルニ至レリ故ニ竊カニ承ル所ニ  
テハ獨逸國皇帝陛下ハ之ヲ以テ帝國政府ハ獨逸國ノ造船事  
業ヲ蔑視スルモノナリト領ル、由ナリ先般山階宮殿下御歸  
朝ニ際シ獨逸皇ヘ御對顔有之候節獨逸皇ハ親シク殿下ニ對シ  
「將來帝國ニ於テ軍艦ヲ製造センニハ須ク獨逸國ノ造船業ヲ  
惠顧アリタシ」云々談話被爲在候是レ同皇帝陛下カ其臣民  
ノ工業ヲ惠顧スル爲メ頗ル注意アリテ吐露セラレタル數言  
ニ御座候

此他獨逸國政府カ帝國政府ニ對シ不快ノ感情ヲ抱有スル原  
因ハ多々可有之候得共既ニ先年來隨時及詳報置候ニ付茲ニ  
反覆致サス候要スルニ帝國ハ屢々獨逸國ヨリ其友交ナル情

義ヲ表彰センコトヲ請求シタレトモ獨逸國ハ其報酬ヲ得サルトノ感觸ヲ抱クニアリ之カ爲メ今ヤ條約改正ノ商議ヲ開カントスルニ方リ我請求ヲ容レサルハ蔽フヘカラサルノ事實ニ有之候其證左トシテ別紙前帝國駐劄獨逸公使「フオン、ホルレーベン」氏ノ秘密書信寫差出候間實際ノ情況御推知有之度候又錦地駐劄「グウトシユミツト」男ヨリ某氏ヘ授シタル内信ノ趣意モ同然タレトモ兩人共其本意ハ改正ヲ贊成スル方ニ有之申候

奧地利國ニ對スル商議モ可成速カニ好機ヲ見計ラヒ開談ニ及フヘキ覺悟ニ候得共同國內閣員ハ暑中休暇以後本月十五日マテ洪牙利國ニ於テ開會ノ議會ニ臨席爲メ同國ニ滞在シ外務大臣「カルノキー」伯ハ同議會開會ノ後直チニ維納ニ歸府可致歟否確知致兼候ニ付今俄カニ商議ヲ開クノ途無之候又瑞西國ニ對スル商議ニ就テハ頃日奧國駐劄瑞西公使來訪候ニ付云々内談相試ミ候處彼ハ左ノ趣意ニテ應答致候貴國ト我國トノ條約改正ノ事ニ就キ閣下ト商議ヲ開クニ至レハ拙者ノ光榮之ニ過キス故ニ適當ノ時機ニ臨ミテ我政府ニ稟申シ商議權ノ委任ヲ請フハ拙者ノ本懷トスル所ナリ然レトモ獨逸國政府ニシテ未タ卒先シテ貴國ト商議

有之申候

註 一四二文書

一四五 明治三十七年十月三十一日

陸奥外務大臣ヨリ  
青木駐獨公使宛

## 獨逸政府ヘノ開談方ニ關スル件

條約改正ニ關スル件(第六)

本月十一日附第四信ヲ以テ帝國駐劄獨逸公使ヨリ獨逸政府ヘ報告可差出答ニ有之候旨申進置候處右ハ同公使ノ陳述ニ依レハ來月二日橫濱出帆ノ獨逸郵船ニテ發送致候答ニ有之候由本大臣ハ同公使ヲシテ可成我カ爲メニ利益ナル報告ヲ爲サシメント欲シ間接ノ手段ヲ以テ百方之ヲ努メタレハ其報告ノ趣旨モ左程惡敷方ニハ有之間敷又同公使ヨリ本大臣ヘ話セシ口振ニ依ルモ其様子ニ被聞取候間閣下ニハ此機ニ乘シテ獨逸政府ニ向テ談判ノ歩ヲ進メラレ候様致度致冀望候

右申進候 敬具

ヲ開カサル以上ハ假令拙者ヨリ如何ニ我政府ニ向テ申立ルモ何等ノ効驗モ無之寧ロ貴國ト獨逸國トノ商議既ニ歩ヲ進ムルノ時ヲ俟ツノ優レルニ若カサルヘシ云々又本官曾テ白耳義國ヘ出張中同國外務大臣ニ内談セシ結果モ右同様ニ有之要スルニ奧ト云ヒ瑞ト云ヒ白ト云ヒ何レモ皆獨逸等大國ノ先例ニ倣フモノニ候ヘハ此際獨逸國ニ對スル商議ヲ後日譲リ而シテ奧瑞白ヲ先ニセントスルカ如キハ到底徒勞ニ屬スルヲ免カレサルヘシ故ニ先ツ獨逸政府ノ措置果シテ奈邊ニ出ツヘキ哉之ヲ觀テ以テ然カル後諸國ニ對スル運動方針ヲ講スルノ外ナカルヘクト被存候尤モ不日維納ヘ微行シ舊友通商局次長 von Pason ニ面晤ノ上商議ノ手續ヲ可相開ト存申候

明治二十七年十月十八日

在獨特命全權公使子爵 青木 周藏

外務大臣子爵 陸奥 宗 光殿

追 伸

本官儀英國ヨリ歸任後兎角不快勝ニテ神身ヲ勞スルニ憚ル氣味有之候得共至當ノ保養相加ヘ可成勉勵可致覺悟ニ

一四六 明治三十七年十月三十一日

陸奥外務大臣ヨリ  
青木駐獨公使宛

## 獨逸ニ於ケル外國人ノ權利ノ制限ニ關スル件

附屬書 外國人ニ對スル權利ノ制限

送第三六號 條約改正ニ關スル件(第七)

條約改正ノ件ニ付過般獨逸公使林外務次官ニ面話ノ節獨逸國ニテハ外國人モ其本國人ト一樣ノ取扱ニシテ別ニ外國人ニ限り制限ヲ設クルコト無之旨獨逸公使申居候ニ付林次官ハ一二ノ例ヲ舉ケテ其然ラサルコトヲ示シ置キ尙其後爲取調候處別紙ニ記載ノ諸事項ハ總テ外國人ニ對シテ多少制限ヲ立居候コトヲ發見致候尤是ハ當方ヨリ申進候ヲ待タス閣下ニ於テ疾ク御承知ノ事トハ相信候得其實際談判ノ節御參考ニモ可相成ト存候ニ付獨逸文ノ儘及御送付置候

將又閣下英京御滞在中獨逸政府ヘ提出スヘキ我提案ノ獨逸文本文ハ總テ閣下ニ調製方ヲ御一任可致旨申進置候處追テ彌ヨ開談ノ場合ニ到リ同政府ヨリ自然提議スヘキ修正又ハ添刪ノ諸點等御申送相成候節於當方双方國語ノ本文ニ就テ調査參看致候必要有之候ニ付右獨逸文寫一部早便御送附相成度又奧國政府ヘ提出スヘキ議定書(獨逸ニ對スル分ト異

ナリ)ノ獨逸文モ同様一部御添附相成度以テ去月二十六日已ニ電信ニテ申進候得共尙爲念茲ニ申進候  
右申進候 敬具

十月二十九日發遣

註 十月二十六日附青木駐獨公使宛往電第九五六號(二三)  
ハテヲ省略ス

附屬書 外國人ニ對スル權利ノ制限

Falle, in denen die Ausländer in Deutschland gewiss Beschränkungen unterworfen sind:

I. Korporationen und andere juristische Personen des Auslandes dürfen in Preussen ein stehendes Gewerbe nur mit Erlaubniss des Ministeriums betreiben, soweit nichts anderes durch Staatsverträge bestimmt ist.

II. Korporationen und andere juristische Personen des Auslandes dürfen in Preussen Grundeigenthum nur mit Genehmigung des Königs erwerben.

III. Ausländische Feuerversicherungsgesellschaften bedürfen zum Geschäftsbetrieb in Preussen der Genehmigung des Ministeriums, welche jederzeit widerrufen werden kann.

一四七 明治三十七年十一月二日 青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

獨政府開談承認躊躇ノ件

(25) German Government do not agree to open soon negotiation about treaty revision. I went, therefore, to Vienna and saw Count Kalnoky. He declines to negotiate until Germany does. He referred to our diplomatic representation to Austria. I did best I can (could) to remove bad impression. Nevertheless it can not be demise that he considers steps you have taken hitherto (?) ridiculous and he takes cool attitude on treaty revision. I will seek the cooperation of Holleben hoping he can render good services.

(Via Peters.), Nov. 1, 1894. Aoki.

註 陸奥外務大臣ノ此迄填國ニ對シテ採リ來リタル措置トハ新タニ本邦駐割公使ニ任命セラルベカリシヘンげみゆら一氏ニ對スルあぐれまんヲ拒絶シ且ツ填國駐割帝國公使モ缺員ノ儘ニ放置シタルコトヲ指スモノノ如シ

一四八 明治三十七年十一月七日 陸奥外務大臣ヨリ  
青木駐獨公使宛

開談ニ關スル件

陸奥外務大臣時代 對獨交渉 一四七 一四八 一四九

IV. Ausländische Versicherungsanstalten dürfen Agenten in Preussen nur mit Erlaubniss des Ministeriums ernennen.

V. Ausländern darf die concessionalen Auswanderungs-unternehmer nicht ertheilt werden.

VI. Ausländische Auswanderungs-unternehmer dürfen Agenten in Preussen nur mit Genehmigung des Handelsministers bestellen. Die Genehmigung kann von einer Caution abhängig gemacht, und kann jederzeit widerrufen werden.

VII. Dem Ausländer kann die Erlaubniss zum Gewerbebetrieb im Umherziehen versagt werden. Die Ertheilung des dazu nötigen Hausiergewerbescheins ist also Ausländern gegenüber lin das Belieben der Behörde gestellt.

VIII. Die Küstenschiffahrt ist Ausländern nur gestattet auf Grund besonderer Kaiserlicher Verordnung oder eines Staatsvertrags.

IX. Ausländische Fischer sind von der Küstenfischerei ausgeschlossen.

Dr. Loenholm.

送第四一號 條約改正ニ關スル件(第十一)

獨逸政府ハ條約改正談判ヲ速ニ開始スルコトニ同意セサル旨貴電(二十五)接手致候右ハ先頃貴電ニテ御申越相成居候通同國政府ハ必ス帝國駐割同國公使ノ報告閱悉ノ後ヲ待テ談判ニ取掛ル所存ニ可有之候獨逸公使ノ報告ノ義ハ已ニ第六信ニテ申進置候通彌ヨ本月二日附郵送致候由ニ候又其報告ノ趣旨モ該信中ニ申述候通餘リ我力爲メニ不利益ナル方ニ無之様承知被致候兎ニ角同國政府ニ於テ其自國公使ノ具報ヲ得ル迄ハ何トシテモ公然談判ノ緒ヲ開カストノ決意ニ候ハハ是亦致方モナキ次第ニ付此上ハ我ニ於テハ右報告到達ノ頃ヲ見計ラヒ透サス迫リテ開談ヲ促スノ外他ニ良策モ可無之ト存候

(以下省略)

註 一四七文書

一四九 明治三十七年十二月六日 青木駐獨公使ヨリ  
陸奥外務大臣宛

填國政府ノ態度打診ノ件

別信第十二號 二十八年一月二十二日到



獨逸國政府ニ於テ帝國政府ト條約改正ノ商議ヲ開始スルニ先チ埃地利國瑞西國若クハ白耳義國ニ對シ條約改正ノ商議ヲ促スモ恐ラク其効驗ヲ見ル能ハサル事情ハ既ニ本年十月十八日附機密別信第十一號<sup>1</sup>ヲ以テ及具申置候得共是ヨリ前即チ同月九日到達ノ電報<sup>2</sup>ヲ以テ「獨逸國ニ對スル商議若シ此上手間取ルヘキ見込ナレハ白耳義國埃地利國若クハ瑞西國ニ對シ先ツ商議ヲ試ミテ如何」云々御來意ノ趣モ有之候ニ付右別信第十一號ノ末段ニ於テ申進候如ク維也納ニ微行シ埃國前外務省通商局長 von Plason ニ面晤ノ上商議ノ手續ヲ試ムルコトニ決意シ客月二十五日當地ヲ發シ維也納ニ旅行致候

右 von Plason 氏ト本官トハ舊友ノ間柄ニモ候ヘハ從前ノ内約ニ基キ這回ノ我提議ニ就キ氏ノ協力ヲ籍ルコトヲ得ハ便宜渺カラスト存候然ルニ維也納ニ至リ聞合セタルニ氏ハ既ニ他ノ官ニ轉任シ當時ハ通商條約締結ノ事務ニ關係セサル趣ニ有之依テ直接外務大臣 Count Kalnoky 并ニ次官 Baron Von Pasetti ニ面會ノ上成ルヘク速カニ條約改正ノ商議ヲ相開キ度旨縷々申入候處到底兩氏トモ異口同音ニ答ヘテ曰ク

タ條約案等ヲ獨逸語ニ翻譯シタルコト無之候  
右及復申候也

明治二十七年十二月六日

特命全權公使子爵 青木 周藏

外務大臣子爵 陸奥 宗光殿

註 1 2 夫々一四四、一四二文書 3 省略

一五〇 明治三十七年十二月三日

獨逸公使ヨリ  
陸奥外務大臣宛

條約改正交渉開始方ノ件

Tokio, den 30 Dezember 1894.

Herr Minister.

Euerer Exzellenz beehre ich mich im Auftrag meiner hohen Regierung ganz ergebenst mitzutheilen, dass dieselbe hofft, Mitte Januar die Vertragsverhandlungen mit dem Viconte Aoki zu eröffnen. Genehmigen Euerer Exzellenz auch bei diesem Anlass die erneuerte Versicherung meiner ausgezeichneten Hochachtung.

V. Gutschmidt

Seiner Exzellenz

奧陸外務大臣時代 對獨交涉 IHO IHI IHI

歐洲以外ノ各國ニ對スル關係ニ於テハ埃地利國ハ獨逸國ト相提携シテ進退ヲ俱ニスルノ方針ヲ執ルモノナリ故ニ獨逸國ニ於テ未タ貴國トノ條約改正ノ商議ヲ開カサルニ方リ獨リ埃國ノミ卒先シテ其商議ニ着手セントスルハ遺憾ナカラ我政府ノ爲シ能ハサル所ナリ云々埃國政府ノ回答ハ夫レ斯ノ如ク極メテ冷淡ニ有之候尤モ埃國駐劄瑞西國公使ヘハ別ニ至懇ノ内談ヲ遂ケ時期到來セハ速ニ商議ヲ開クヘキ旨打合せ置申候要スルニ獨逸國政府ニ於テ條約改正ノ商議ヲ開クニ至ラサル以上ハ假令埃、瑞、白ニ對シ如何ニ力ヲ盡シテ商議ヲ促スモ何等効驗ヲ呈スルノ見込無之候將又別紙寫第二十二號電報<sup>3</sup>ヲ以テ條約案及議定書案ノ獨逸語譯文ヲ閣下ニ進達候様御申越相成候處獨逸國トハ先年既ニ獨逸文ヲ用ヒス英文ノミニ據テ條約ヲ締結セシ先例モ有之候ニ付今回モ亦我條約案ヲ提出シテ商議ヲ開クニ至レハ別ニ獨逸語ノ翻譯文ヲ提出セサル覺悟ニ有之候若シ同政府ニ於テ之ヲ必要トスルニ於テハ彼ラシテ其ノ翻譯文ヲ作ラシムルノ考案ニ有之候且機密別信第七十一號ニ於テ追伸候如ク本官儀英國ヨリ歸任後ハ兎角不快勝ニテ精神ヲ勞スルニ厭フ氣味有之成ルヘク攝養相加ヘ居候折柄未

dem Herrn Viconte Mutsu  
Minister der Auswärtigen  
Angelegenheiten z. z.

一五一 明治三十八年二月四日

陸奥外務大臣ヨリ  
獨逸公使宛

交渉開始方通報ニ對シ回答ノ件

親展送第一號

獨逸國特命全權公使

男爵フォン、グートシミツド閣下

外務大臣子爵 陸奥 宗光

以書管致啓上候陳者昨年十二月三十日附貴管ヲ以テ貴國政府ハ本月中旬青木子爵ト條約改正ニ關スル談判御開始可相成御冀望ニ有之候旨貴國政府ノ御訓令ニ依リ御通知相成本大臣ニハ此好報ヲ聞キ深ク致満足候右回答旁本大臣ハ玆ニ重ネテ閣下ニ向ヒ敬意ヲ表候 敬具

一五二 明治三十八年一月三十一日

青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

交渉開始ノ件

(47) Held conference twice already, but the whole of counter-proposal is not yet communicated to me. I am at a disadvantage for not knowing the text of new treaty signed with United States which is well-known to German Government.

(Via Peters.) Tokyo, Jan. 23, 1895. Aoki.

一五三 明治二十六年一月二十三日 陸奥外務大臣ヨリ  
青木駐獨公使宛(社電)

日米條約書變改條力ニ關スル事

No. 28 (38) I have instructed Japanese Minister in America to send you copy American treaty. Its chief differences from British treaty lie in immigration clause, waiving of conventional tariff, fixing definite date for enforcement of treaty and conditionality of most favoured nation clause.

Sent 24 Jan. 1895. Mutsu.

一五四 明治二十六年一月二十四日 青木駐獨公使ヨリ  
陸奥外務大臣宛(社電)

關税側裁減電報ノ事

(50) At conferences the following 18 points were

Article XI are inconsistent with principle of opening of the whole country. These words shall be expunged and proper provision made as in treaties between other Powers so that foreign vessels may visit any port taking on board at their own expense Japanese customs officers.

8. In Paragraph 3, Article XI, Osaka to be expunged from the list of exceptions.

9. Chartering of foreign vessels for coasting trade to be permitted.

10. In respect of taxation and right of transfer by sale, will or succession, land that may be owned by foreigners to be placed on perfect equality with land owned by Japanese subjects. In short, the restoration of Article XXII of Okuma treaty.

11. Germany, not having joined international convention for the protection of industrial property and copyright, desires to insert in Protocol certain declaration looking to the future conclusion of special convention on the subject.

12. In the place of Paragraph 4 of Anglo-Japanese Protocol, the following to be inserted with reference

presented to me :

1. Consular convention should be concluded on the basis of our draft proposed (in) 1887.

2. Codes shall have been in actual operation for two years instead of a year when the new treaty comes to operation as provided in the note of Saionji dated June 11, 1889.

3. Not necessary to stipulate, but is emphatically expected that a translation of the Civil Code shall be completed in due time.

4. Stipulation demanded regarding the settlement of *his pendens* as provided formerly.

5. Assurance requested that German consular jurisdiction shall cease only simultaneously with those of other Powers.

6. Right of owning real property both within and outside foreign settlement for purposes other than agricultural is insisted upon in spite of my strongest remonstrance.

7. Words "which are or may be opened to foreign commerce" in Paragraph 3, Article III and the words "where foreign trade is permitted" in Paragraph 2,

to sugar question.

When an internal tax is levied upon production or consumption of any article within territories of one of the High Contracting Parties, either throughout the country or in limited districts, whether levied for the benefit of State, Commune or corporation, similar article imported into that country or such districts from the territories of the other shall not be required to pay high tax. No such tax shall be imposed upon imported articles if articles of the same kind are not produced in that country or districts. Nor shall it be imposed so long as like articles produced in the country or such districts are not subject to the same internal taxation.

13. Drawback should be allowed for 5 years and the principle of requiring only the evidence of identity should be maintained instead of requiring original packing.

14. New conventional and statutory tariff to be enforced after 6 months instead of one month.

15. All vested rights should be respected even after the expiration of the treaty.

16. In Article XV after "commerce and navigation" words "in all other matters" to be inserted.

17. The existing arrangement providing for cases of disagreement between Japanese customs officers and importers in regard to assessed value to be continued until supplementary convention of specific duty will be concluded.

18. German subjects should be allowed to establish private warehouses.

As to tariff German Government appear to take advantage of your assurance to German Minister in Japan that any article the annual import of which amounts to 50,000 yen will receive special consideration. Accordingly German Government instructed the proper authorities to prepare the list of articles whose importation to Japan should be protected against future statutory tariff. It is expected that during the next month long list will be presented to me.

In reference to ownership of land, I explained that while the conclusion of treaties lies within Imperial prerogative, ownership of land can only be regulated

by law, more especially as a law of 1873 prohibits sale of land to foreigners. Therefore, if the ownership of land be guaranteed by treaty, legislative cooperation becomes necessary. I insisted that this point be left to domestic legislation. But German Government call attention to Article II of new treaty between Germany and Italy which guarantees ownership of real property. It is pointed out that the narrow spirit of Article XVIII of our draft stands in strange contrast with the broad liberal principles embodied in Article I and Article III and that even if executive department of the German Government were satisfied, Chamber may judge that, so long as Japan is not disposed to deal with foreign nationals on liberal principles, Germany should not enter into reciprocal treaty. It is feared that Chamber will take no action on the treaty concluded upon the proposed basis as in case of treaty between Germany and Roumania which was left in abeyance for more than ten years. It is stated that Vice-Minister for Foreign Affairs suggested that the best solution of land question would be found in the purchase by the Japanese Gov-

ernment of all lands held in perpetuity. This is taken as an utterance which justified every circumspection on the part of German Government regarding designs of the Japanese Government.

Berlin, Jan. 27. 1895. Tokyo, Jan. 30, 1895. Aoki.

sufficient data to correct erroneous impression and I hope you will do so before German Government demand modification of our tariff proposals.

Sent Feb. 1st 1895. Mutsu.

廣島ヨリ發電

一五五 明治三十八年二月二日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

并獨王國國兵トノ輸入品ニ對スル關稅ノ件

Received your telegram 50. I am not at present prepared to reply to all proposals of German Government, but one point based upon misapprehension demands immediate attention. I had interviews with German Minister in Japan regarding treaty revision but as we were not negotiators I did not deem it necessary to enter into full details. I did not certainly intend to convey impression that minimum value was (the) only limitation regarding conventional tariff. Our tariff proposals contradict such impression. The Japanese government desire that same limitations may be applied in case of Germany as were applied in case of Great Britain. You are in possession of

一五六 明治三十八年二月三十一日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

永代借地買収案ノ件

No. 70. (43) I presume you are in possession of sufficient data to reply to nearly all 18 points named in your telegram no. 50. But if you desire additional instruction upon any points, telegraph number of the points as given in your telegram and I will at once reply. Vice-Minister for Foreign Affairs only spoke of scheme to purchase perpetual leases as one of many unpracticable projects that had been put forward. As matter of fact (the) scheme was suggested by Yokohama Herald but was never entertained or considered by the Japanese Government. It can not be admitted that land question in Settlements requires any solution. The leases in perpetuity are

valid and the Japanese Government have no designs against them.

Sent Feb. 21, 1895. Mutsu.

一五七 明治三十八年二月十三日

青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

獨逸側對案ニ對シテ請願ノ件

(61) Am I authorized to accept counter-proposals without referring them to you? I asked for instructions by my telegram 50, whereupon you informed me you were not prepared to reply at once. I waited and German Government have been impatient to receive your reply. Give me full instructions on 18 points as German Government stand firm on their counter-proposals in spite of my exhaustive arguments.

(Via Peters.), Feb. 23, 1895. Aoki.

一五八 明治三十八年二月十三日

陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

獨逸ノ修正案ニ對シテ請願ノ件

jurisdiction of all other Powers would be tantamount to stipulation that operation of treaty with Germany is to be dependent upon concurrence of all other Powers. In other words, amendment hereunder would be practically to revive Article X (of) Yoshida treaty. While the Japanese Government have no other wish or intention than to bring all new treaties into operation at the same time, they can not consent to make operation of any one treaty dependent upon operation of all other treaties. (The) subject was discussed fully in connection with British negotiations.

6. Japanese Government regret (but) impossible to make concession demanded hereunder. They frankly admit that such concession would be in the direction of liberal principles. They intend to grant foreigners right to own real property whenever they feel satisfied that (the) privilege can safely and without shock or undue internal economic disturbance be granted, but the Japanese Government desire to pursue (the) course usually pursued by other Powers and make domestic legislation precede not succeed

No. 81. (45) Following is reply to 18 points in your telegram no. 50.

1. Accepted. Proposal (of) 1887 will, however, require some modifications.
2. Necessity for this amendment not perceived. All Codes have been promulgated and are in actual operation excepting Civil Code and portion of Commercial Code. Those in abeyance merely undergoing revision. Present conditions, therefore, essentially different from conditions existing when note of Saionji was written. Civil Code deals more especially with domestic concerns and is consequently of least importance to foreigners. Under these circumstances Japanese Government consider one year ample.
3. Translations already exist. Civil Code now undergoing revision. Modifications introduced will also be translated.
4. Accepted. Clause to be inserted in Protocol.
5. The question of jurisdiction is so inseparably connected with other matters involved in scheme of treaty revision that engagement to make abolition of German jurisdiction dependent upon abolition of jurisdiction engagements on the subject.

7. The Japanese Government fail to perceive inconsistency referred to hereunder. Similar stipulations exist side by side in some German treaties. See Article II and Article V, treaty with Mexico, 1882, also Article II and Article III, treaty with Dominica, 1885. Right of trade, travel and residence is reciprocally guaranteed by first and third Paragraphs, Article I and second Paragraph, Article II of our draft. Right of commerce and navigation between two countries is guaranteed by first and third Paragraph, Article II. Former right is general and applicable to all parts of respective countries, while (the) latter right having reference exclusively to foreign commerce and navigation is necessarily limited to designated ports of entry, otherwise collection of customs duties would be impossible, nor would taking on board of customs officers remove difficulty. Customs administration must be present where imports are landed. I do not find it usual to provide in treaties that foreign vessels may visit all ports by taking customs officers on board.

8. The Japanese Government trust that, as this amendment would be of but trifling practical benefit to German shipping, German Government will not insist.

9. No conventional engagement on this subject necessary. Many foreign vessels now employed in coasting-trade under charter. The question is regulated entirely by domestic legislation and present system works well. Consequently the Japanese Government are averse to introduction into treaty of any stipulation on the subject.

10. This proposal, so far as real property is concerned, is answered under 6. So far as other property is concerned, Paragraph 3, Article I would seem to be sufficient.

11. Accepted, provided special convention is not to come into operation until cessation of German consular jurisdiction.

12. Accepted in principle but may be necessary to partially recast (the) clause. The engagement being reciprocal should be inserted as an article in the treaty.

13. National treatment is guaranteed hereunder

and the Japanese Government think that beyond that guarantee domestic legislation should alone have force.

14. Accepted.

15. All vested rights will as a matter of course be respected after as well as before termination of treaty. Those rights are independent of treaty being dependent upon the instruments under which they become vested. Japanese Government declare that no treaty engagement could in the least add to sanctity of those rights.

16. As principle of conditionality is excluded, Japanese Government desire to limit clause to commerce and navigation in accordance with usual practice.

17. Existing arrangement will be continued pending conclusion of supplementary convention or until new treaty takes effect.

18. Same answer as under 13. Article XVIII of our draft was not conceived in illiberal spirit. Nearly all Japan's ancient engagements are more or less affected by system of consular jurisdiction and upon inauguration of new system it was thought best in

order to guard against misunderstandings to expressly abrogate those earlier engagements since those engagements will be inapplicable to new condition. Such abrogation will not in the least disturb vested rights. Impress upon German Government our earnest desire to adhere in new treaty to principle of reciprocity so far as possible and our disinclination to introduce exceptional unilateral clauses. Also our wish to push on negotiation as rapidly as possible. Draft treaty with accepted amendments will be sent you by mail.

Sent. Feb. 27, 1895. Mutsu.

一五九 明治二十六年三月十日 青木駐獨公使ヨリ 陸奥外務大臣宛(來電)

通令ニ基テ會議ノ結果報告ノ件

(64) Had important conference. Your replies are considered very unsatisfactory. I must point out that although German Government is, on political grounds, our most sincere well-wisher, it can not yield questions of national economic interest on this account, for they are forced by the state of political par-

ties to insist on the proposed amendments and nothing short of considerable concessions on our part will secure treaty revision. Particular difficulties are created by the points 2, 3, 7, 8, 9, 10, 13, 15, 16. I have been cautioned that a persistent refusal to meet German desires will oblige them to form eventually coalition among the Powers for the joint protection of their treaty interests.

(Via Peters.), March 12, 1895. Aoki.

一六〇 明治二十六年三月十六日 青木駐獨公使ヨリ 陸奥外務大臣宛(來電)

會議結果報告ノ件

(70) Points 2 and 3 in my telegram 50 are still insisted upon.

Regarding point 6, German Government insist upon at least revival of Article XXII, Okuma treaty, with the following additional rights concerning land outside foreign settlement:

1. right to accept hypothecation of land;
2. right of leasing land not to be restricted to commercial and residence purposes;

3. long duration should be allowed for such leases. Regarding point 7, the wording of treaties with Mexico and Dominica being different from our draft, German Government desire to follow the wording of those treaties.

Point 13 is still insisted upon. Your declaration concerning point 15 is desired to be repeated in a note.

Regarding point 16, German Government will withdraw their demand provided declaration is made in a note that German consular jurisdiction shall not cease earlier than those of Powers.

Regarding point 17, German Government desire existing arrangement shall be embodied in new treaty. Of above mentioned points only 2 and 3, in my opinion, touch the principal questions involved in treaty revision. On those points, therefore, I will further try to convince German Government that necessity for their proposals does not exist. All other points, however important, are in my opinion secondary questions which are suitably adjusted in all modern treaties.

On point 6, objection of Japan to grant ownership

questions to you place me in a very disagreeable position toward German Government and entails much delay in negotiation. Therefore, inform me your final decision as soon as possible, especially as this session of Reichstag will soon be over.

(Via Peters.), March 29, 1895. Aoki.

機密第十四號信ナニセハ見當ル

一六二 明治三十八年四月一日 青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

在本邦英國國民ノ日獨交渉妨害運動ノ件

Tokio, April 1, 1895. Aoki.

(72) Strictly confidential. Trench and even Bunsen told foreign Representatives in Tokio that, in new treaty England having conceded more than she should have done, other countries must curtail Japan's demands. German Government have an official report on the subject. Englishmen in Japan are influencing Germans and Frenchmen to make difficulties in treaty revision in order to regain advantages surrendered by the British Government.

陸奥外務大臣時代 對獨交渉 一六二 一六三

of land to foreigners is incomprehensible to Germans who, in this respect, apparently share the same ideas with Austrians, Swiss and Belgians. German Government ridicule our attitude as narrowminded and far removed from the spirit of assimilation which has guided Japan in her modern progress. Germany can not understand why Japan should object to revival of Article XXII, Okuma treaty, with additional concessions above mentioned. They think Reichstag will not sanction treaty which does not grant ownership of land, more especially as this right was already conceded in Okuma treaty. Your argument contained in paragraph 4 of 機密第十四號信 on treaty revision does not *convince* Europeans because ownership of land is preferable to lease even if it cost more. As a result of the recent achievements Japan is admitted to be a great power. We must, therefore, prove ourselves worthy of being a great power by taking broadminded view of conditions by which every selfrespecting nation regulates its foreign relations. In regard to tariff, demand is not yet formulated. The necessity of constantly referring

Berlin, April 1, 1895. Aoki.  
Shimonoseki, April 2, 1895.

一六三 明治三十八年四月五日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

在本邦英人ノ態度ニ關スル件

I can not think Trench or Bunsen would so far discredit action of their own Government as to make statements referred to in your telegram no. 72. Besides, Trench has been sick for (a) long time and Bunsen has not been here since signature (of) British Treaty except for (a) short time on route to Bangkok. Then he approved of treaty claiming share of honor in concluding it. But even if Trench and Bunsen were guilty of indiscretion attributed to them, I have too high opinion of German statesmanship to believe that German Government would, at (the) expense or independently of their own interests, make recovery for British subjects of privileges deliberately surrendered by British Government one of the objects of treaty revision, more especially as any such action would necessarily be extremely distasteful be-

二八九

cause humiliating to Great Britain. Opposition of foreigners in settlements may always be expected, but in case of Great Britain, United States and Italy it proved futile. It ought not to prove more powerful in Germany with less interests than Great Britain or United States and indirect opposition of British subjects can not have greater weight in Germany than their direct opposition had in Great Britain.

Will shortly reply fully to your previous telegrams. Cabinet implicitly rely upon your energetic efforts to bring about early conclusion of treaty with Germany. Regarding ownership of real property, I may say German-Russian Treaty, 1894, makes that right subject to domestic law. This telegram is only for your own information.

April 5, 1895. Mutsu.

註 本電信ハ番號ナギン本省ヲ經由ヤメノハ關ヨリ直轄官  
林ニ打電セラレタルカ故ナリシ

一六三 明治二十六年四月十日 青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

永代借地權ニ所有權ニ變換ノ件

ture. Creation or maintenance of such anomalous rights under arrangement derogatory to national rights of Japanese subjects are contrary to fundamental principles of state law.

German Government also point out that while national footing is guaranteed in taxation, lease-holders will be liable to pay municipal taxes which together with rent exceed rate of taxation on Japanese. German Government attribute our reluctance to meet their desire once accorded by Okuma treaty to ..... foreign sentiment (antiforeign sentiment?) of the people and would much regret if Japanese Government would not find way to regulate foreign relations in accordance with usages of civilized nations. In the face of the success of our arms and demands made on China for the interest of liberal international intercourse, it will be easy for you to suppress eventual internal dissensions. Believe me, broad foundations which intercourse of the world now(?) today demands will only facilitate national development. I, therefore, repeat my former representations and hope our wise Government will finally decide to convert pre-

(78) Regarding Trench (and) Bunsen I simply informed you and expected no explanation. In making counter demands German Government of course stand upon their own views. Neither England nor Italy would consider eventual success of Germany, humiliating to England. Russian treaty, 1894, hardly affords precedent for another country, motive of restriction being stated to be expulsion of Jews from Russia. While thanking for confidence imposed upon me, I must call your attention to my former reports anticipating difficulties with Germany. Causes are, I hope, known to you. In my opinion, German Government is logical in demanding revival of Article XXII, Okuma treaty. Germans (are) more accurate and juristic than Englishmen. Consider the following points:

If the present system of lease is to be maintained instead of ownership there will be two systems of lease. If it is intended to extend present system as the number of foreigners increase, treaty must guarantee it. If not, right enjoyed by the present leaseholders can not be shared by other foreigners in fu-

sent leases to ownership and permit foreigners to lease land for industrial purposes as well. This final decision will bring the affair to conclusion satisfactory to both parties.

Petersburg, April 11, 1895. Aoki.  
Shimonoseki, April 13, 1895.

一六四 明治二十六年四月十七日 青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

獨逸側ヨリ提出ノ税目表送附ノ件

別信第十五號 五月二十五日到  
獨逸政府ニ於テ我提出案ヲ修正スル爲メ廣ク當該商人ヲ招集シテ其所見ヲ叩キ更ニ冗長ナル約定税目表ヲ作り提出ス  
ヘキ旨ハ義ニ本年一月二十七日發第五十號電報ヲ以テ申述  
置候處本月十三日ニ至リ同政府ヨリ別冊税目表ヲ本官ニ交付致候

該税目表ハ第二ページ及第三ページ第四ページ及第五ページト各二ページヲ一紙面トシテ通覽ヲ要スルモノニ有之而シテ各紙面ノ左方「一ページ」ノ全面ヲ五欄ニ分テ其第一欄ニ此税目ノ品目番號ヲ載セ第二欄ニハ先年調印濟ノ條約

(所謂大隈條約) 附屬税目ニ於テ同種品目ニ對シ附シタル番號ヲ載セ第三欄ニ品名ヲ掲ケ第四欄ニ稅率ヲ示シタリ而シテ第五欄ニWノ字ヲ附シタルモノハ即チ從價稅ヲ「スベシフキツク」稅ニ改ムルヲ許ササルコトヲ示シタルモノニ有之候又每紙面ノ右方(即チ各二「ペーヂ」ヲ一紙面トシテ通覽シ其右方ニ於ケル一「ペーヂ」)ニハ左方第三欄ニ掲載シタル物品ノ名稱及性質ヲ明ニスル爲メ其意義ヲ説明シタリ

凡ソ約定税目ニ載セタル物品ノ名稱性質ニ就キ誤解ナカラシメンカ爲メ各品名ニ付其定義ヲ掲クルハ獨逸通商條約及其他ノ條約ニ於テ類例ヲ見ル所ナルヲ以テ別冊税目案ニ於テモ亦其例ニ從フタルモノナリ

我提出案ニ依レハ從價稅ノ算定ニ於テ用ユル物品元價ハ產地ノ價格ニ依ルト雖トモ獨逸政府ハ之ヲ不可ナリトシ日本ニ輸入スル凡テノ物品元價ハ其船積スル港地ノ市價ニ依ルモノトナシ別冊第十七「ペーヂ」末尾ヨリ第三段目ノ一項ニ於テ其旨ヲ明示セリ又同「ペーヂ」末尾ノ二段ハ本官ノ電報第五十號ニ載セタル第十七點即チ從價稅算定ノ際物品價格ニ就キ輸入者ト稅關吏トノ間ニ異議ヲ生シタル場合ニ於ケル

一六五 明治三十八年七月十五日

青木駐獨公使ヨリ  
西園寺外務大臣代理宛(來電)

## 回訓要請ノ件

(129) My reports on treaty revision with Germany are answered. Inform me your plans on the subject as soon as possible, for I have reason to believe that indifference toward Germany will invite absolute coolness on her part.

(以下省略)

(Via Peters.), July 25, 1895. Aoki.  
Tokio, July 28, 1895.

註 明治三十八年六月五日文部大臣西園寺公望外務大臣臨時代理トナル

一六六 明治三十八年八月五日

西園寺外務大臣代理ヨリ  
青木駐獨公使宛(往電)

## 獨逸側ノ税目修正旨請シ難キ旨通報ノ件

No. 311 (59) Your telegram 129 received. I know you are well aware that beyond certain limit of concessions it is far better that treaty revision should fail than to be accomplished. This has been from

陸奥外務大臣時代 對獨交渉 一六五 一六六

規定ヲ掲ケタリ而シテ該規定ハ通商條約中ニ記入スヘキモノナリ

右税目表ニ就キ本官ニ於テハ篤ト調査ヲ加ヘタル上此機密信御落手ノ以前更ニ何分ノ儀ヲ電報可致存居候ヘトモ獨逸政府ノ提出案ハ不取敢茲ニ及郵送候條御參考相成度候本年二月二日到達ノ貴電<sup>2</sup>即チ廣島ヨリ直接本官ヘ宛テ御發送相成候電報ニ閣下ハ條約改正ノ商議委員ニアラサルカ故ニ本件ニ就キ日本駐劄獨逸公使ト面談ノ際敢テ詳細ニ涉ラサリシ云々ト有之候處抑モ全權委員ニ向テ訓令ヲ下スノ地位ニ在ル閣下ヨリ日本駐劄獨逸公使ニ申述セラレタル事項ニ對シテハ獨逸政府ハ一層特ニ重キヲ置テ止マス爲之本官ノ辨解ハ動モシテ無効ニ屬スルコト多シ此段深ク御含置相成度候

右及稟申候 敬具

明治三十八年四月十七日

在伯林 特命全權公使子爵 青木 周藏

外務大臣子爵 陸奥 宗 光殿

註 1及2一五四及一五五 約定税目表(獨文)省略

the beginning, immovable principle governing treaty revision. You followed it while you occupied portfolio of Minister for Foreign Affairs and you were guided by it in your negotiations in London. Consequently I express your own conviction when I say that German proposals especially tariff overstep that limit. Delay in answering your reports was caused by trying to find some satisfactory solution of this difficulty as well as by our attention being directed to more urgent question of triple intervention. Now I do not of course propose to believe that treaty revision with Germany could be effected without any concession on our part, but I do insist that concession should be confined within reasonable bounds. Therefore before giving definite answer I like to know your opinion as to how far and what points we may in justice yield to German demands and in what respects we should insist upon our original proposals. Particulars by mail.

Sent Aug. 5, 1895. Saionji.



一六七 明治三十八年八月六日 西園寺外務大臣代理ヨリ  
青木駐獨公使宛(往電)

## 獨逸側ノ稅目案ニ付訓令ノ件

送第一六號 條約改正ニ關スル件(第十二)  
日獨條約改正ノ件ニ關スル閣下ノ報告ニ對シ回答遲延ノ義  
ニ付去月廿八日貴電(一二九號)ニ接シ候處當方ニ於テ決  
シテ獨逸國トノ談判ヲ度外ニ置キ居ルト申ス次第ニハ無之  
是迄閣下ヨリ御電報相成候同政府ノ修正提議ニ對シテハ已  
ニ帝國政府ノ意見ヲ電答致置候廉モ有之候ニ付テハ閣下ヨ  
リ之ヲ同政府ヘ御申入相成候結果如何ト御報告ヲ相待居候  
次第ニ候尤御承知ノ通同政府力要求スル所ノ各修正タルヤ  
中ニハ其性質甚タ輕易ナラサル點モ有之候ニ付テハ折角已  
ニ英米伊露ノ諸國ニ向テ満足ノ結果ヲ得タルモ若シ今獨逸  
國政府力要求スルカ如キ修正ヲ新タニ肯諾スルトキハ最惠  
國條款ノ存スルカ爲メ是迄折角博シ得タル所ノ好結果モ獨  
逸一國トノ條約ノ爲メニ全ク徒効ニ歸スル次第ナレハ其邊  
ノ處ハ如何ニ帝國政府ニテ迅速ナル完結ヲ望ムモ亦能ク審  
思熟慮ヲ加ヘサルヲ得サル筋ニ有之殊ニ四月十七日附別信  
第十五號<sup>2</sup>ヲ以テ御送附相成候獨逸國政府ヨリ提出セシ約定稅

訂セシ約定稅目上ノ稅率ヲ低減シタリトスルトキハ帝國政  
府ニ於テハ爲メニ右日英間約定稅目ニ依テ得ヘキ所ノ收入  
額ノ殆ト九步即收入豫算額四百萬圓ノ處ヨリ三十五萬圓ヲ  
減殺セラル、ニ至ルヘク候

前記ノ理由ナルヲ以テ右獨逸政府ノ對案ノ如キハ帝國政府  
ニ於テハ到底承諾難致候得共一日モ速ニ本談判ノ了局ヲ見  
度希望ヲ有スルヲ以テ寛大ナル精神ニテ更ニ斟酌ヲ加ヘ改  
メテ左記ノ品目ヲ約定稅目中ニ編入スルコトヲ承諾可致候

|                                  |     |
|----------------------------------|-----|
| Alizarin Dyes.                   | 10% |
| Paper other than Printing paper. | 10% |
| Salicylic acid.                  | 10% |
| Bromide.                         | 10% |
| Chlorate and iodide of Potash.   | 10% |
| Subnitrate of bismuth.           | 10% |

今如シ此數種ヲ約定稅目中ニ編入スルコトスルトキハ獨  
國ニ於テハ其ノ日本ヘノ輸出額ノ百分ノ七十一ニ對シ低稅  
ノ利益ヲ享クルコトト可相成又此外尙絹綿繻子<sup>(註參四)</sup>

ニ對スル稅率一割五分トアリシヲ一  
割ニ減スルコトヲ承諾可致候

陸奥外務大臣時代 對獨交涉 一六八

目案ノ如キハ獨逸文ノ儘ナルヲ以テ之カ翻譯ニ爲取掛候處  
重モノ品物ノ名稱ナルカ故ニ其筋ノ者ニ就テ十分其譯文ヲ  
正確ナラシメサルヲ得ス夫等手數ノ爲メ餘程ノ日子ヲ要シ  
而シテ稍々其譯文ノ出來上リタル後始メテ調査ニ從事致候  
得共其品目殆ト數百種ニ上リ居候ニ付之ヲ調査スルコトモ  
甚タ容易ナラス隨テ右ニ對スル回答モ遲延致候次第ニ候  
抑帝國政府ノ提出セシ約定稅目案タルヤ輸入額ヲ二分シテ  
約定稅目ニ依テ課稅スルモノト普通稅則ニ依テ課稅スルモ  
ノト可成丈半々ニ相成候様仕組置キタルモノニシテ該提案  
ニ依ルトキハ獨逸國ヨリ輸入額百分ノ六十一ハ或ハ新訂セラ  
ルヘキ日獨約定稅目ニ依リテ直接ニ或ハ最惠國主義ノ適用  
ニ依リテ間接ニ低稅ノ利益ヲ享クルコトト相成居候處今回  
獨逸國政府ヨリ提出ノ對案ニ依ルトキハ普通稅則ニ依テ課稅  
スヘキモノハ買入船舶ヲ除キ僅カニ輸入額ノ百分ノ三程ヨ  
リ外無之ニ至ルヘク是レ殆ト普通稅則ヲ設クルノ餘地ヲ存  
セサルモノトイフテ宜キ次第ニ有之加之右對案ナルモノハ  
餘程以前ノ調ニ依リシモノト見ヘ其掲載品目中ニハ目下復  
輸入セサルモノ又絶ヘテ輸入セシコトナキモノモ多々有之  
候且今若シ假リニ獨逸國政府ノ提案ニ依リテ日英兩國間ニ新

帝國政府ニ於テハ此上最早讓與ノ致様無之若シ尙又之ヲ爲  
サントスルトキハ普通稅則ナルモノハ到底之ヲ設クルコト  
ヲ斷念セサルヲ得サルコトト可相成次第ニ付閣下ニハ獨逸  
政府ノ要求ヲ之ニテ喰止ムルコトニ御盡力相成度但シ若シ  
尙獨逸國政府ニ於テ肯諾ノ模様無之候ハ、互相的ニ日本ヨリ  
獨逸國ヘ輸入スル品物ニ對スル約定稅目ヲ締結致度旨御提議  
相成度又之ヲモ承諾セサルトキハ約定稅目ニ編入セサル品  
物ニ對シ日伊兩國政府間ニ締結セシ議定書第一項第二節ノ  
如キ規定ヲ議定書中ニ挿入スルコトヲ御提議相成度右稅目  
ニ關スル談判ノ結果如何ニ依リ條約案ニ對シテモ多少酌議  
ヲ相加可申所存ニ有之候ニ付先ツ稅目ノ點ニ付テハ獨逸政  
府ハ何レノ程度ニテ折合フヘキヤノ處ヲ御談判ノ上御報告  
相成候様致度候

右及訓令候 敬具

一六八 明治三十八年十月吉日

青木駐獨公使ヨリ  
西園寺外務大臣代理宛(來電)

## 我讓步案ニ對スル獨逸側ノ態度ニ關スル件

(144) I had a conference with German negotiators

on October 12th in which I cautiously presented your concession on tariff. This has not at all satisfied them and their former demands are insisted upon both with respect to 18 points as well as tariff. However, owing to my obstinate representation, their definite answer is reserved until the next conference. I must again remark that Loenhof's pamphlet has created serious obstacle.

(Via Peters.), Oct. 14, 1895. Aoki.

一六九 明治三十八年十月三十日 青木駐獨公使ヨリ  
西園寺外務大臣へ謹啓(奉電)

貴方案ニ對スル獨逸側ノ回答ニ關スル事

(148) Referring to my telegram 144, German reply on tariff is as follows:

They agree to strike out 1, 2, 4, 6, 7, 11, 14, 18, 20, 22, 24, 27 and 28 of the articles enumerated in our original tariff proposals, but of 58 articles in their counter-proposal, they demand that the following be included in the conventional tariff:

1. alkalies and alkaline salts, alumina and aluminium salts, mordants for dyeing purposes, bleaching pow-

der (chloride of lime), mineral acids, 5 per cent;

2. carriage wagons and locomotive engines (of) all kinds for railways and tramways, parts thereof, 5 per cent.

3. glycerine, 10 per cent.

4. bromide and iodide of potassium, 5 per cent.

5. drugs, medicines and chemicals (of) all kinds not otherwise provided for in this tariff, 8 per cent.

6. coal tar colours (the term aniline dyes is insufficient), 5 per cent.

7. inorganic colouring matters not otherwise provided for in this tariff, 10 per cent.

8. dynamite and other high explosives, 5 per cent;

9. hops, 5 per cent.

10. machinery, engines and boilers not otherwise provided for in this tariff, parts thereof including accessories, 5 per cent.

11. malt, 5 per cent.

12. iron or steel structural work of every kind, 7  $\frac{1}{2}$  per cent.

13. zinc rolled or stretched, rod, plate, and sheet, 5 per cent.

17 as stated in my telegram 70 are insisted upon strongly, but on 7 and 16 I can remove their scruples by diplomatic notes without changing the text of draft of treaty.

On all other points your definite and favorable answer is required, but in case of rejection your positive declarations are of urgent necessity on point 6:

(A) whether foreigners are permitted to accept hypothecation of land.

(B) whether right of leasing land extend to industrial purposes.

(C) whether partnerships consisting of Japanese and foreigners are allowed to acquire real property. And on the point 15, whether Japanese subjects would be permitted to acquire land leased in perpetuity. And lastly, on the vexed question of two systems of lease whose anomaly is pointed out in my telegram 78. Regarding point 17, I remark that the present arrangement means maintenance of paragraphs 2 and 3 of Article VIII, Austro-Japanese treaty. In reporting to you counter-demands, I can do no more than indicate as I have done what points are insisted up-

14. wire, nails, 5 per cent.
  15. drawn wire of iron or steel, 7 per cent.
  16. manufactures of iron or steel not otherwise provided for in this tariff, 10 per cent.
  17. paper, all kinds, 5 per cent.
  18. potato-starch, potato-flour, dextrine, dressing and finishing preparations for textile stuffs, 5 per cent.
  19. woollen flannels and mousselins, 5 per cent.
- Of the foregoing articles German Government attach particular importance to 1, 5, 6, 7, 10, 14, 17 and 19. Besides, the following demands are made:
1. to guarantee in the protocol free importation of samples of merchandise in reasonable quantities subject to approval of custom-house authorities.
  2. to enumerate in Japanese-German tariff those articles in Anglo-Japanese treaty that are also important for Germany.
  3. provision similar to paragraph 4 of the protocol between Japan and Russia.
- Regarding 18 points in my telegram 50, I presented German Government memorandum to remove their scruples on points 2 and 3. Points 6, 7, 13, 15, 16,

on, particularly, if well-considered answers are given promptly, treaty can be signed without any delay.

(Via Petersburg), Oct. 27, 1895.

Tokio, Oct. 29, 1895. Aoki.

一七〇 明治三十八年十一月二日 西園寺外務大臣代理ヨリ  
青木駐獨公使宛

レンホルム氏ノ著書ニ關スル件

送第二三號

先般「フオン、ブランド」カ著ヘシ日本政變ノ書冊ニ對シ帝國大學雇教師「レンホルム」ニ於テ著セシ駁論ノ書冊末編ハ條約改正上ニ妨害ト可相成モノナル趣御來示相成居候處其後「レンホルム」ニ於テモ其非ヲ悟リ曩ニ該書發賣ノ書肆ヘ急報シ其發賣ヲ差止メ更ニ別冊ノ通訂正刊行致候趣ニ有之候右書冊入手致候ニ付玆ニ一部差進候間御落手相成度此段申進候 敬具

譯 書冊(四六號三十五頁)名左ノ如ク

Japan. Erwiderng auf Herrn von Brandt's  
Schrift "Die Zukunft Ostasiens" von  
Dr. L. Loenhohn.

sidence" in second paragraph, Article III. All land taxes, municipal *equally with* (as well as?) imperial, are paid by actual owners of land. Hence, as Japanese Government is owner of all land in foreign settlement, lease-holders can not be called upon to pay such taxes. Land owned by mixed partnerships will of course stand in (the) name of Japanese partners in (the) same manner as will Japanese vessels belonging to such partnerships. Foreigners will have right to lease land outside foreign settlements for (the) same period as Japanese subjects will have right to purchase leases in perpetuity in foreign settlements equally with foreigners. Japanese Government admit that system of perpetual leases within foreign settlements only is (an) anomaly, but the anomaly already exists, whereas permission to foreigners to own land within (the) same limits and not elsewhere would be creation of new anomaly. Point 13 accepted upon (the) understanding that engagement on (the) subject is to appear as (an) article of the treaty in reciprocal form. Point 15, Japanese Government have no objection in principle to this point. It would be (an) act

一七一 明治三十八年十一月六日 西園寺外務大臣代理ヨリ  
青木駐獨公使宛(往電)

獨逸側ノ要求ニ對シ訓令ノ件

(74) Received your telegram 148. While it leaves much to be desired, it gives hope of final accommodation. Questions of tariff require expert examination. Accordingly, I am unprepared at present to answer that portion of your telegram. Regarding 18 points in your telegram 50, I limit present reply to 6 points which you say are strongly insisted on, hoping that remaining outstanding points have been abandoned. But regarding point 2 you can, if necessary, explain that whereas note of Saionji only promised promulgation, present note guarantees actual operation. Point 6, Japanese Government will grant to German subjects right to accept hypothecations of land outside foreign settlements subject to qualification that in case of default and forced sale only such persons as may own land can become purchasers. Japanese Government consents to insertion of word "industrial" after "residential" in second paragraph, Article II (and) also word "industry" after "re-

of bad faith not to respect vested rights. Accordingly, inference to be drawn from unilateral clause in Treaty or Protocol on the subject would be unpleasant. If, therefore, German Government will address you note asking what effect new treaty will have on vested rights, you can reply under authority that vested rights will be respected. Point 16 in your telegram 70, you say this demand will be withdrawn if Japanese Government declare by note that German consular jurisdiction shall not cease earlier than consular jurisdiction of other Powers. Upon that understanding you are authorized to address to German Government at (the) time treaty is signed (a) note in (the) following sense:

“Japanese Government agree to maintenance of German consular jurisdiction so long as is continued the consular jurisdiction of any (other?) power whose subjects or citizens have the right in virtue of express treaty stipulations to trade, travel and reside in all parts of the Empire.”

Point 17 is admittedly inequitable. Japanese Government consent to continuance of existing arrangement

until new treaty takes effect, but they find it impossible to perpetuate it after that time. Point 7, Japanese Government do not fully appreciate exact significance of this demand. Accordingly I should like to know (the) nature of (the) note you propose giving on (the) subject. Japanese Government consent to provision similar to paragraph 4 of Protocol between Japan and Russia. I hope liberal concessions now offered by Japanese Government will enable you to adjust all outstanding points in treaty and protocol. Answer regarding tariff will follow as soon as possible.

November 16, 1895. Saionji.

一四二 明治三十八年十一月十三日 青木駐獨公使ヨリ  
西園寺外務大臣ヲ連宛(來電)

開港場問題ニ付謹令ノ件

(155) On point 7 of my telegram 50, German Government have discovered insufficiency of the wording of their treaties with Mexico and Dominica because both countries, acting within their treaty rights, frequently made experiments of opening and then clos-

ing certain ports to foreign commerce and navigation. Therefore, German Government have recently proposed to strike out (the) word "foreign" in order to realize to full logical extent (the) principle of opening the Empire in accordance with your instructions. I remonstrated against this proposal and declared that, Japan's intentions being entirely honest, no discrimination shall be exercised against German shipping. I also called their attention to utterances of Japanese press which is in favor of opening more and more ports to transmarine commerce. German negotiator thereupon confidentially suggested that the difficulty might be overcome by giving a note to the following effect:

Words "foreign commerce" refer to transmarine commerce without distinction of the flag under which it is carried on. Therefore, "ports open to foreign commerce" include all ports where vessels engaged in transmarine commerce are permitted to enter, the only exception being those ports which are open to particular transmarine commerce with Vladivostock and Korean ports.

(Via Petersburg), Nov. 23, 1895. Aoki.

一四三 明治三十八年十一月三日 青木駐獨公使ヨリ  
西園寺外務大臣ヲ連宛(來電)

(157) While I do not believe bases of your telegram 74 can be accepted entirely, I will try my best on receipt of your reply on tariff without which negotiation can not be proceeded with. It is, however, absolutely necessary to avoid all direct expressions denying to foreign vessels national footing treatment in matters of transmarine commerce. The wording confidentially suggested by German negotiators is the only practical way to exclude foreign vessels from particular domestic transmarine commerce. Your proposal to include Chinese ports among exceptions will create insurmountable obstacle because in my judgment their distance is too great to entitle their commerce with Japan to be regarded as special transmarine commerce.

(Via Petersburg), Dec. 3, 1895. Aoki.

一四四 明治三十八年十二月一日 西園寺外務大臣代理ヨリ  
青木駐獨公使宛(往電)

開港場問題ニ付謹令ノ件

No. 633. (76) Regarding point 7, Japanese Government accept solution by means of diplomatic note provided in proposed note words "exclusively to domestic transmarine commerce or" are inserted before words "to particular" and last four words are replaced by following words, "ports of China, Corea and Eastern Asiatic Russia."

I will be able shortly to give you instructions regarding tariff, but in (the) meantime I desire to know if you think adjustment of treaty questions possible on basis of my telegram 74.

(Via Petersburg), Sent Dec. 1, 1895. Saionji.

一四五 明治三十八年十二月三日 西園寺外務大臣代理ヨリ  
青木駐獨公使宛(往電)

第四問題ニ付謹令ノ件

No. 635. (77) Regarding first eight items of amended German tariff-counter-proposals as enumerated in your telegram 148, Japanese Government make fol-

lowing proposition :

All articles coming under those general heads, the importation of which taken separately averaged for last three years not less than Yen 50,000 annually, *each*(?) shall be included in conventional tariff, provided importation from Germany of such articles taken separately averaged for (the) same period not less than Yen 20,000 annually *each*(?) and provided also ad valorem rates of duty respecting articles thus brought into conventional tariff are to be (the) same as agreed to in conferences of 1882 and 1886. Japanese Government will consent to insert item 17 at (the) same rate of duty as agreed to in conferences. Japanese Government consent to reduce duty on item 16 of our original tariff-proposals to Germany to 10 per cent, provided (the) item reads silk-faced cotton-satins, that being the intention of original proposals. Japanese Government consent to enumerate in Japanese-German tariff all articles appearing in Anglo-Japanese tariff which German Government may desire, provided German Government accept converted rates of duty appearing in Anglo-Japanese supplementary

German negotiators, accordingly, suspect that Japan secretly intend to modify this article after conclusion of Treaty. I therefore propose you to withdraw this declaration.

They demand insertion of the word "industry" after the word "commerce" in paragraph 3, Article II. They desire to insert in (the) treaty your declaration regarding right to accept hypothecation in reciprocal form. Wording proposed for the note on the duration of German consular jurisdiction has provoked violent opposition. They desire plain positive declaration that German consular jurisdiction shall not cease earlier than that of any other Power. In view of the fact that revision of treaty with Germany, if accomplished leaves no doubt as to our success with the remaining Powers, I propose that this demand be conceded. Regarding seventeenth of the 18 points, I declared that it should be left to domestic legislation. German negotiators, however, point out that Japan has not yet promulgated enactments prescribing procedure to be followed in case referred to this renders some explicit declaration necessary.

convention, copy of which you can obtain from British Foreign Office through Japanese Minister in London. Japanese Government desire to suppress items 9, 10, 11, 12, 16 and 18 of German amended counter-proposals, item 9, 11 and 18 being unimportant as articles of import and items 10, 12 and 16 requiring no protection against high duties because of (the) nature of (the) articles. Respecting items 13, 14, 15 and 19, Japanese Government desire to adhere to rates of duty agreed to at conferences, not only because of that agreement but because those rates are consistent and in harmony with other rates in proposed conventional tariff and can not be regarded as excessive.

December 2, 1895. Saionji.

一七六 明治二十六年十二月十一日 青木駐獨公使ヨリ  
西園寺外務大臣代理宛(來電)

#### 提議ノ變更請求ノ事

(160) Your declaration that land owned by partner ship will stand in the name of Japanese partners conflict with Article 73 of the Commercial Code.

Your proposal regarding meaning of the words "foreign commerce" has, upon most cautious sounding, called forth violent opposition and, if further insisted upon, will have grave consequences. By insertion of the words "exclusively to domestic transmarine commerce" and "ports of China," exception has grown too large for adjustment. By expunging words "ports of China" and by confining exception to those ports that are open only to transmarine commerce of peculiarly local character, final adjustment might be found possible.

Foregoing are results of last Saturday's hard-fought battle. My strongly repeated remonstrances that granting ownership of land to foreigners will inevitably bring about social and economical revolution in Japan seems to have had its effect and indications are that I have probably succeeded in making German Government abandon their demand on this point. Questions of tariff are reserved for another conference, but success is doubtful unless foregoing points can be satisfactorily adjusted before resuming negotiation. Lastly, I have reason to fear that Ger-

man Government will strongly oppose conversion of ad valorem into specific duty, seeing that by virtue of Article II of supplementary convention between Japan and England that conversion can not be carried out without their consent. Nevertheless, I will make determined efforts to make them accept it. Regarding Formosa, do you intend to make reservation, which I think in some respect advantageous, in terms similar to that contained in Anglo-Japanese treaty in respect of British colonies? If so, inform me at once. Also, your speedy decision is necessary on all the points above mentioned.

(Via Petersburg), Dec. 11, 1895.  
Tokio, Dec. 13, 1895. Aoki.

一七十七 明治三十八年十二月十六日 青木駐獨公使ヨリ  
西園寺外務大臣へ謹宛(來電)

第四十二號ノハ面議ノ經過報告ノ件

(162) On 13th and 14th December, I had conferences, these days being named by German negotiators. I regret that the interval was too short for you to

answer my telegram 160. Immediate replies to that as well as to this telegram are necessary.

Regarding your proposition on the first eight items of amended German tariff-counter-proposal, German negotiators ask whether the two collective items in annual return of foreign trade, 1894, which read respectively "medicines and chemicals, all other" and "all other dyes and paints" are intended to be included in the conventional tariff. If not, they declare that your proposition can not even be discussed. German Government further desires to be specifically informed what other articles are in your estimation to be included in the conventional tariff as being articles whose annual importation taken separately exceed 50,000 yen of which more than 20,000 yen comes from Germany. Regarding items 9, 11 and 18, while admitting that they are unimportant as articles of import, German Government insist upon them for the political reason that votes of agrarian members of Reichstag must be secured in favor of treaty. These items are merely intended to satisfy agrarian league that the Government have not neglected agricultural

一七十八 明治三十八年十二月十六日 西園寺外務大臣へ謹宛  
青木駐獨公使ヨリ(往書)

露獨條約ノ施行問題ニ付

No. 689. (82) Regarding question of land owned by mixed partnerships, will answer shortly.

Japanese Government consent to insert word "industry" in third paragraph, Article II. Japanese Government consent to insert in treaty, in reciprocal form, stipulation regarding hypothecations.

Japanese Government do not think they can in fairness be asked to give unqualified declaration regarding duration of German consular jurisdiction. It is highly improbable that any treaties will remain unrevised after 1899, but possibility of such being the case is not sufficiently remote to be wholly ignored. Treaty with United States comes into operation definitively (on) 17th July, 1899. Supposing treaty with (any) other Power remains on that date unrevised and unqualified declaration should be given, then German Government might demand participation in all privileges granted to United States, on the one hand, while claiming, on the other, continuation of German

(Via Petersburg), Dec. 16, 1895. Aoki.

Consular jurisdiction. Japanese Government are certain (that) German Government have no wish to make such situation possible. Accordingly, if German Government still reject our former proposal, then Japanese Government will consent to German demand subject to following reservation that, so long as German Consular jurisdiction continues, German Government is not to demand participation in privileges, favors, facilities, advantages, immunities or exemptions which are or may be extended to any other Power in consideration of or in connection with the abolition of consular jurisdiction.

Regarding point 17, Japanese Government must invite attention to practical side of (the) question. One quarter of Japan's entire foreign trade is conducted by Japanese merchants. Besides, new law regarding customs appraisements will require consent of Diet. These circumstances are guarantees of (the) fact that new enactment will be neither unjust, unreasonable nor arbitrary. Moreover, Japanese Government (is) unable to understand why by exception their liberty of action in this particular should be

restricted, since such stipulations are unusual in reciprocal treaties of commerce.

Japanese Government fear that negotiations are at cross purposes regarding significances of (the) words "which are or may be opened to foreign commerce." These words or their equivalent appear in many treaties, several of which are with Germany. Japanese Government are not particular regarding words used, but they wish it distinctly understood that commerce with foreign countries is to be carried on only at ports or places designated for the purpose, in other words, at ports of entry and Japanese Government think that (the) words used have no other meaning. They also think those words taken with Article VIII of Anglo-Japanese treaty are bar to any discrimination. To allow goods to be indiscriminately imported at all places would make collection of revenue impossible. Japanese Government would have no objection to replace (the) words "foreign commerce" by words "the importation and exportation of merchandise from and to foreign countries."

Article II, Supplementary Convention with Great

Britain, relates exclusively to periodical readjustment of specific duties based upon variations in exchange. Conversion of ad valorem to specific duties is provided for by Protocol. You will remember our original proposals contained scheme for revision of specific rates at option of Japanese Government. That scheme was rejected by British Government. Scheme appearing in Article II, Supplementary Convention, was proposed by British Government and reservation was introduced by Japanese Government. Consequently, Japanese Government are indifferent whether German Government consent to readjustment or not, but Japanese Government must admit that scheme is equitable as it tends to make rates of specific duties constant. Japanese Government do not consider any reservation necessary regarding Formosa.

(Via Petersburg), December 20, 1895. Saionji.

一七九 明治三十八年十二月三十一日  
西園寺外務大臣代理  
青木縣獨公使宛(往電)

税目問題二件訓令ノ件

No. 704. (83) Regarding first 8 items, amended

陸奥外務大臣時代 對獨交渉 一七九

German tariff counter-proposals, Japanese Government intended to exclude from conventional tariff all articles appearing under collective headings quoted in your telegram 162 which do not separately equal double qualifications named in my telegram 77. Those headings embrace infinite variety of articles too numerous and insignificant to be separately enumerated. Impracticable to introduce all those articles into conventional tariff except by collective headings which would bring all drugs, medicines, chemicals, dyes and paints under conventional tariff. If this is (the) intention of German Government, you are negotiating in circle. We are exactly where we were before my telegram 77. Unless you can induce German Government to modify their decision, we must regard their declaration respecting collective headings as tantamount to categorical rejection of proposed adjustment. In present situation, therefore, (it is) useless to enumerate what articles would come within 50,000 and 20,000 yen qualification.

Regarding item 9, average total imports, three years, 18,400 yen; from Germany, 15,800 yen. Item

11, importation too small to be separately enumerated in Customs Returns. Item 18, not imported. Japanese Government would be sorry to think fate of treaty might depend, before Reichstag, upon introduction of those 3 items into conventional tariff. But if all other questions respecting tariff can be adjusted, Japanese Government will consent exceptionally to admit hops into conventional tariff.

Regarding item 19, Japanese tariff-proposals were framed on graduated scale from 5 to 15 per cent according to nature and condition of articles. It would be illogical and inequitable to levy lower rate of duty on flannels than on yarn used to manufacture flannels. Equally illogical and inequitable to make distinction respecting rate of duty between flannels and other tissues, more especially as flannels are not nearly most important tissue imported into Japan. If Japanese Government acceded to German demand for reduction of duty on flannels to 5 per cent, they could not reasonably resist inevitable demands of other Powers for corresponding reduction respecting yarns and other tissues. Taking Customs

Returns (for) last three years, it appears reduction of duty to 5 per cent on cotton and woollen yarns and tissues alone would have meant annual average loss of revenue of Yen 874,000, whereas annual average value of flannels imported from Germany was only Yen 800,000.

In lesser degree same difficulty would follow reduction of duty to 5 per cent on item 14. For instance, such reduction would necessitate corresponding reduction respecting iron and steel wire, bar, rod, plate and sheet, for, if such corresponding reduction did not appear in Japanese-German tariff, then Belgium would be entitled to demand conventional tariff in order to secure equalization of duties. Japanese Government can only avoid extending principle of conventional tariffs by giving as far as possible equal treatment to all Powers under proposed three conventional tariffs. So far as agreements have been reached, German Government, comparatively speaking, can not complain of proportion of German imports coming under conventional tariff and, taking tariffs of other countries into consideration, Japanese Govern-

ment do not think German Government can justly say that rates of duty, appearing in proposed Japanese conventional tariff, are excessive. Japanese Government consider their interests, in tariff question at least, equal to combined interests of all Powers and consequently superior to interests of any single Power. Terms of proposed new treaty (are) not identical with those contemplated in 1882 and 1886, but tariff should be considered on its own merits and economic conditions have not in (the) meantime so changed as to make ad valorem rates then proposed by Foreign Representatives and accepted by Japanese Government inapplicable now. Under these circumstances, while we are bound to take into consideration Germany's difficulties, we must not lose sight of our own embarrassments and paramount interests. Present these considerations to German Government in most effective manner. Decision of Cabinet is necessary regarding question of land owned by mixed partnerships. Consequently, reply on that subject must be delayed for short time.

Sent Dec. 31, 1895. Saionji.

陸奥外務大臣時代 對獨交涉 一八〇 一八一

一八〇 明治三十九年一月八日 青木駐獨公使ヨリ  
西園寺外務大臣代理宛(來電)

稅關ニ付請願ノ件 (11)

(116) Regarding collective headings, I have always rightly understood your intention, but strong declaration of German negotiators must be brought to your knowledge. So long as we decline to name articles coming within double qualifications, negotiation can not be resumed and even if resumed, it would proceed only in circle. Therefore, please enumerate items specifically.

Regarding mixed partnership, I trust no distinction will be drawn between Japanese and foreigners in the application of commercial code.

(Via Peters.), Jan. 8, 1896. Aoki.

一八一 明治三十九年一月十四日 青木駐獨公使ヨリ  
西園寺外務大臣代理宛(來電)

同 件 (11)

(11) Your answer to my telegram 166 requested, more especially as German Minister for Foreign Affairs desires speedy conclusion. But no definite pro-

三〇六



gress in negotiation can be made without direct and positive replies on all contested points.

(Via Petersburg), Jan. 14, 1896. Aoki.

一八二 明治三十九年一月六日 西園寺外務大臣代理ヨリ  
青木駐獨公使宛(往電)

税目及組合ノ不動産所有權問題ニ付訓令ノ件

No. 26. (3) In addition to items enumerated in my confidential letter no. 16 under date of August 6th, 1895, railway carriages and parts thereof, locomotive engines and parts thereof, dynamite, phosphorus amorphous and quinine would answer double qualification. These items would bring nearly 74 per cent of German imports under conventional tariff.

Regarding question of mixed partnerships, you are authorized to withdraw declaration contained in my telegram 74 and to say that in (the) opinion of Japanese Government, the new treaty being in operation, mixed partnerships organized under Japanese laws and subject to Japanese jurisdiction would in view of Article 73, Commercial Code, have right in partnership names to acquire immovable property. In order

to conserve liberty of legislation for (the) future, you should avoid any express or written engagement on this subject. You can say if necessary that when former declaration was made Article 73, Commercial Code, was overlooked.

Sent, Jan. 18, 1896. Saionji.

一八三 明治三十九年二月三十一日 青木駐獨公使ヨリ  
西園寺外務大臣代理宛(來電)

税目及組合ノ不動産所有權問題ニ付訓令ノ件

(13) I had conference on February 18th.

1. What modifications do you desire in our draft consular convention ?

2. German Government demanded that all rights enumerated in Article II, law of property, should always remain rights in rem. I declared they might hope, but not demand. Inform me present situation of code revision.

3. Regarding samples of merchandise in my telegram 148, may I agree to insert in treaty reciprocal engagement similar to Article V, German-Italian treaty, 1891 ?

4. Notwithstanding your telegram 82, I finally succeeded in making German Government accept converted rates of duty in Anglo-Japanese supplementary

convention, such convention to be signed in Tokio.

5. German Government desire to insert in Protocol the following:

"The subjects of each of the two countries shall enjoy in the other protection of inventions, patterns, and models, trade and manufacture marks, firm and other commercial names upon fulfillment of conditions prescribed by law. This agreement shall immediately take effect upon the exchange of ratifications of present treaty."

I recommend acceptance of this proposal because jurisdiction over this matter can be immediately resumed by Japanese courts.

6. May I sign treaty in German language as German Government earnestly demand ?

If you do not demand larger modification in consular convention and agree to foregoing points, leaving to my responsibility minor details of unimportance such as wording clause stated in point 12 of my telegram

50, treaty can be signed without delay.

(Via Peters.), Feb. 21, 1896. Aoki.

Tokio, Feb. 22, 1896.

一八四 明治三十九年二月二十六日 西園寺外務大臣代理ヨリ  
青木駐獨公使宛(往電)

領事條約面議及特許權保護條項等ニ關シ訓令ノ件

No. 163. (12)

1. Draft Consular Convention has not been examined in connection with present treaty-revision scheme. Consequently impossible to say at present what modifications may be necessary in order to make it accord exactly with provisions of new commercial treaty and spirit of modern legislation. Japanese Government having given assurance, which is binding, to conclude consular convention hereafter, they hope German Government will accept that assurance as sufficient in order to prevent delay in signature of commercial treaty which would be inevitable if treaty and convention were to be considered together.

Besides, while early conclusion of commercial treaty is of utmost importance, there is plenty of time in which to conclude consular convention.

2. Regarding rights in rem. your reply is approved. Work of code-revision is progressing carefully and successfully. Civil Code with (the) exception of chapters relating to family and succession has been completed and presented to Diet.

3. accepted.

4. accepted.

5. accepted subject to following modifications:

Before (the) word "protection" insert (the) words "the same" and after (the) word "names" insert (the) words "as native subjects." Agreement to take effect at (the) same time convention tariff comes into actual operation. Engagement to protect without stating nature or degree of protection would be useless, hence advantage of placing stipulation on national footing. Japanese Government consider (the) concession hereunder (to be) of considerable importance. Consequently, they desire operation of (the) agreement (to be) delayed until conventional tariff goes

Point 6 being earnestly insisted upon, your proposal will lead to grave difficulties if not complete dead-lock. Immediate reply by direct telegram requested.

Berlin, March 2, 1896. Aoki.

一八六 明治三十九年三月五日 青木駐獨公使ヨリ 西園寺外務大臣代理宛(來電)

條約用語ニ關スル件

(21) Negotiations having been conducted here in German language, German Government would at all events object to make English deciding text.

Berlin, March 5, 1896. Aoki.

註 本電信ハ後出三月四日附第一七五號訓電到着前ニ發セ  
シレタルモノナランカ

一八七 明治三十九年三月四日 西園寺外務大臣代理ヨリ 青木駐獨公使宛(往電)

特許權條項及條約用語ニ付訓令ノ件

No. 175. (13) Point 5. Japanese Government consent to German proposal as to date of operation, but

陸奥外務大臣時代 對獨交渉 一八六 一八七

into operation. Japanese Government (are) confident this equitable compromise will be unobjectionable.

6. Regarding language of treaty, Japanese Government would prefer to sign in English alone as neutral language as on former occasion. If German Government object to that course, you may sign in three languages, Japanese, German and English, making English deciding text in case of divergence between Japanese and German.

Minor details are, in accordance with (the) suggestion in your telegram 13, left to your responsibility.

Sent, Feb. 29, 1896. Saionji.

一八五 明治三十九年二月廿四日 青木駐獨公使ヨリ 西園寺外務大臣代理宛(來電)

特許權條項及條約用語ニ付訓令ノ件

(18) Point 5 in my telegram 13. Proposed wording naturally implies national footing. If you insist to make it explicit, I will try. But regarding the date of operation, agreement being reciprocal, please agree to German proposal.

with (a) view to guard against possible misunderstandings in future, Japanese Government consider it necessary to place engagement explicitly on national footing. In your telegram 13, you say Japanese courts can immediately resume jurisdiction over this matter. Japanese Government do not understand that such resumption would necessarily follow as consequence of proposed engagement, but if German Government concur in your opinion on (the) subject I suggest, but do not insist, that your joint opinion be reduced to writing in diplomatic note or some other form.

Point 6. Owing to cipher code requirements, negotiations from this side had to be conducted in English. Accordingly it is important to have English text of treaty. Therefore if alternative proposal contained in my telegram 12 is rejected, you can next propose to sign in German and English. If this proposal is rejected, you can consent to sign in Japanese and German, but you will exhaust every effort to secure English text. If Japanese (and) German texts are adopted, you must take responsibility to make

Japanese (text) correct.

March 4, 1896. Saionji.

一八八 明治三十九年三月六日 青木駐獨公使ヨリ  
西園寺外務大臣代理宛(來電)

德議ノ獨國辭者ノ件

(22) I have strongly represented to German Government that your assurance to conclude consular convention ought to be sufficient. They emphatically reply (that it is) impossible to act on that assurance because, judging from the way in which Japanese Government has conducted negotiation, negotiation on consular convention may be indefinitely prolonged. They bitterly complain that, contrary to international usage, I have been plenipotentiary only in name and that commercial treaty would have been concluded long ago, had I been able to give definite replies at conferences instead of referring minute details to you. My argument that Japanese Government has not committed themselves to conclude consular convention simultaneously with commercial treaty is

refuted on the ground that the subject has from the beginning formed one of the 18 points and the fact that more than one year has been allowed to pass without any step being taken by Japanese Government after their agreement to conclude has led German Government to exercise great vigilance in negotiation. I am afraid that absolute dead-lock in pending negotiations can not be prevented unless you give me at once full power to conclude consular convention on my responsibility. I earnestly recommend this course not only because the basis is the same as proposed (in) 1887, but because conventions already concluded by Germany on terms of entire reciprocity with Russia, Italy, Greece (and) United States, by which I shall be guided, are guarantees of the fact that consular convention shall conflict neither with commercial treaty nor with (the) spirit of modern legislation.

Regarding language of commercial treaty, German Government insist upon their demand as condition sine-quanon.

Results so far reported having been secured by

extreme efforts, desired consummation can be attained only by yielding these two points.

(Via Peters.), March 8, 1896. Aoki.

一八九 明治三十九年三月十日 獨逸公使ヨリ  
西園寺外務大臣代理宛

在本邦獨逸公使歸書

領事條約締結方ニ關スル件

Memo.

At the beginning of the treaty negotiations the Japanese Government has, at the request of the German Government promised the conclusion of a Consular Convention on the basis of the project submitted to the foreign Representatives at Tokio in 1887, reserving only some alterations in the latter.

At the present moment, asked by Viscount Aoki by telegram to indicate the desired modifications the Imperial Japanese Government seems to wish to put off the negotiations for a Consular Convention, which however the German Government considers to be a necessary complement of the Commercial Treaty, on

the plea, that, as the Consular jurisdiction still continues, the conclusion of a Consular Convention is not a pressing matter.  
I am under instructions from my Government to declare that the Commercial Treaty and the Consular Convention are closely connected, in fact *inseparable* from each other.

I am also ordered to observe, that the seeming limitation of the Powers conferred on Viscount Aoki and the consequent necessity for the latter to continually ask for instructions concerning almost every detail have led to the protraction of the negotiations, for which in consequence the German Government cannot be held responsible.

三十九年三月九日獨公使ヨリテ西園寺大臣へ手交アリ。  
中田

一九〇 明治三十九年三月十日 西園寺外務大臣代理ヨリ  
獨逸公使宛

西園寺外務大臣歸書

領事條約締結方ニ關スル件

Memo.

Japanese Government had not failed to appreciate the necessary relation existing between the new Commercial Treaty and the proposed Consular Convention, but as the latter was to be eventual in all its provisions, they did not look upon its immediate conclusion as absolutely essential. In fact they had supposed that the course of procedure contemplated in 1887 and actually followed in 1889, would be pursued in the present instance.

The demand, therefore, made upon Viscount Aoki for a specific enumerations of the modifications of the Project of 1887 was unexpected and naturally found the Japanese Government unprepared to give a definite reply. But not wishing to delay the principal negotiations until the question of Consular Convention could be thoroughly examined, the Japanese Government without entering into particulars declared that the desired amendments would have for their object to bring the Consular Convention into accord with the Commercial Treaty and the spirit of modern legislation.

Japan communicated to me in (the) same sense as your telegram. I will hand him on March 11th (a) memo substantially as follows:

We appreciate necessary relation between commercial treaty and consular convention, but as all provisions of the latter were to be eventual its immediate conclusion was not considered absolutely essential. We thought in fact that in present instance the same course of procedure contemplated in 1887 and followed in 1889 would be pursued. Therefore demand to enumerate specifically modifications of Project of 1887 came unexpectedly and we were naturally not prepared to give a definite reply. But as we did not wish that principal negotiations will be delayed until after thorough examination of the question of consular convention, we declared in general way that amendments desired would be to make consular convention accord with commercial treaty and spirit of modern legislation. But as German Government desires to associate still closer together negotiations of consular convention and commercial treaty, Japanese Minister in Germany will be instructed by te-

In view, however, of the desire of the German Government to associate still closer together the negotiations of the Commercial Treaty and the Consular Convention, telegraphic instructions will be sent to Viscount Aoki which will enable him to fully satisfy the German Government regarding the question of amendments.

With reference to the question of the powers conferred upon Viscount Aoki it should be pointed out that the authority which he has is in conformity with international usage. It is the same as was held by him when he concluded the Treaty with Great Britain and it is also the same as is possessed by all other Japanese Plenipotentiaries.

二十九年三月九日獨逸公使ヨリ申出ノ件ニ對シ同月十一日西園寺大臣ヨリ口頭ヲ以テ本文ノ通り回答ノ上覺ノ爲メ本書寫ヲ同公使ニ交付セシメタリ。 本野

一九二一 明治三十二年三月十日 西園寺外務大臣代理ヨリ  
青木駐獨逸公使宛(往電)

領事條約ニ關スル件

No. 196. (15) On March 9th German Minister in

telegram so as (so that?) he will be enabled to fully satisfy German Government regarding amendments.

Powers, which Japanese Minister in Germany has, is in conformity with international usage and is the same as he had in British negotiation and is also the same as possessed by all other Japanese plenipotentiaries.

Sent, March 10, 1896. Saionji.

通譯外務大臣時代 通譯外務大臣時代 一九二一

一九二一 明治三十二年三月十一日 西園寺外務大臣代理ヨリ  
青木駐獨逸公使宛(往電)

領事條約ニ關スル件

No. 197. (16) You are authorized to sign German text alone taking care that date of operation of treaty coincides with date of operation of British Treaty.

Regarding consular convention, draft of 1887 is undergoing careful examination. Modifications desired will be limited to very few articles, principally if not entirely to articles XIII and XIV. Besides, Japanese Government wish either to suppress article III or make it reciprocal, consular convention to take

effect and terminate at (the) same time as treaty of commerce and navigation. Full instructions with definitive authority to conclude consular convention will be sent you within one week, that period being necessary in order to obtain Imperial sanction. If assurance in foregoing sense is not sufficient to satisfy German Government, you may sign treaty upon explicit understanding that ratification by Germany is dependent upon conclusion of consular convention.

Sent, March 11, 1896. Saionji.

一六三 明治三十二年三月十日 西園寺外務大臣代理  
青木駐獨公使宛(往電)

獨逸政府ノ態度ニ關スル件

No. 206. (18) You are authorized to conclude consular convention on (the) basis of (the) Project of 1887 subject to the following modifications:

Article III, last paragraph, should read "Consular officers who are citizens of the State by which they are appointed," also last sentence, same paragraph, words "consular offices" should replace words "these offices."

the death takes place." Reason, preferential claims should be determined by territorial law.

Section e, suppress last 34 words. Reason, retention of those words might involve questions of pledges and security deposited.

Section f, first paragraph, replace words "movable property" by word "estate," also suppress last 11 words. Reason, to bring it into harmony with section i as amended.

Section h, suppress fourth paragraph. Reason, Article XIII sufficient.

Section i, unite two paragraphs into one, suppressing last 9 words (of) first paragraph and first 11 words (of) second paragraph, also replacing words, "same country" by words "place where the property is situated" and words "that country" by words "the decedent's country." Reason, to bring stipulation into harmony with legislation.

Article XVI, after (the) word "detain" insert words "not being a subject of the country where the request is made."

These modifications are more recommendatory than

Article XI, section 2, insert between words "such" and "contracts" words "acts, agreements and".

Article XII, insert at (the) end a proviso that due notice is to be given to competent territorial authorities of all births, deaths and marriages so certified or celebrated.

Article XIII, suppress last 12 words of first paragraph and whole of last paragraph. Reasons, 12 words suppressed are unnecessary and service of writs of all kinds on all persons entirely too comprehensive.

Article XIV, section a, fourth paragraph, add at (the) end (the) words "or an order from a competent Court of Justice of the country." Reason, to provide for contingency of local authorities being present but refusing to cooperate.

Section d, first paragraph, make terms 10 and 12 months respectively instead of 6 and 8 months. Reason, distance between Japan and Germany.

Section d, last paragraph, suppress all except first 16 words and add (the) following: "which are entitled to priority according to the law of the place where

demands sine qua non. Accordingly you are given discretion within the limits of reciprocal consular conventions between European Powers of highest civilization. Your attention is invited to Articles I, II and XVII in connection with provisions of Commercial Treaty. If German Government insist upon signing in German language alone, you can do so. Japanese Government (is) anxious to conclude commercial treaty without delay. Accordingly it is hoped this telegram will enable you to sign commercial treaty immediately, leaving consular convention to be signed subsequently. Full powers will be sent by first opportunity and you may sign in anticipation of their arrival.

Sent, March 13, 1896. Saionji.

一九四 明治三十二年三月十日 青木駐獨公使ヨリ  
西園寺外務大臣代理宛(來電)

獨逸政府ノ態度ニ關スル件

(27) I have ascertained confidently that German Government finding my attitude firm and uncompromis-

ing have decided to present to you through German Minister in Japan their demand relative to drawback, warehouses and customs appraisement. I recommend not to yield any of those points. In reply to German argument that warehousing facilities in Japan are at present inadequate, I declared that Japanese Government will promote their own interests by building more and more warehouses according to commercial requirement.

Via Peters, March 14, 1896. Aoki.

一九五 明治三十九年三月十三日

西園寺外務大臣代理ヨリ  
青木駐獨公使宛(往電)

獨逸政府ノ意向及談判ノ現況報告方訓令ノ件

No. 228. (20) Referring to your telegram 27, Japanese Government wish to know (the) present intention of German Government as I have heard nothing from German Minister. Japanese Government also desire to know actual present situation of negotiations. Several of more important concessions recently made by

Japanese Government were made upon (the) understanding that negotiations had been practically completed and that such concessions cleared (the) way for actual signature of treaty. Consequently Japanese Government would be disappointed if German Government should now bring forward again new demands.

Via Peters, March 23, 1896. Saionji.

一九六 明治三十九年三月二十一日

西園寺外務大臣代理ヨリ  
青木駐獨公使宛

領事條約締結全權御委任狀送附ノ件

條約改正ニ關スル件

領事職務條約ノ義ニ關シテハ昨年一月二十八日接貴電<sup>(一五)</sup>(五十號)中獨逸政府ニ於テハ去ル二十年(即千八百八十七年)東京ニ於ケル條約改正會議へ提出セシ所ノ基礎ニ依テ右條約ヲ締結スルコトヲ提議セシ旨御來示有之候ニ付二月二十七日ノ電信<sup>(其)</sup>(四十五號)ニテ右條約締結ノ義ハ承諾スヘケレトモ多少ノ修正ヲ要スル旨回答致置候得共元來右條約ノ實行ヨリ見ルコトハ新條約ノ實施即領事裁判權廢止ノ後ニ在ルコトナレハ必スシキ新條約ト同時ニ締結スルノ要ナカレ

一九七 明治三十九年三月二十日

青木駐獨公使ヨリ  
西園寺外務大臣代理宛(來電)

獨逸政府最終的要求ニ付諸訓ノ件

ヘント相信シ居候ノミナラス獨逸政府ヨリモ其後外ニ何等ノ申出モ無之候ニ付右修正ヲ要スル點ニ付テモ未タ審査ヲ遂ケ居ラス候處先頃閣下ヨリ該條約案ニ付如何ナル修正ヲ要スルヤトノ電稟有之候ニ因リ該案ニシテ果シテ通商條約及方今立法ノ精神ニ牴觸スル所ナキヤ否ヲ研究セサルヘカラサル旨電答致置候次第ニ候然ルニ本月九日突然在本邦獨逸公使ヨリ本大臣ニ面晤ヲ求メ來リ其節別紙甲號ノ覺書<sup>(一六)</sup>ヲ提出シ又同日後レテ貴電<sup>(二二)</sup>(二十二號)接收致候ニ付此一事ヲ以テ最早成ルニ垂ントシ居ル所ノ改正談判ノ進行ヲ阻遏スルハ甚タ不利益ナリト存シ翌十日電報<sup>(一七)</sup>(十五號)ヲ以テ申進候通十一日ニ於テ乙號ノ口上書ヲ獨逸公使ニ手交シ而シテ越ヘテ十三日電信<sup>(一八)</sup>(十八號)ニテ該條約案ニ加フヘキ修正諸點ヲ列載シ條約締結ノ義閣下ニ御委任致候次第ニ有之候

因テ茲ニ該條約締結ニ關スル全權御委任狀<sup>2</sup>及御添附候間御領收有之度候

右申進候 敬具

註 1 旁記括弧内ノ數字ハ本書ニ於ケル文書番號ナリ

2 全權御委任狀寫ハ之ヲ省略ス

(31) As the result of negotiations in which I energetically opposed German demands, only one point remains in commercial treaty on which German Government might present demand through German Minister in Japan, that is, their new desire to insert (the) word "industry" in the most favoured nation clause which I strongly opposed on the ground that such provision is unusual. Besides, German Government desire two reciprocal provisions in connection with consular convention in accordance with her usual practice with other nations. I earnestly recommend you to accept promptly these (the following?) two points to secure immediate conclusion of treaty.

1. Functions of consuls exercisable in reference to their nationals may likewise be exercised in regard to those persons who were originally their nationals but have lost that status, provided that the names of such persons have been previously communicated to competent authorities.

2. It is agreed that two Contracting Parties shall conclude extradition treaty and that, before operation of such treaty, Japan will grant to Germany's requisition for extradition (the) same rights and favors which Japan has or may hereafter grant to a third Power in so far as Germany will reciprocally respond to similar requisition from Japan.

I ask for immediate instructions by direct telegram. (Via Peters.), March 22, 1896. Aoki.

一九八 明治三十九年三月十六日  
西園寺外務大臣代理  
青木駐獨公使宛(社電)

最終的要求ニ付訓令ノ件

No. 242. (21) German Minister in Japan has said nothing about three questions mentioned in your telegram 27. Am I to understand from your telegram 31 that German Government waive those questions? Nothing yet heard from German Minister regarding insertion (of the) word "industry" in most favored nation clause. Accordingly, in order that you may act independently of any representations he may make, you are given full discretion to

include or exclude the word. If German Minister approaches me, I shall inform him you have full instructions. Japanese Government do not seriously object to insert the word in most favored nation clause. Accordingly, if by yielding the point you can secure immediate conclusion of treaty, you better give way.

Regarding question of Germans who have lost national status, I can not find in other consular conventions engagement similar to one now proposed. Besides, proposed engagement might involve Japan in disputes with other Powers on the subject of naturalization. Consequently engagement should be excluded. Regarding extradition, Japanese Government consent to proposed clause although they would prefer to have last part of (the) clause take simple form of engagement to extend reciprocally most favored nation treatment in the matter of extradition. German Minister informs me German Government wish to insert sterilised milk in conventional tariff at 5 per cent duty. You can consent.

Sent, March 28, 1896. Satonji.

一九九 明治三十九年三月十九日  
西園寺外務大臣代理  
青木駐獨公使宛(社電)

談判促進方訓令ノ件

No. 243. Japanese Government for special reasons (is) most anxious to conclude negotiations with Germany without further delay. All recent important concessions have been made by Japan with this object in view. Consequently, unusual practice now pursued by Germany of bringing forward one after another fresh demands tends to defeat that object. Therefore, if Germany presents new demands, you should yourself reject them.

Our objection to the exercise of consular functions over persons losing national status lies in difficulties liable to arise in connection with newly acquired nationality. Therefore, if the proposed engagement be so worded as to exclude consular functions respecting persons who have acquired another nationality, Japanese Government might consent to its insertion and, if such engagement is usual as you say, I wish to know how such difficulties are dealt with. This is only for your own guidance and I hope you

will push on negotiations as rapidly as possible.

Via Eastern, March 30 (12-30 a.m.), 1896. Satonji.  
社電 本電信ハ青木公使宛條約改正關係社電第二十二號ナリ

二〇〇 明治三十九年三月二十一日  
青木駐獨公使  
西園寺外務大臣代理宛(來電)

條約締結に關スル件

(34) If no political incident arise within next few days, treaty might be signed next Saturday, international political constellation which govern attitude of Germany is changing every minute. Therefore, conclusion of treaty will much depend upon how far we secure Germany's good-will by favoring her material interest. The rumour which, in spite of my efforts to the contrary, persistently appear in European press to the effect that Japan will give orders to Armstrong for guns and for the establishment of steel factory has caused much irritation here. Accordingly no time should be lost in removing every cause of ill-feeling which directly affects Germany's politics toward Japan. I regret that my telegrams 26 and 30 are still unanswered

and that your telegram 19 contains but meager information. I trust you will sympathise severely nervous strain to which I have been subjected in conducting negotiations and that you will spare no effort in immediately bringing about more favorable relation with Germany which has powerful voice in the Council of nations.

Berlin, March 31, 1896. Aoki.

註 青木公使來電第二十六號及三十號同公使宛往電第十九號ハ此處ニハ見當ラサルモ註ニヨルニ第二十六號ハ(軍艦軍器注文方ノ件)第三十號ハ(償金ヲ獨逸銀行ハ預入ノ件)第十九號ハ(軍艦製造ノコト)未決ナリト返電ヲソフ。

二〇一 明治三十九年四月三日 西園寺外務大臣代理ヨリ 青木駐獨公使宛(往電)

新條約至急調印方ノ件

No. 257. (23) Using your best effort, sign treaty immediately by all means. As to your telegrams 26 and 30, Japanese Government are not prepared at this moment to give definite answers. Endeavor not to let German Government mix these questions with

tent to make them.

Via Petersburg, April 8, 1896. Aoki.

註 推薦セラレタル翻譯者ハ荒川邦藏ナリ。

二〇四 明治三十九年四月八日 青木駐獨公使ヨリ 陸奥外務大臣宛

新條約調印迄ノ經過報告ノ件

附屬書一 日獨通商航海條約(獨文并英文)

二 日獨通商航海條約附屬議定書(獨文并英文)

三 日獨領事職務條約

四 領事裁判權消滅時期ニ關スル獨逸外務大臣來翰

五 獨逸外務大臣宛返翰

六 外人ヲ社員トスル商事會社ノ土地所有權ニ關スル青木公使ノ往翰

七 普魯西國トノ修好通商航海條約ノ廢止ニ關スル青木公使ノ往翰

八 獨逸外務大臣ノ返翰

別信第壹號 新通商航海條約并領事權限條約ノ件

五月十二日到

日獨間三條約重修事件ニ關シテハ年來當地并英國主府ヨリ屢々致報道置候獨政府ハ明治二十二年間ノ出來事及從前

陸奥外務大臣時代 對獨交渉 二〇四

question of signature of treaty.

Via Eastern, Sent, April 3, 1896. Saionji.

二〇二 明治三十九年四月四日 青木駐獨公使ヨリ 西園寺外務大臣代理宛(來電)

新條約調印濟ノ件

(35) Insurmountable obstacles finally overcome, treaty and consular convention signed on April 4th.

Berlin, April 4, 1896. Aoki.

二〇三 明治三十九年四月八日 青木駐獨公使ヨリ 陸奥外務大臣宛(來電)

批准交換其他ニ關スル件

(36) Ratifications to be exchanged in Berlin as soon as possible. Signed copies mailed on April 8th Via San Francisco together with English translation of treaty and protocol. Having suffered severe nervous strain on account of long and onerous negotiations, my health is in danger and am advised to take rest. Therefore, impossible to make Japanese translation. I recommend Arakawa Kunizo as thoroughly compe-

云々ノ約束アリタルニモ係ラス帝國政府ハ更ニ獨國ノ工業ヲ惠顧セス云々等ヲ含ミ且ツ日英間重修商議ノ好結果ニ驚嘆シ一昨年秋季ヨリ兎角言ヲ左右ニ托シテ商議ヲ開クニ熱心ナラサル都合ニテ有之候又昨年一月開議後ハ同政府ハ例ノ十八條ニ添フルニ「コンヴェンションナル、タリツフ」ノ區域ニ於テ無類ノ煩請ヲ提シタリ之カ爲メ帝國政府ハ勿論閣下ニ於テモ定テ不快ノ御感覺有之候ハント洞察罷在候其後昨年四五月中ノ事變相起候際ニハ本官ニ於テモ本件商議ノ好結果ヲ見ルコト殆ト無覺束歎ト迄モ痛心致候得共依然事ヲ左側ニ放任候テハ到底中興ノ御偉業成就セサル都合タルニ由リ一方ニハ竊ニ當國及壤國ノ自由黨派機關新聞并ニ從來日本ニ對シ輸入商ヲ營ム者等ヲ利用シテ速ニ條約改正ヲ決行シ以テ三國干涉ニ誘起セル帝國官民ノ不快ナル感覺ヲ更換シ併テ舊交ヲ溫ムヘシ云々ヲ間接又ハ直接獨政府ニ勸諭セシメ少シク其功驗相顯ハルヘニ當リ他ノ一方ニ於テハ昨年七月第百二十九號電信ヲ發シテ八月六日附貴訓令(條約改正第十六號信)ヲ促シ十月初旬ニ際シ重テ商議ヲ開クニ至レリ爾來數十回ノ電信ヲ往復スルニ當リテハ不幸ニモ貴拙ノ間動モスレハ意味違相生候爲メ獨政府ハ遂ニ種



々ノ狐疑ヲ抱キ（假令ハ商法第七十三條ノ制規即チ明治三十二年七月十七日以後内外人ニ通シテ効力ヲ有スヘキ條章アルニモ係ハラズ昨年十一月十八日第七十四號電信ヲ以テ「ミキストパートナリシツプ」ハ本邦人ノ名ヲ以テ不動産ヲ所有シ得」ト御回答相成候ニ付獨政府大ニ狐疑ヲ生セシ等（是ナリ）加之本官ノ所有スル商議權ノ非常ニ狹隘ナルヲ議シ併テ本官ノ頑固ナル抗議ヲ厭ヒ并ニ商議ノ即決セサルニ退屈シ去月六七日ノ交貴地駐在「グートシユミット」男爵ニ命シテ直接西園寺侯爵ニ迫テ云々ノ請求ヲ提出シタルハ甚タ遺憾ナル出來事ニテ有之候何トナレハ該請求許容サレタル後去月十日以降第十五、十六、并十八號ノ電訓ニ由テ本官ノ商議權ハ漸々擴張セルト同時ニ獨政府商議員ハ何等歟本邦ノ事情ヲ察知スルニ似テ種々雜多ノ舊案ニ溯回シテ其認可ヲ要求シ本官之ヲ容レサレハ重テ東京ヘ短刀直入シ西園寺侯爵ヲ衝クヘシトノ口氣ヲ以テ本官ヲ攻撃煩悶セシメタリ尤モ本件將ニ成功セントスルニ方リテハ奮ニ慢リニ章句ノ置替ヲ否ミ若クハ字句ノ修正ヲ拒ム必要ナキノミナラス多少ノ讓歩ヲ以テ協意ヲ收斂セサル可カラスト覺悟シ第一、通商航海條約附添覺書中第三條第五章ニ於テ我

難キ苦情ヲ鳴シタリ爲之本官ハ前項末段ノ讓歩ヲ爲シタル都合ニ有之候通商航海條約第十七條ノ取極（二十一條ト對照スヘシ）ハ批准交換ノ當日ヨリ其効力ヲ得ル都合ナリ貴電信第十三號ノ來示ニ徴スレハ右取極ニシテ假令効力ヲ得ルモ本件ヲ支配スル裁判權ハ必スシモ帝國政府ノ實施シ得ヘキ理由ナキニ似タリトノ事ニ候得共奮ニ字句ノ組立上帝國政府必ス之ヲ實施スルノ權アルノミナラス當日ノ商議ニ於テ互相ノ間必ス之ヲ實施スルコトニ取極候間御批准前後ニ際シ緊急的勅令ヲ以テ必需ノ御用意有之度候條約既成國ニ對スル處分ニ關シテハ敢テ不致建言候

同上條約第十九條ノ取極ハ近隣某國ニ關シ帝國政府ニ於テ或ハ之ヲ適用スヘキ場合モ可有之歟ト豫察シ強テ互相ノ文體ヲ要求致置候都合ナリ

其他兩條約ノ各項ニ關シ註解的（ニ）種々報道致度候得共數月來神經症ニ罹リ頗ル疲勞其上郵船出發ノ期切迫致居候間今回ハ數行ノ報道ニ止置候尤通商航海條約文ケハ達筆ナル宮岡書記官ニ命シ英文ニ翻譯セシメ候間先ツ譯文御査閱有之度候

將又獨逸人ノ資格タル法律學ノ區域ニ於テハ概ネ英米人ニ

「ゼネラル、スタチユートリー、クリツフ」及其將來ノ改正ヲ六箇月前ニ公布スルコトヲ許容シ第二、千八百九十六年三月三十一日附本官ヨリ獨外務大臣ヘ遺シタル書帖ニ於テ所謂「ミキスト、パートナリシツプ」ハ假令獨逸人加名スルモ現今通用ノ法律ニ由レハ（將來法律ヲ改正シテ之ヲ禁スルハ全ク我立法權ノ隨意ナリ）不動産ヲ所有シ得ルト明言シ第三、同四月四日附獨外務大臣投書中ノ第一質問（「獨逸人モ亦邦人ト齊シク其當時通用スル法律ノ取極ニ從ヒ永代借地權、地上權、借權等ヲ所有シ得云々」但シ本件ハ法律ノ取極アレハ然ルヘク反對ノ取極アレハ勿論然ラサルニ由リ之ヲ諾ス）ヲ認諾シ第四、領事權限條約第十五條ニ於テ獨米、獨希間同種類約款ノ意味ヲ稍々明了ニ徵密ニ取極候得共依之我立法權ヲ束縛シタル都合ニハ無之候間故障ナク御承認有之度候

豫メ御承知ノ通獨逸國ニ於テハ英國風ノ永代借地若クハ無期限借地ノ制度ナク隨テ獨逸人ハ寸地ト雖所有權ノ名義ヲ以テ之ヲ所有スルヲ貴フノ流義慣習ナル故我居留地内外ノ土地ヲ所有シ若クハ借用スルコトニ關シ獨政府ハ開議ノ最初ヨリ手強ク帝國政府ノ意嚮ニ反抗シ殆ト疎解答辯ニ堪ヘ

超越スルコト世界衆ノ認許スル處ニ有之候處本官ノ微力ヲ以テ之ト樽俎ノ間ニ折衝シ聊カ使命ノ一部ヲ全フシタルハ正ク我 陛下ノ開明御事業ニシテ漸ク獨人ノ之ヲ欣喜認體シタル徵證ニ外ナラス故ニ府下駐在英國、奧國大使其他相識ノ交際官ハ本官ヲ訪テ本條約ノ締結ヲ慶賀シ土耳其帝ハ其大使ヲ以テ本件ノ成功ヲ祝セシメ申候

先ハ右申進度調印濟通商航海條約領事權限條約本書各壹冊公文甲乙丙號本書謄寫總テ五葉差進候 敬具

明治二十九年四月八日

在獨逸特命全權公使子爵 青木 周藏

外務大臣伯爵 陸 奥 宗 光殿

註 1 旁記括弧内ノ數字ハ本書ニ於ケル文書番號ナリ

附屬書一 明治二十九年四月四日 調印濟 日獨條約書

日獨通商航海條約

明治二十九年四月四日伯林ニ於テ調印（獨文）

註 同年八月二十六日批准同年十一月十八日伯林ニ於テ批准書交換

Handels und Schifffahrtsvertrag zwischen

Japan und dem Deutschen Reich vom 4.  
April 1896.

Seine Majestät der Kaiser von Japan und Seine Majestät der Deutsche Kaiser, König von Preussen, im Namen des Deutschen Reichs, von dem gleichen Wunsche geleitet, das gute Einvernehmen, welches erfreulicherweise zwischen ihnen besteht, durch Ausdehnung und Hebung des Verkehrs zwischen Japan und Deutschland zu erhalten, und überzeugt, dass diese Aufgabe nicht besser als durch die Revision des zur Zeit zwischen den beiden Ländern bestehenden Vertrages erfüllt werden kann, haben b. geschlossen, ein solche Revision auf Grundlage der Billigkeit und des gegenseitigen Vortheils vorzunehmen, und zu diesen Zwecke zu ihren Bevollmächtigten ernannt, nämlich:

Seine Majestät der Kaiser von Japan:

Allerhöchstihren ausserordentlichen Gesandten und bevollmächtigten Minister bei Seiner Majestät dem Deutschen Kaiser, König von Preussen, Herrn Vicomte Sinzo Aoki,

Vertreter zur Verfolgung und Vertheidigung ihrer Rechte vor diesen Gerichten zu wählen und zu verwenden, und in allen anderen auf die Rechtspflege bezüglichen Angelegenheiten alle Rechte und Begünstigungen der Inländer geniessen.

Die Angehörigen eines jeden der vertragschliessenden Theile sollen in den Gebieten des anderen in Bezug auf die Niederlassung und das Reisen, auf den Besitz von Waren und beweglichen Sachen aller Art, auf den, sei es kraft letzten Willens oder in anderer Weise erfolgenden Erwerb von Todeswegen bei solchem Vermögen aller Art, welches sie unter Leben den erwerben dürfen, und in Bezug auf alle wie immer beschaffenen Verfügungen über Vermögen jeder Art, welches in gesetzmässiger Weise erworben ist, die nämlichen Begünstigungen, Freiheiten und Rechte geniessen und in diesen Beziehungen keinen höheren Abgaben und Lasten unterworfen sein, als wie Inländer oder die Angehörigen der meistbegünstigten Nation.

Die Angehörigen eines jeden der vertragschliessenden Theile sollen in den Gebieten des anderen voll-

Seine Majestät der Deutsche Kaiser, König von Preussen:

Allerhöchstihren Staatsminister, Staatssekretär des Auswärtigen Amtes, Herrn Adolf Freiherrn Marschall von Bieberstein, welche nach gegenseitiger Mittheilung ihrer in guter und gehöriger Form befundenen Vollmachten den nachstehenden Handels- und Schifffahrtsvertrag vereinbart und festgestellt haben:

#### Artikel I.

Die Angehörigen eines jeden der beiden vertragschliessenden Theile sollen volle Freiheit geniessen, überall die Gebiete des anderen vertragschliessenden Theiles zu betreten, zu bereisen oder sich daselbst niederzulassen, und sollen vollen und uneingeschränkten Schutz für ihre Person und ihre Eigenthum geniessen.

Sie sollen freien und ungehinderten Zutritt zu den Gerichten haben zur Verfolgung und Vertheidigung ihrer Rechte; sie sollen in gleicher Weise wie die Inländer das Recht haben, Anwälte, Advocaten und

kommene Gewissensfreiheit, sowie in Gemässheit der Gesetze, Verordnungen und Reglements das Recht privater oder öffentlicher Abhaltung ihres Gottesdienstes und auch das Recht geniessen, ihre betreffenden Landsleute nach ihren religiösen Gebräuchen auf den geeigneten und passend befundene, zu diesem Zweck angelegten und unterhaltenen Plätzen zu bestatten.

Sie sollen unter keinem Vorwande gezwungen werden, andere oder höhere Abgaben oder Steuern zu bezahlen als diejenigen, welche jetzt oder künftig von Inländern oder Angehörigen der meistbegünstigten Nation gezahlt werden.

#### Artikel II.

Die Angehörigen eines jeden der vertragschliessenden Theile, welche in den Gebieten des anderen wohnen, sollen von jedem zwangsweisen Militärdienst irgend welcher Art, sei es im Heer, in der Flotte, der Bürgerwehr oder der Miliz, von allen an Stelle persönlicher Dienstleistung auferlegten Abgaben und von allen Zwangsanleihen oder militärischen Leistungen oder Abgaben befreit sein.

### Artikel III.

Es soll gegenseitige Freiheit des Handels und der Schifffahrt zwischen den Gebieten der beiden vertragschliessenden Theile bestehen.

Die Angehörigen eines jeden der vertragschliessenden Theile dürfen überall in den Gebieten des anderen Gross- oder Kleinhandel mit allen Arten von Erzeugnissen des Bodens und des Gewerbefleisses und von Waaren, soweit sie in den Verkehr gebracht werden dürfen, sei es persönlich oder durch Beauftragte, einzeln oder in Vereinigung mit Fremden oder Inländern betreiben, sie dürfen Wohnhäuser, Fabrikgebäude, Warenhäuser, Läden und sonstige Räumlichkeiten besitzen oder mietben und bewohnen, auch dürfen sie für Niederlassungen, Industrien und Handelzwecke Ländereien pachten, wobei sie wie die Inländer den Gesetzen, den Polizei- und Zollvorschriften des Landes unterworfen sind.

Sie sollen befugt sein, frei und sicher mit ihren Schiffen und deren Ladungen alle die Plätze, Häfen und Flüsse in den Gebieten des anderen Theiles zu besuchen, welche für die Einfuhr oder Ausfuhr von

Waren geöffnet sind oder künftighin geöffnet sein werden, und sollen gegenseitig in Angelegenheiten des Handels, der Industrie und der Schifffahrt dieselbe Behandlung wie die Inländer oder die Angehörigen der meistbegünstigten Nation geniessen, ohne andere oder höhere Steuern, Auflagen oder Zölle irgend welcher Art oder Bezeichnung, mögen dieselben im Namen oder zum Vortheil der Regierung, öffentlicher Beamter, Privater oder irgend welcher Korporationen oder Anstalten erhoben werden, zu entrichten, als diejenigen, welche von Inländern oder Angehörigen der meistbegünstigten Nation gezahlt werden, immer in Gemässheit der Gesetze, Verordnungen und Reglement des betreffenden Landes.

### Artikel V.

Bei der Einfuhr in Deutschland sollen auf Gegenstände, welche in Japan erzeugt oder verfertigt sind, von welchem Platze sie auch kommen mögen, und bei der Einfuhr in Japan sollen auf Gegenstände, welche in Deutschland erzeugt oder verfertigt sind, von welchem Platze sie auch kommen mögen, keine anderen oder höheren Zölle gelegt werden, als auf die gleichartigen Gegenstände, welche in irgendeinem fremden Lande erzeugt oder verfertigt sind.

Auch soll bezüglich eines in den Gebieten des einen vertragschliessenden Theiles erzeugten oder verfertigten Gegenstandes, von welchem Platze derselbe auch kommen möge, kein Verbot der Einfuhr in die Gebiete des anderen aufrecht erhalten oder

Waren geöffnet sind oder künftighin geöffnet sein werden, und sollen gegenseitig in Angelegenheiten des Handels, der Industrie und der Schifffahrt dieselbe Behandlung wie die Inländer oder die Angehörigen der meistbegünstigten Nation geniessen, ohne andere oder höhere Steuern, Auflagen oder Zölle irgend welcher Art oder Bezeichnung, mögen dieselben im Namen oder zum Vortheil der Regierung, öffentlicher Beamter, Privater oder irgend welcher Korporationen oder Anstalten erhoben werden, zu entrichten, als diejenigen, welche von Inländern oder Angehörigen der meistbegünstigten Nation gezahlt werden, immer in Gemässheit der Gesetze, Verordnungen und Reglement des betreffenden Landes.

### Artikel IV.

Die Wohngebäude, Fabriken, Warenhäuser und Läden der Angehörigen eines jeden der vertragschliessenden Theile in den Gebieten des anderen, sowie alle dazu gehörigen Räumlichkeiten, welche zu Niederlassungen, Industrie- und Handelszwecken bestimmt sind, sollen unverletzlich sein.

Es ist unzulässig, in solchen Gebäuden und Räum-

lichkeiten Durchsuchungen oder Haussuchungen abzuhalten, oder Bücher, Papiere und Rechnungen einzusehen und zu prüfen, ausgenommen in denjenigen Fällen und in denjenigen Formen, in welchen derartige Massnahmen nach den Gesetzen, Verordnungen und Reglements auch Inländern gegenüber anwendbar sind.

### Artikel VI.

In den Gebieten eines jeden der vertragschliessenden Theile sollen bei der Ausfuhr nach den Gebieten des anderen auf keinen Gegenstand andere oder höhere Zölle oder Abgaben gelegt werden als diejenigen, welche bei der Ausfuhr der gleichartigen Gegenstände nach irgend einem anderen fremden Lande jetzt oder in Zukunft entrichtet werden; auch darf nicht die Ausfuhr eines Gegenstandes aus den Gebieten des einen der vertragschliessenden Theile in die Gebiete des anderen mit einem Verbote belegt werden, welches sich nicht gleichmässig auf die Ausfuhr der gleichartigen Gegenstände nach irgend einem anderen Lande erstreckt.

# Artikel VII.

Die Angehörigen eines jeden der vertragschliessenden Theile sollen in den Gebieten des anderen mit Bezug auf die Befreiung von Durchfuhrzöllen und in Allem, was sich auf Zollniederlagen, Ausfuhrvergütungen, Erleichterungen und Rückzölle bezieht, völlige Gleichstellung mit den Inländern geniessen.

# Artikel VIII.

Für zollpflichtige Gegenstände, welche als Muster von den die Gebiete des einen der vertragschliessenden Theile besuchenden Kaufleuten, Gewerbetreibenden und Handlungsreisenden des anderen Theiles eingebracht werden, wird beiderseits Befreiung von Eingangs- und Ausgangsabgaben zugestanden, unter der Voraussetzung, dass diese Gegenstände binnen der durch die Landesgesetze bestimmten Frist unverkauft wieder ausgeführt werden, und vorbehaltlich der Erfüllung der für die Wiederausfuhr oder für die Zurückerlieferung in der Niederlage notwendigen Zollformlichkeiten. Die Wiederausfuhr der Muster muss in beiden Ländern unmittelbar am ersten Einfuhrort durch Niederlegung des Betrages der

bezüglichen Zollgebühren oder durch Sicherheitsstellung gewährleistet werden.

Ferner werden Musterkarten und Muster in Abschnitten und Proben, sofern sie nur zum Gebrauch als solche geeignet sind, beiderseits frei von Eingangsabgaben zugelassen, auch wenn ihre Einbringung auf anderem als dem im vorausgehenden Absatz bezeichneten Wege erfolgt.

# Artikel IX.

Wird innerhalb der Gebiete eines der vertragschliessenden Theile im ganzen Lande oder in einem beschränkten Umkreise, sei es für Rechnung des Staates oder für Rechnung einer Gemeinde oder Korporation, von der Hervorbringung, der Herstellung oder dem Verbrauch eines Artikels eine innere Abgabe erhoben, so darf der gleiche Artikel, wenn er aus den Gebieten des anderen Theiles eingeführt wird, in diesem Lande oder diesen Umkreise nur mit einer gleichen und mit keiner höheren oder lästigeren Abgabe belegt werden.

Keinerlei Abgaben dürfen erhoben werden, falls

in diesem Lande oder in diesem Umkreise Artikel derselben Art nicht erzeugt oder hergestellt werden, oder, wenn sie auch daselbst erzeugt oder hergestellt werden, nicht von derselben Abgabe getroffen sind.

# Artikel X.

Alle Gegenstände, welche in japanischen Häfen auf japanischen Schiffen gesetzmässig eingeführt werden oder eingeführt werden dürfen, können in diese Häfen auch auf deutschen Schiffen eingeführt werden, ohne anderen oder höheren Zöllen oder Abgaben, gleichviel welcher Benennung, unterworfen zu sein, als wenn diese Gegenstände auf japanischen Schiffen eingeführt würden; und umgekehrt können alle Gegenstände, welche in deutsche Häfen auf deutschen Schiffen gesetzlich eingeführt werden oder eingeführt werden dürfen, in diese Häfen auch auf japanischen Schiffen eingeführt werden, ohne anderen oder höheren Zöllen oder Abgaben, gleichviel welcher Benennung, unterworfen zu sein, als wenn diese Gegenstände auf deutschen Schiffen eingeführt würden. Diese gegenseitige gleiche Behandlung erfolgt ohne Unterscheid, ob die betreffenden

Gegenstände unmittelbar von dem Ursprungsort oder von einem anderen Platze kommen.

Ebenso soll eine völlig gleiche Behandlung auch hinsichtlich der Ausfuhr herrschen, so dass in den Gebieten eines jeden der vertragschliessenden Theile bei der Ausfuhr eines Gegenstandes, welches gesetzmässig aus denselben ausgeführt wird, dieselben Ausfuhrzölle gezahlt und dieselben Ausfuhrvergütungen und Rückzölle gewährt werden sollen, gleichviel, ob die Ausfuhr auf japanischen oder auf deutschen Schiffen erfolgt, und ohne Rücksicht auf den Bestimmungsort, mag dieser ein Hafen der vertragschliessenden Theile oder einer dritten Macht sein.

# Artikel XI.

Keine Tonnen-, Hafen-, Lootsen-, Leuchthurm-, Quarantäne- oder ähnlichen Gebühren irgend welcher Art oder Bezeichnung, die sei es im Namen oder im Interesse des Staates, sei es in demjenigen von öffentlichen Beamten, von Privaten, von Korporationen oder von Instituten irgend einer Art erhoben werden, dürfen in den Gebieten des einen Landes den Schiffen des anderen Landes auferlegt werden,

sofern dieselben nicht in den gleichen Fällen ebenso und unter denselben Bedingungen den inländischen Schiffen und den Schiffen der meistbegünstigten Nation auferlegt werden. Diese Gleichförmigkeit in der Behandlung soll gegenseitig auf die beiderseitigen Schiffen Anwendung finden, ohne Rücksicht darauf, von welchem Hafen oder Platze dieselben ankommen, und wohin sie bestimmt sind.

#### Artikel XII.

Rücksichtlich des Ankerplatzes, des Ladens und Löschens der Schiffen in den Häfen, Bassins, Docks, Rheden und Flüssen der Gebiete beider Länder soll den inländischen Schiffen kein Vorrecht gewährt werden, das nicht in gleicher Weise den Schiffen des anderen Landes gewährt wird; die Absicht der vertragschliessenden Theile geht dahin, dass auch in dieser Hinsicht die beiderseitigen Schiffe auf dem Fusse völliger Gleichheit behandelt werden sollen.

#### Artikel XIII.

Der Küstenhandel der beiden vertragschliessenden Theile wird durch die Bestimmungen des gegenwärtigen Vertrags nicht berührt; derselbe soll den

dass deutsche Schiffe nach wie vor für die Dauer des gegenwärtigen Vertrages Ladung zwischen den gegenwärtigen geöffneten Häfen befördern dürfen, ausgenommen nach oder von den Häfen von Osaka, Niigata und Edisuminato.

#### Artikel XIV.

Kriegs- oder Kauffahrteischiffe eines jeden der vertragschliessenden Theile, welche durch stürmisches Wetter oder durch irgend einen andern Unfall genöthigt werden, in einem Hafen des anderen Theiles Zuflucht zu suchen, sollen die Befugnisse haben, daselbst Ausbesserungen vorzunehmen, sich alle nöthigen Vorräthe zu verschaffen und wieder in See zu gehen, ohne irgend andere Gebühren zu bezahlen als diejenigen, welche von inländischen Schiffen zu entrichten sein würden. Falls jedoch der Führer eines Kauffahrteischiffes sich genöthigt sehen sollte, über einen Theil seiner Ladung zu verfügen, um Ausgaben zu bestreiten, so soll er verpflichtet sein, sich nach den Verordnungen und Tarifen des Ortes, wohin er gekommen ist, zu richten. Wenn ein Kriegs- oder Kauffahrteischiff des einen

Gesetzen, Verordnungen und Reglements jedes der beiden Länder unterworfen sein. Es ist jedoch vereinbart, dass japanische Staatsangehörige in Deutschland und deutsche Reichsangehörige in Japan in dieser Beziehung die Rechte geniessen sollen, welche in Gemässheit jener Gesetze, Verordnungen und Reglements den Angehörigen irgend eines andern Landes bewilligt sind oder künftig bewilligt werden.

Ein japanisches Schiff, welches in einem fremden Lande mit Gütern für zwei oder mehr deutsche Häfen betrachtet ist, und ein deutsches Schiff, welches in einem fremden Lande mit Gütern für zwei oder mehr japanische Häfen betrachtet ist, darf einen Theil seiner Ladung in einem der Bestimmungshäfen löschen und seine Reise nach dem anderen oder nach den anderen Häfen, sofern daselbst die Einfuhr oder Ausfuhr von Waaren gestattet ist, behufs Löschung des Restes seiner ursprünglichen Ladung fortsetzen, in allen Fällen unter Beachtung der Gesetze und Zollordnungen der beiden Länder.

Die japanische Regierung willigt indessen darein,

der vertragschliessenden Theile an den Küsten des anderen strandet oder Schiffbruch leidet, so sollen die Ortsbehörden den Generalkonsul, Konsul, Vicekonsul oder Konsularagenten des Bezirks, in welchem der Unfall stattgefunden hat, oder, wenn es derartige Konsularbeamte dort nicht giebt, den Generalkonsul, Konsul, Vicekonsul oder Konsularagenten des nächsten Bezirks benachrichtigen.

Alle Rettungsregeln bezüglich japanischer in den deutschen Küstengewässern verunglückter oder gestrandeter Schiffe sollen nach Massgabe der deutschen Gesetze, Verordnungen und Reglements Platz greifen, und umgekehrt sollen alle Rettungsregeln hinsichtlich deutscher, in den japanischen Küstengewässern verunglückter oder gestrandeter Schiffe in Gemässheit der japanischen Gesetze, Verordnungen und Reglements erfolgen.

Ein derartiges gestrandetes oder verunglücktes Schiff oder Fahrzeug und alle Theile desselben, sowie alle seine Ausrüstungsgegenstände und Zubehörungen, ferner alle Güter und Waaren, welche davon gerettet worden sind, einschliesslich derer, welche in die See

geworfen waren, oder der Erlös dieser Gegenstände, falls sie verkauft worden sind, ebenso alle an Bord eines solchen gestrandeten oder verunglückten Schiffes oder Fahrzeuges vorgefundenen Papiere sind den Eigenthümern oder deren Beauftragten auszuhändigen, sobald sie von denselben beansprucht werden. Wenn diese Eigenthümer oder Beauftragten sich nicht an Ort und Stelle befinden, so sind alle die gedachten Gegenstände dem betreffenden Generalkonsul, Konsul, Vicekonsul oder Konsularagenten, sofern die Herausgabe von denselben innerhalb der durch die Landesgesetze festgesetzten Frist verlangt wird, auszuhändigen, und diese Konsularbeamten, Eigenthümer oder Beauftragten sollen nur die Rettung und Erhaltung der Güter erwachsenen Kosten, einschliesslich des Bergelohnes, bezahlen, wie sie im Falle des Scheiterns eines inländischen Schiffes zu entrichten wären.

Die aus dem Schiffbruch geretteten Güter und Waren sollen von allen Zöllen befreit sein, sofern sie nicht für den Verbrauch deklariert werden, in welchem Falle sie die gewöhnlichen Abgaben zu

entrichten haben.

Wenn ein Schiff oder Fahrzeug, welches im Eigenthum von Angehörigen des einen der vertragschliessenden Theile steht, in den Küstengewässern des anderen strandet oder verunglückt, so sollen die betreffenden Generalkonsuln, Konsuln, Vicekonsuln oder Konsularagenten, falls der Eigenthümer oder der Schiffsführer oder ein anderer Beauftragter des Eigenthümers nicht anwesend ist, ermächtigt sein, amtlichen Beistand zu leisten, damit den Angehörigen des betreffenden Landes die erforderliche Unterstützung gewährt wird. Derselbe Grundsatz soll in dem Falle Anwendung finden, wenn der Eigenthümer, Schiffsführer oder sonstige Beauftragte zugegen ist, indes solchen Beistand nachsucht.

#### Artikel XV.

Alle Schiffe, welche nach deutschem Recht als deutsche, und alle Schiffe, welche nach japanischem Recht als japanische Schiffe anzusehen sind, sollen im Sinne dieses Vertrages als deutsche beziehungsweise japanische Schiffe gelten.

#### Artikel XVI.

erfüllen.

#### Artikel XVIII.

Die vertragschliessenden Theile sind über Folgendes einverstanden:

Die einzelnen Fremdenniederlassungen in Japan sollen den betreffenden japanischen Gemeinden einverleibt werden und hinfür Bestandtheile der japanischen Gemeinden bilden.

Die zuständigen japanischen Behörden sollen demnach mit Bezug auf dieselben alle Verbindlichkeiten und Verpflichtungen übernehmen, welche ihnen hinsichtlich der Gemeinden obliegen und gleichzeitig sollen die öffentlichen Gelder und Vermögensgegenstände, welche diesen Niederlassungen gehören, den genannten japanischen Behörden übergeben werden.

Sobald diese Einverleibung erfolgt, sollen die bestehenden, zeitlich unbegrenzten Überlassungsverträge, unter welchen jetzt in den gedachten Niederlassungen Grundstücke besessen werden, bestätigt und hinsichtlich dieser Grundstücke sollen keine Bedingungen irgend einer anderen Art aufgelegt werden, als sie in den bestehenden Überlas-

Die vertragschliessenden Theile kommen darin überein, dass in allen auf Handel und Schifffahrt bezüglich Angelegenheiten jede Art von Vorrecht, Begünstigung, oder Befreiung, welche der eine vertragschliessende Theil der Regierung, den Schiffen oder den Angehörigen irgend eines anderen Staates gegenwärtig eingeräumt hat oder in Zukunft einräumen wird, sofort und bedingungslos, auf die Regierung die Schiffe oder die Angehörigen des anderen vertragschliessenden Theiles ausgedehnt werden soll, da es ihre Absicht ist, dass Handel und Schifffahrt eines jeden Landes von dem anderen in allen Beziehungen auf den Fuss der meistbegünstigten Nation gestellt werden sollen.

#### Artikel XVII.

Die Angehörigen des einen der vertragschliessenden Theile sollen in den Gebieten des anderen in Bezug auf den Schutz von Erfindungen, von Mustern (einschliesslich der Gebrauchsmuster) und Modellen von Handels- und Fabrikmarken, von Firmen und Namen dieselben Rechte, wie die eigenen Angehörigen unter der Voraussetzung geniessen, dass sie die hierfür vom Gesetz vorgesehenen Bedingungen

sungsverträgen enthalten sind.

Die Besitzrechte an diesen Niederlassungsgrundstücken können in Zukunft von ihren Besitzern frei und, ohne dass es dazu, wie bisher in gewissen Fällen, der Genehmigung der konsularischen oder japanischen Behörden bedarf, an Inländer oder Ausländer veräußert werden.

Im Übrigen gehen die nach den ursprünglichen Überlassungsverträgen den Konsularbehörden zustehenden Funktionen auf die japanischen Behörden über.

Alle Ländereien, welche von der japanischen Regierung für öffentliche Zweck der Fremdenniederlassung bisher zinsfrei hergegeben worden sind, sollen, unbeschadet der aus der Gebietshoheit sich ergebenden Rechte, frei von allen Steuern und Lasten den öffentlichen Zwecken, für welche sie ursprünglich bestimmt worden, dauernd erhalten bleiben.

#### Artikel XIX.

Der gegenwärtige Vertrag erstreckt sich auch auf die mit einem der vertragschliessenden Theile gegenwärtig oder künftig zollgeheinten Gebiete.

der Regierung seiner Majestät des Deutschen Kaisers, Königs von Preussen, von ihrem Wunsche, den Vertrag in Kraft zu setzen, Anzeige gemacht hat. Der Vertrag soll von seinem Inkrafttreten ab 12 Jahre in Geltung bleiben.

Jeder der vertragschliessenden Theile soll das Recht haben, zu irgend einer Zeit, nachdem 11 Jahre von Tage des Inkrafttretens des Vertrages verlossen sind, dem anderen seine Absicht, diesen Vertrag aufhören zu lassen, anzukündigen, und mit Ablauf von 12 Monaten nach erfolgter Kündigung soll der gegenwärtige Vertrag gänzlich aufhören und endigen.

Der Artikel XVII des gegenwärtigen Vertrages soll schon mit dem Tage des Austausches der Ratifikationen in Kraft treten und, sofern nicht von den vertragschliessenden Theilen noch ein Anderes vereinbart werden sollte, so lange in Geltung bleiben, bis die übrigen Bestimmungen des Vertrages ihre Wirksamkeit verlieren.

#### Artikel XXII.

Der gegenwärtige Vertrag soll ratifiziert und die Ratifikationsurkunden sollen in Berlin sobald als

#### Artikel XX.

Der gegenwärtige Vertrag tritt vom Tage seines vollen Inkrafttretens an die Stelle des Vertrages vom 20. Februar 1869, sowie derjenigen Abkommen und Übereinkünfte, welche in Ergänzung des letzteren Vertrages abgeschlossen sind oder bestehen. Von demselben Tage ab verlieren jene früheren Vereinbarungen ihre Wirksamkeit, und demgemäss hört alsdann die bis dahin in Japan ausgeübte Gerichtsbarkeit deutscher Gerichtsbehörden auf und erreichen alle ausnahmsweisen Privilegien, Befreiungen und Immunitäten, die bis dahin deutschen Reichsangehörigen als einen Bestandtheil oder einen Ausfluss dieser Gerichtsbarkeit genossen, ohne Weiteres ihre Endschaft. Diese Gerichtsbarkeit wird alsdann von japanischen Gerichten übernommen und ausgeübt werden.

#### Artikel XXI.

Der gegenwärtige Vertrag mit Ausnahme des Artikels XVII soll—jedoch nicht vor dem 17. Juli 1899—in Kraft treten nach Ablauf eines Jahres, nachdem die Regierung seiner Majestät des Kaisers von Japan

möglich ausgetauscht werden.

Zu Urkund dessen haben die beiderseitigen Bevollmächtigten diesen Vertrag unterzeichnet und mit ihren Siegeln versehen.

So geschehen zu Berlin in doppelter Ausfertigung am 4. April 1896.

(L. S.) VICOMTE AOKI,  
(L. S.) FREIHERR VON MARSHALL.

(其附屬) 中國總理領事 (其附屬) 總理領事

His Majesty the Emperor of Japan, and His Majesty the German Emperor, King of Prussia, in the name of the German Empire, being equally desirous of maintaining the relations of good understanding which happily exist between them, by extending and increasing the intercourse between Japan and Germany, and being convinced that this object cannot better be accomplished than by revising the Treaties hitherto existing between the two countries, have resolved to complete such a revision, based upon principles of equity and mutual benefit, and, for that purpose, have named as their Plenipotentiaries, that



is to say :

His Majesty the Emperor of Japan, Viscount Aoki Suizo, His Envoy Extraordinary and Minister Plenipotentiary at the Imperial Court of Berlin :

And His Majesty the German Emperor, King of Prussia, His Minister of State, Secretary of State for Foreign Affairs Adolf Baron Marschall von Bieberstein; Who, after having communicated to each other their Full Powers, found to be in good and due form, have agreed upon and concluded the Treaty of Commerce and Navigation.

#### Article I.

The subjects of each of the two Contracting Parties shall have full liberty to enter, travel, or reside in any part of the territories of the other Contracting Party, and shall enjoy full and perfect protection for their persons and property.

They shall have free and easy access to the Courts of Justice in pursuit and defence of their rights; they shall be at liberty equally with native subjects to choose and employ lawyers, advocates, and representatives to pursue and defend their rights before such

Courts, and in all other matters connected with the administration of justice they shall enjoy all the rights and privileges enjoyed by native subjects.

The subjects of each Contracting Party shall enjoy in the territories of the other the same privileges, liberties, and rights in whatever relates to rights of residence and travel; to the possession of goods and effects of any kind; to the succession, by will or otherwise, to all movable property which they were in their life time permitted to acquire and the disposal of property of any sort in any manner whatsoever which they may lawfully acquire, and shall be subject to no higher imposts or charges in these respects than native subjects, or subjects or citizens of the most favoured nation.

The subjects of each of the Contracting Parties shall enjoy in the territories of the other entire liberty of conscience, and, subject to the Laws, Ordinances, and Regulations, shall enjoy the right of private or public exercise of their worship, and also the right of burying their respective countrymen, in such suitable and convenient places as may be esta-

blished and maintained for that purpose.

They shall not be compelled, under any pretext whatsoever, to pay any charges or taxes other or higher than those that are, or may be, paid by native subjects, or subjects or citizens of the most favoured nation.

#### Article II.

The subjects of either of the Contracting Parties residing in the territories of the other shall be exempted from all compulsory military service whatsoever, whether in the army, navy, National Guard, or militia; from all contributions imposed in lieu of personal service; and from all forced loans or military exactions or contributions.

#### Article III.

There shall be reciprocal freedom of commerce and navigation between the territories of the two Contracting Parties.

The subjects of each of the Contracting Parties may trade in any part of the territories of the other by wholesale or retail in all kinds of produce, manufactures, and merchandise of lawful commerce,

either in person or by agents, singly, or in partnerships with foreigners or native subjects; and they may there own or hire and occupy the houses, manufactories, warehouses, shops, and premises, and lease land for residential, industrial and commercial purposes, conforming themselves to the laws, Police and Customs Regulations of the country like native subjects.

They shall have liberty freely to come with their ships and cargoes to all places, ports, and rivers in the territories of the other which are or may be opened to the importation and exportation of merchandise, and shall enjoy, respectively, the same treatment in matters of commerce, industry and navigation as native subjects, or subjects or citizens of the most favoured nation, without having to pay taxes, imposts, or duties, of whatever nature or under whatever denomination levied in the name or for the profit of the Government, public functionaries, private individuals, Corporations, or establishments of any kind, other or greater than those paid by native subjects, or subjects or citizens of the most



favoured nation, subject always to the Laws, Ordinances, and Regulations of each country.

#### Article IV.

The dwellings, manufactories, warehouses, and shops of the subjects of each of the Contracting Parties in the territories of the other, and all premises appertaining thereto destined for purposes of residence, industry, or commerce, shall be respected.

It shall not be allowable to proceed to make a search of, or a domiciliary visit to, such dwellings and premises, or to examine or inspect books, papers, or accounts, except under the conditions and with the forms prescribed by the Laws, Ordinances, and Regulations for subjects of the country,

#### Article V.

No other or higher duties shall be imposed on the importation into Germany of any article produced or manufactured in Japan, from whatever place arriving; and no other or higher duties shall be imposed on the importation into Japan of any article produced or manufactured in Germany from whatever place arriving, than on the like article produced or manu-

factured in any other foreign country.

Likewise no prohibition shall be maintained or imposed on the importation of any article produced or manufactured in the territories of either of the Contracting Parties, into the territories of the other, from whatever place arriving, which shall not equally extend to the importation of the like article produced or manufactured in any other country. This last provision is not applicable to the sanitary and other prohibitions occasioned by the necessity of protecting the safety of persons, or of the cattle, or of plants useful to agriculture.

#### Article VI.

No other or higher duties or charges shall be imposed in the territories of either of the Contracting Parties on the exportation of any article to the territories of the other than such as are, or may be, payable on the exportation of the like article to any other foreign country; nor shall any prohibition be imposed on the exportation of any article from the territories of either of the Contracting Parties to the territories of the other which shall not equally

extend to the exportation of the like article to any other country.

#### Article VII.

The subjects of each of the Contracting Parties shall enjoy in the territories of the other exemption from all transit duties, and a perfect equality of treatment with native subjects in all that relates to warehousing, bounties, facilities, and drawbacks.

#### Article VIII.

The two Contracting Parties agree to exempt from import and export duties all dutiable goods which are imported as specimens by merchants, manufacturers, and commercial travellers of one of them into the territories of the other, provided that such articles are re-exported, without being sold, within the period prescribed by the law of the country, and provided further that in respect of such articles Customs formalities in regard to the re-exportation and bringing back to warehouse have been followed. The aforesaid re-exportation of samples shall be permitted only when the duty or security therefor has been deposited at the place of first importation.

Further, parts or specimens of sample-cards and samples shall be reciprocally admitted free of import duty in so far as they are fit to be used only for the purposes of samples, even though they be imported in other than the aforesaid way.

#### Article IX.

When within the territories of either Contracting Party, either throughout the country or in a limited district, internal tax is levied for the benefit of the State or of a community or corporation upon production, fabrication, or consumption of an article, the like article when imported from the territories of the other, shall, in that country or district, be subject only to the same taxation and not to any higher or (more) burdensome tax.

No tax shall be imposed in case articles of the same kind is not produced or fabricated in the country or district, or when they are produced or fabricated but the same duty is not imposed.

#### Article X.

All articles which are or may be legally imported into Japanese ports in Japanese vessels may likewise

be imported into those ports in German vessels, without being liable to any other or higher duties or charges of whatever denomination than if such articles were imported in Japanese vessels; and, reciprocally, all articles which are or may be legally imported into German ports in German vessels may likewise be imported into those ports in Japanese vessels, without being liable to any other or higher duties or charges of whatever denomination than if such articles were imported in German vessels. Such reciprocal equality of treatment shall take effect without distinction, whether such articles come directly from the place of origin or from any other place.

In the same manner there shall be perfect equality of treatment in regard to exportation, so that the same export duties shall be paid and the same bounties and drawbacks allowed in the territories of either of the Contracting Parties on the exportation of any article which is or may be legally exported therefrom, whether such exportation shall take place in Japanese or in German vessels, and

*whatever may be the place of destination, whether a port of either of the Contracting Parties or of any third Power (?)*.

#### Article XI.

No duties of tonnage, harbour, pilotage, lighthouse quarantine, or other similar *or corresponding* (?) duties of whatever nature or under whatever denomination, levied in the name or for the profit of the State, public functionaries, private individuals, Corporations, or establishments of any kind, shall be imposed in the territories of either country upon the vessels of the other country which shall not equally and under the same conditions be imposed in the like cases on national vessels *in general* (?) or vessels of the most favoured nation. Such equality of treatment shall apply reciprocally to the respective vessels, from whatever port or place they may arrive, and whatever may be their place of destination.

#### Article XII.

In all that regards the stationing, loading, and unloading of vessels in the ports, basins, docks, *roadsteads* (?), harbours, or rivers of the territories of

the two countries, no privilege shall be granted to national vessels which shall not be equally granted to vessels of the other country; the intention of the Contracting Parties being that in this respect also the respective vessels shall be treated on the footing of perfect equality.

#### Article XIII.

The coasting trade of both the Contracting Parties is excepted from the provisions of the present Treaty, and shall be regulated according to the Laws, Ordinances, and Regulations of each of the two countries. It is, however, understood that Japanese subjects in Germany and German subjects in Japan, shall enjoy in this respect the rights which are or may be granted under such Laws, Ordinances, and Regulations to the subjects or citizens of any other country.

A Japanese vessel laden in a foreign country with cargo destined for two or more German ports and a German vessel laden in a foreign country with cargo destined for two or more Japanese ports may discharge a portion of her cargo at one port, and

continue her voyage to the other port or ports of destination so far as importation and exportation of goods is there permitted, for the purpose of landing the remainder of her original cargo there, subject always to the Laws and Customs Regulations of the two countries.

The Japanese Government, however, agrees to allow German vessels to continue, as heretofore, for the period of the duration of the present Treaty, to carry cargo between the existing open ports of the Empire, excepting to or from the ports of Osaka, Niigata, and Ebisu-minato.

#### Article XIV.

Any ship of war or merchant-vessel of either of the Contracting Parties which may be compelled by stress of weather, or by reason of any other distress, to take shelter in a port of the other, shall be at liberty to refit therein, to procure all necessary supplies, and put to sea again, without paying any dues other than such as would be payable by national vessels. In case, however, the master of a merchant-vessel should be under the necessity of disposing of

a part of her cargo in order to defray the expenses, he shall be bound to conform to the Regulations and Tariffs of the place to which he may have come.

If any ship of war or merchant-vessel of one of the Contracting Parties should run aground or be wrecked upon the coasts of the other, the local authorities shall inform the Consul-General, Consul, Vice-Consul, or Consular Agent of the district of the occurrence, or if there be no such Consular officer, they shall inform the Consul-General, Consul, Vice-Consul, or Consular Agent of the nearest district.

All proceedings relative to the salvage of Japanese vessels wrecked or cast on shore in German territorial waters shall take place in accordance with the Laws, Ordinances, and Regulations of Germany, and reciprocally, all measures of salvage relative to German vessels wrecked or cast on shore in Japanese territorial waters take place in accordance with the Laws, Ordinances, and Regulations of Japan.

Such stranded or wrecked ship or vessel, and all parts thereof, and all furnishings and appurtenances

belonging thereunto, and all goods and merchandise saved therefrom, including those which may have been cast into the sea, or the proceeds thereof, if sold, as well as all papers found on board such stranded or wrecked ship or vessel, shall be given up to the owners or their agents, when claimed by them. If such owners or agents are not on the spot, the same shall be delivered to the respective Consul-General, Consuls, Vice-Consuls, or Consular Agents upon being claimed by them within the period fixed by the laws of the country; and such Consular officers, owners, or agents shall pay only the expenses incurred in the saving and preservation of the property, including the salvage which would have been payable in the case of a wreck of a national vessel.

The goods and merchandise saved from the wreck shall be exempt from all the duties of the Customs unless cleared for consumption, in which case they shall pay the ordinary duties.

When a ship or vessel belonging to the subjects of one of the Contracting Parties is stranded or wrecked in the territorial waters of the other, the

respective Consul-General, Consuls, Vice-Consuls, and Consular Agents shall be authorized, in case the owner or master, or other agent of the owner, is not present, to lend their official assistance in order to afford the necessary assistance to the subjects of the respective States. The same rule shall apply in case the owner, master, or other agent is present, but requires such assistance to be given.

#### Article XV.

All vessels which, according to German law, are to be deemed German vessels, and all vessels which, according to Japanese law, are to be deemed Japanese vessels, shall, for the purposes of this Treaty, be deemed German and Japanese vessels respectively.

#### Article XVI.

The Contracting Parties agree that, in all that concerns commerce and navigation, any privilege, favour, or immunity which either Contracting Party has actually granted, or may hereafter grant, to the Governments, ships, subjects, or citizens of any other State, shall be extended immediately and unconditionally to the Government, ships, subjects, or *citizens* (?) of

the other Contracting Party, it being their intention that the trade and navigation of each country shall be placed, in all respects, by the other on the footing of the most favoured nation.

#### Article XVII.

The subjects of each of the Contracting Parties shall enjoy in the territories of the other the same protection as native subjects in regard to inventions, patterns and models, trade and manufacture marks, firm and other commercial names, provided they fulfil the conditions prescribed for the purpose by law.

#### Article XVIII.

The Contracting Parties agree to the following arrangement:—

The several foreign Settlements in Japan shall be incorporated with the respective Japanese Communes, and shall henceforth form (an) integral part of (the) Japanese municipalities (*Communes*?).

The Competent Japanese authorities shall thereupon assume all municipal obligations and duties in respect thereof, and the common funds and property, if any, belonging to such Settlements, shall at the

same time be transferred to the said Japanese authorities.

When such incorporation takes place the existing leases in perpetuity under which real property is now held in the said Settlements shall be confirmed, and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of those real property.

(The) right of possession in respect of *those leases in perpetuity* (such property?) may be sold in future by their owners (possessors?) to Japanese or foreigners freely and without being required, as have (?) hitherto occurred in certain cases, to obtain (the) approval of the Consular or the Japanese authorities. Moreover those functions which under the original contracts of lease appertained to the Consular authorities.

All lands which may previously have been granted by the Japanese Government free of rent for the public purposes of the said Settlements shall, subject to the right of eminent domain, be permanently reserved free of all taxes and charges for the public

purposes for which they were originally set apart.

#### Article XIX.

The present Treaty shall also extend to *all territories* (the territories of those States?) which are or may hereafter be united in Customs union with either of the Contracting Parties.

#### Article XX.

The present Treaty shall, from the date it come into force, be substituted in place of the Treaty of the 20th day of February, 1869, as well as of those Arrangements and Agreements concluded or existing subsidiary to the aforesaid Treaty; and from the same date those older Treaty, Arrangements, and Agreements shall lose their force, and, in consequence, the jurisdiction of German Consular authorities in Japan shall cease, and all the exceptional privileges, exemptions, and immunities then enjoyed by German subjects as a part of or appurtenant to such jurisdiction, shall, without further ado, reach its end, and thereafter all such jurisdiction shall be assumed and exercised by Japanese Courts.

#### Article XXI.

The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Berlin as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same and have affixed thereto their seals.

Done at Berlin, in duplicate, this 4th day of April, in the year 1896.

(L. S.) Viscount Aoki.  
(L. S.) Freiherr von Marschall.

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#### Protokoll.

Die unterzeichneten Bevollmächtigten haben gleichzeitig mit dem Handels- und Schifffahrtsvertrage vom heutigen Tage noch folgende Bestimmungen vereinbart:

#### 1. Zu Artikel I Des Vertrages.

Die japanische Regierung ist damit einverstanden, noch vor der Eröffnung des Landes für deutsche Reichsangehörige das bestehende Passsystem derartig

The present Treaty with the exception of Article

XVII shall, *however not before July 17th 1899* (?), come into force upon the expiration of one year after the Government of His Majesty the Emperor of Japan shall have given notice to the Government of His Majesty the German Emperor, King of Prussia, of its wish to have the same brought into operation. The Treaty shall remain in force for the period of twelve years from the date it goes into operation.

Either Contracting Party shall have the right, at any time after eleven years shall have elapsed from the date this Treaty takes effect, to give notice to the other of its intention to terminate the same, and at the expiration of twelve months after such notice is given this Treaty shall wholly cease and determine.

The Article XVII of the present Treaty shall come into force immediately on the day of the exchange of ratifications of the Treaty; and shall, so long as no other agreement is entered into between the Contracting Parties, remain in force until other articles of the present Treaty lose their force.

#### Article XXII.

zu erweitern, dass deutsche Reichsangehörige, welche ein Empfehlungszugnis des deutschen Vertreters in Tokio oder eines deutschen Konsuls in den geöffneten japanischen Häfen vorlegen, auf Antrag von dem japanischen Auswärtigen Amt in Tokio oder von den Ortsbehörden des Bezirks, in welchem ein offener Hafen liegt, für jeden Theil des Landes und für einen 12 Monate nicht überschreitenden Zeitraum gültige Pässe erhalten; es besteht Einverständnis, dass die bestehenden Regeln und Vorschriften, welche für die das Innere des Reiches besuchenden deutschen Reichsangehörigen massgebend sind, aufrecht erhalten bleiben sollen.

## 2. Zu Artikel I Und III.

Zwischen den vertragschliessenden Theilen besteht Einverständnis darüber, dass die Angehörigen des einen Theiles in den Gebieten des anderen Theiles auch zu dem Erwerb und Besitz von Hypothekenrechten an unbeweglichen Sachen in gleicher Weise wie die Inländer zugelassen werden sollen.

## 3. Zu Artikel V.

Die vertragschliessenden Theile sind übereinge-

kommen, dass sechs Monate nach dem Austausch der Ratifikationen des heute unterzeichneten Handels- und Schiffahrtsvertrages der hier beigefügte Einfuhrtarif—unbeschadet der Bestimmungen des Artikels XIX des zwischen den vertragschliessenden Theilen gegenwärtig bestehenden Vertrages von 1869, solange der genannte Vertrag in Kraft bleibt, und danach, gemäss den Bestimmungen der Artikel V und XVI des heute unterzeichneten Vertrages—auf die darin genannten Gegenstände, soweit sie deutsche Boden- oder Industrieerzeugnisse sind, bei Einfuhr nach Japan Anwendung finden soll. Nichts in diesem Protokoll oder dem beigefügten Tarif soll indessen das Recht der japanischen Regierung beeinträchtigen, die Einfuhr folgender Gegenstände zu verbieten oder zu beschränken, nämlich: von verfälschten Drogen, Medikamenten, Lebensmitteln oder Getränken; unanständigen oder unzüchtigen Drucksachen, Bildern, Büchern, Karten, Lithographien oder Stichen, Photographien oder irgend welchen unanständigen oder unzüchtigen Gegenständen; von Gegenständen, deren Einfuhr in Widerspruch mit den japanischen

Gesetzen über den Schutz der Erfindungen, Handelsmarken oder Urheberrechte stehen würde; oder von sonstigen Gegenständen, die in sanitären Hinsicht oder für die öffentliche Sicherheit oder Moral gefährlich sein könnten.

Die in dem genannten Tarif aufgeführten Werthzölle sollen, soweit als es für thunlich erachtet werden wird, in spezifische Zölle, die in der gegenwärtigen japanischen Silberwährung zu berechnen sind, durch eine Nachtragskonvention umgewandelt werden, welche zwischen den beiden Regierungen sobald als möglich abgeschlossen werden soll; als Grundlage für diese Umwandlung sollen die Durchschnittspreise genommen werden, welche in den japanischen Zollübersichten während der dem Tage des gegenwärtigen Protokolls vorhergehenden sechs Kalendarernomate nachgewiesen worden sind, unter Zuschlag der Kosten für Versicherung und Transport von Kauf-, Erzeugungs- oder Fabrikationsplätze bis zum Landungshafen, sowie eventuell der Kommissionspesen.

Es besteht jedoch Einverständnis darüber, dass

kommen, dass sechs Monate nach dem Austausch der Ratifikationen des heute unterzeichneten Handels- und Schiffahrtsvertrages der hier beigefügte Einfuhrtarif—unbeschadet der Bestimmungen des Artikels XIX des zwischen den vertragschliessenden Theilen gegenwärtig bestehenden Vertrages von 1869, solange der genannte Vertrag in Kraft bleibt, und danach, gemäss den Bestimmungen der Artikel V und XVI des heute unterzeichneten Vertrages—auf die darin genannten Gegenstände, soweit sie deutsche Boden- oder Industrieerzeugnisse sind, bei Einfuhr nach Japan Anwendung finden soll. Nichts in diesem Protokoll oder dem beigefügten Tarif soll indessen das Recht der japanischen Regierung beeinträchtigen, die Einfuhr folgender Gegenstände zu verbieten oder zu beschränken, nämlich: von verfälschten Drogen, Medikamenten, Lebensmitteln oder Getränken; unanständigen oder unzüchtigen Drucksachen, Bildern, Büchern, Karten, Lithographien oder Stichen, Photographien oder irgend welchen unanständigen oder unzüchtigen Gegenständen; von Gegenständen, deren Einfuhr in Widerspruch mit den japanischen

hinsichtlich der unter den Nummern 2, 11, 18, 19, 20, 21, 24, 30, 31, 34, 35, 38, 39, 40, 41, 44, 47, 48, 56, 59 des beigefügten Tarifs aufgeführten Gegenstände die zwischen Japan und Grossbritannien vereinbarte Umrechnung der Werthzölle in spezifische Zölle für die deutsche Einfuhr massgebend sein soll.

Solange und soweit die Umwandlung in spezifische Zölle nicht erfolgt ist, sollen die Werthzölle in Gemässheit der am Schlusse des beigefügten Tarifs aufgeführten Vorschrift erhoben werden.

Für die in dem beigefügten Tarif nicht aufgeführten Gegenstände soll, unbeschadet der Bestimmungen des Artikels XIX des Vertrages von 1869 und der Artikel V und XVI des heute unterzeichneten Vertrages, sechs Monate nach dem Austausch der Ratifikationen des letzteren der japanische Generaltarif Geltung erlangen, mit der Massgabe jedoch, dass dieser Generaltarif sowie etwaige spätere Änderungen desselben sechs Monate zuvor bekannt gemacht sein müssen, ehe sie auf die deutsche Einfuhr in Japan zur Anwendung gebracht werden dürfen.

Sobald und soweit die vorgenannten Tarife Geltung erlangen, soll der jetzt in Japan für deutsche Güter und Waaren geltende Tarif seine Wirksamkeit verlieren.

In allen anderen Beziehungen sollen die Bestimmungen des bestehenden Vertrages und der dazu nachträglich getroffenen Vereinbarungen bedingungslos bis zum Inkrafttreten des heute unterzeichneten Handels- und Schifffahrtsvertrages in Wirksamkeit bleiben.

#### 4. Zu Artikel XVII.

Es besteht Einverständnis darüber, dass in jedem der beiden vertragschliessenden Länder den Angehörigen der anderen Theiles der Schutz von Erfindungen, von Mustern (einschliesslich der Gebrauchsmuster) und Modellen, von Handels- und Fabrikmarken, von Firmen und Namen dann gewährt werden muss, wenn die hierfür vom Gesetz vorgesehenen Bedingungen erfüllt sind.

Übrigens behalten sich die vertragschliessenden Theile den Abschluss eines besonderen Vertrages über die gegenseitigen Beziehungen auf dem Gebiete

des Patent-, Muster- und Markenschutzes vor und werden seinerzeit in entsprechende Verhandlung eintreten.

Ferner erklärt die japanische Regierung, dass sie, bevor die deutsche Konsulargerichtsbarkeit in Japan in Wegfall kommt, der internationalen Berner Konvention, betreffend das Urheberrecht (geistiges Eigenthum), beitreten werde.

#### 5. Zu Artikel XX.

Es besteht Einverständnis darüber, dass trotz es mit dem vollen Inkrafttreten, des heute unterzeichneten Handels- und Schifffahrtsvertrages an sich eintretenden Wegfalls der in Japan ausgeübten Gerichtsbarkeit deutscher Gerichtsbehörden dennoch diese Gerichtsbarkheit bezüglich aller Angelegenheiten, welche zur Zeit des vollen Inkrafttretens des Vertrages bereits rechtshängig sind, bis zur endgültigen Entscheidung fortdauern soll.

Die unterzeichneten Bevollmächtigten sind übereingekommen, dass dieses Protokoll den beiden vertragschliessenden Theilen zugleich mit dem heute unterzeichneten Handels- und Schifffahrtsvertrag

vorgelegt werden soll, und dass, wenn der genannte Vertrag ratifizirt wird, die in dem Protokoll enthaltenen Vereinbarungen in gleicher Weise als genehmigt angesehen werden sollen, ohne dass es einer weiteren förmlichen Ratifikation bedarf.

Auch wird vereinbart, dass die Bestimmungen dieses Protokolls zu gleicher Zeit mit dem Aufhören der Wirksamkeit des genannten Vertrages ausser Kraft treten.

Zu Urkund dessen haben die beiderseitigen Bevollmächtigten dasselbe unterzeichnet und ihre Siegel beigedrückt.

So geschehen zu Berlin in doppelter Ausfertigung am 4. April 1896.

(L. S.) VICOMTE AOKI.

(L. S.) FREIHERR VON MARSSCHALL.

附屬税目會議後出川四國代表參照

(中英譯)

日獨通商航海條約附屬議定書 (德國議定書)

Protocol.

Upon signing this day the Treaty of Commerce and

陸奧外務大臣時代 對獨交涉 110

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Navigation, the undersigned have agreed upon the following stipulations:—

#### 1. To Article I of the Treaty.

The Japanese Government agree to extend the existing passport system for German subjects, before the opening of the Empire, in such a manner as to allow them, on the production of a certificate of recommendation from the German Representative in Tokio, or from any of German Consuls at the open ports in Japan, to obtain upon application passports available for any part of the country, and for any period not exceeding twelve months, from the Imperial Japanese Foreign Office in Tokio, or from the chief authorities in the Prefecture in which an open port is situated; it being understood that the existing Rules and Regulations governing German subjects who visit the interior of the Empire are to be maintained.

#### 2. To Article I and III.

It is understood between the Contracting Parties that the subjects of one of them in the territories of the other, shall be allowed to acquire and hold

the right of hypothecation in respect of immovable properties in the same manner as natives.

### 3. To Article V.

It is agreed by the Contracting Parties that six months after the exchange of the ratifications of the Treaty of Commerce and Navigation signed this day, the Import Tariff hereunto annexed shall, subject to the provisions of Article XIX of the Treaty of 1869 at present subsisting between the Contracting Parties, as long as the said Treaty remains in force and therefore subject to the provisions of Articles V and XVI of the Treaty signed this day, be applicable to the articles herein enumerated, so far as they are German produce or manufacture, upon importation into Japan. But nothing contained in this Protocol, or the Tariff hereunto annexed, shall impair the right of the Japanese Government to prohibit or restrict the importation of adulterated drugs, medicines, food or beverages; indecent or obscene prints, paintings, books, cards, lithographs or engravings, photographs, or any other indecent or obscene articles; articles the importation of which is contrary to

between Japan and Great Britain, shall also be applied to German imports.

So long and so far as conversion into specific duty does not take place the ad valorem duties shall be levied in conformity with the rule recited at the end of the said Tariff.

In respect of articles not enumerated in the said Tariff, the General Statutory Tariff of Japan for the time being in force shall, after six months from the exchange of ratifications of the Treaty, apply, subject to the provisions of Article XIX of the Treaty of 1869 and Articles V and XVI of the Treaty signed this day. The said General Statutory Tariff as well as its subsequent modifications must be promulgated and published six months in advance before they become operative on German imports into Japan.

As soon as and so far as the Tariffs aforesaid take effect, the Tariff now applicable in Japan to German goods and wares shall lose its effect.

In all other respects, the stipulations of the existing Treaty and all Arrangements concluded subsidiary thereto, shall be maintained unconditionally until

the laws of Japan governing invention, trade-marks, or copy-right; or any other articles which for sanitary reasons, or in view of public security or morals, might offer any danger.

The ad valorem duties established by the said Tariff shall, so far as may be deemed practicable, be converted into specific duties which are to be calculated in the present Japanese silver standard by a Supplementary Convention which shall be concluded between the two Governments as soon as possible; the medium prices, as shown by the Japanese Customs Returns during the six calendar months preceeding the date of the present Protocol, with the addition of the cost of insurance and transportation from the place of purchase, production, or fabrication, to the port of discharge, as well as commission, if any, shall be taken as the basis for such conversion.

It is, however, understood that respecting those articles which are enumerated in Nos. 2, 11, 18, 19, 20, 21, 24, 30, 31, 34, 35, 38, 39, 40, 41, 44, 47, 48, 56, and 59 of the Tariff hereunto annexed, the rates converted from ad valorem into specific duties as agreed upon

the time when the Treaty of Commerce and Navigation signed this day comes into force.

### 4. To Article XVII.

It is understood that in each of the two Contracting Countries the protection of inventions, samples, patterns and models, trade and manufacture marks, firm and other commercial names, must be granted to the subjects of the other, if the conditions that may be prescribed by law in reference thereto are fulfilled.

The two Contracting Parties reserve for future negotiation the conclusion of a special Treaty on their mutual relations in the sphere of the protection of patents, patterns, and trade-marks, which negotiation would be entered into in due time.

The Japanese Government further declares to join the International Convention of Bern regarding Copy-right, before the cessation of German Consular jurisdiction in Japan.

### 5. To Article XX.

It is understood that although with the full operation of the Treaty of Commerce and Navigation

signed this day the jurisdiction, now exercised by German judicial authorities in Japan, comes to an end, still in respect of all those affairs that are actually pending at the time the Treaty takes full effect, the said jurisdiction shall continue to be exercised until the final decision of such affairs.

The undersigned Plenipotentiaries have agreed that this Protocol shall be submitted to the two Contracting Parties at the same time as the Treaty of Commerce and Navigation signed this day, and that when the said Treaty is ratified the agreements contained in the Protocol shall also equally be considered as approved, without the necessity of a further formal ratification.

It is also agreed that the provisions of this Protocol shall terminate at the same time the said Treaty ceases to be binding.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed there to their seals.

Done at Berlin, in duplicate, this 4th day of April, 1896.

Allerhöchsthren ausserordentlichen Gesandten und bevollmächtigten Minister bei Seiner Majestät dem Deutschen Kaiser, König von Preussen:

Herrn Vicomte Sinzo Aoki, und Seine Majestät der Deutsche Kaiser, König von Preussen:

Allerhöchstihren Staatsminister, Staatssekretär des Auswärtigen Amtes, Herrn Adolf Freiherrn Marschall von Bieberstein, welche nach gegenseitiger Mittheilung ihrer in guter und gehöriger Form befundenen Vollmachten die nachstehenden Artikel vereinbart und festgestellt haben;

#### Artikel I.

Jeder der vertragschliessenden Theile kann Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten in allen Häfen, Städten und Plätzen des anderen Theils bestellen, mit Ausnahme derjenigen Orte, wo es nicht angemessen erscheinen sollte, solche Beamte anzuerkennen. Dieser Vorbehalt soll jedoch auf keinen der vertragschliessenden Theile angewendet

(L. S.) Viscount Aoki.  
(L. S.) Freiherr von Marschall.

附屬書川 口總領事職務條約

明治二十九年四月四日柏林ニ於テ調印 (獨本)

明治二十九年四月四日柏林ニ於テ調印 (獨本)

Konsularvertrag Zwischen Japan und dem Deutschen Reich vom 4. April 1896.

Seine Majestät der Kaiser von Japan und Seine Majestät der Deutsche Kaiser, König von Preussen, im Namen des Deutschen Reichs, von dem gleichen Wunsche geleitet, über die wechselseitige Zulassung von Konsularbeamten und über die Befugnisse, Vorrechte und Befreiungen, welche diese Beamten in Japan und Deutschland bei Ausübung ihrer Amtsverrichtungen geniessen sollen, genauere Bestimmungen zu treffen, haben beschlossen, einen Konsularvertrag abzuschliessen, und haben zu diesem Zweck zu Ihren Bevollmächtigten ernannt, nämlich:

Seine Majestät der Kaiser von Japan:

werden, ohne jeder anderen Macht gegenüber ebenfalls Anwendung zu finden.

Die beiderseitigen Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten, ingeleichen die Konsulatskanzler, Sekretäre, Bureaubeamten und Attachés sollen in beiden Ländern alle Vorrechte, Immunitäten und Privilegien geniessen, welche den Beamten desselben Ranges der meistbegünstigten Nation bewilligt sind oder in Zukunft bewilligt werden.

#### Artikel II.

Die Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten sollen nach Vorlegung ihrer mit Beobachtung der in ihren bezüglichen Ländern bestehenden Formlichkeiten ausgetestigten Bestallung gegenseitig zugelassen und anerkannt werden. Das erforderliche Exequatur soll ihnen kostenfrei erteilt werden, und alsdann sollen sie die gegenseitig zugesicherten Rechte, Vorrechte und Immunitäten geniessen.

Bei Vorlegung der Bestallung soll gleichzeitig eine Mittheilung über den dem Konsularbeamten zugewiesenen Amtsbezirk gemacht werden; etwaige



spätere Veränderungen des Amtsbezirks sollen gleichfalls mitgetheilt werden.

Die das Exequatur ertheilende Regierung soll zur Zurücknahme desselben befugt sein unter Darlegung der Gründe, aus denen sie für angemessen erachtet hat, so zu handeln.

### Artikel III.

Konsularbeamte, welche Angehörige desjenigen vertragschliessenden Theiles sind, der sie ernannt hat, sollen frei von Verhaftung oder Gefangenhaltung in bürgerlichen Rechtsstreitigkeiten und von Untersuchungshaft in Strafsachen sein, ausgenommen in Fällen strafbarer Handlungen, welche nach der Landesgesetzgebung als Verbrechen angesehen werden. Sie sollen ferner befreit von Militäreinquartierung und Kontributionen sein, und vorausgesetzt, dass sie nicht Handel, Industrie oder ein anderes Gewerbe, beziehungsweise eine ausseramtliche Erwerbsthätigkeit betreiben, sollen sie auch von persönlichen oder Luxusabgaben und von allen Leistungen und Beiträgen befreit sein, welche einen direkten oder persönlichen Charakter haben. Diese Befreiung soll sich

dagegen nicht auf Zölle, Verbrauchssteuern, örtliche Verzehrungsabgaben oder auf Auflagen hinsichtlich Grundeigentums erstrecken, das sie etwa in dem Lande ihres Amtssitzes erwerben oder besitzen.

Konsularbeamte, welche kaufmännische Geschäfte betreiben, sollen sich nicht auf ihre Konsularvorrechte berufen dürfen, um sich kaufmännischen Verbindlichkeiten zu entziehen.

Im Falle der Verhaftung eines Konsuls oder Konsularbeamten soll die Gesandtschaft seines Landes hiervon sofort durch die Regierung desjenigen Landes, in welchem die Verhaftung stattgefunden hat, in Kenntniss gesetzt werden.

### Artikel IV.

Die Generalkonsuln, Konsuln und ihre Kanzler oder Sekretäre sowie die Vizekonsuln und Konsularagenten sind verbunden, vor Gericht Zeugniss abzugeben, wenn die Landesgerichte solches für erforderlich halten. Doch soll die Gerichtsbehörde in diesem Falle sie mittelst amtlichen Schreibens ersuchen, vor ihr zu erscheinen.

Für den Fall der Behinderung der gedachten Beam-

### Artikel VI.

Die Konsulararchive sollen jederzeit unverletzlich sein, und unter keinem Vorwande soll es den Landesbehörden erlaubt sein, die Papiere, welche zu diesen Archiven gehören, zu durchsuchen oder mit Beschlag zu belegen.

Betreibt ein Konsularbeamter nebenbei Geschäfte, so sollen die auf das Konsulat bezüglichen Papiere unter besonderem Verschlusse, gesondert von den Privatpapieren, aufbewahrt werden.

Die Amtsräume und Wohnungen der Konsularbeamten, welche Angehörige des Landes sind, das sie ernannt hat, und nicht Handel, Industrie oder eine sonstige gewerbliche Thätigkeit nebenbei betreiben, sollen jederzeit unverletzlich sein.

Die Landesbehörden sollen, soweit es sich nicht um Verfolgung von Verbrechen handelt, unter keinem Vorwande dort eindringen. In keinem Falle dürfen sie die daselbst niedergelegten Papiere durchsuchen oder in Beschlag nehmen. Unter keinen Umständen jedoch dürfen die Amtsräume oder Wohnungen der Konsularbeamten als Asyl benutzt werden.

ten durch Dienstgeschäfte oder Krankheit soll, jedoch nur in bürgerlichen Rechtsstreitigkeiten, die Gerichtsbehörde sich in ihre Wohnung begeben, um sie mündlich zu vernehmen, oder unter Beobachtung der einen jeden der beiden Länder eigenthümlichen Förmlichkeiten ihr schriftliches Zeugniss verlangen. Die gedachten Beamten haben dem Verlangen der Behörde in der bezeichneten Frist zu entsprechen und derselben ihre Aussage schriftlich, mit ihrer Unterschrift und ihrem amtlichen Siegel versehen, zuzustellen.

### Artikel V.

Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten können über dem äusseren Eingange ihrer Amtsräume oder ihrer Wohnungen das Wappen ihrer Nation mit einer ihr Amt bezeichnenden Inschrift anbringen.

Sie dürfen auch die Flagge ihres Landes über dem Hause aufziehen, in dem sich das Konsularamt befindet. Desgleichen können sie ihre Flagge auf jeden Fahrzeuge aufziehen, dessen sie sich im Hafen in dienstlichen Angelegenheiten bedienen.

#### Artikel VII.

Im Falle des Todes, der Verhinderung oder Abwesenheit der Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten dürfen deren Kanzler oder Sekretäre, wenn ihr amtlicher Charakter zuvor Kenntnis der betreffenden Behörden in Deutschland oder in Japan gebracht worden ist, zeitweilig die Konsulargeschäfte wahrnehmen, und sie sollen während solcher Amtsführung die gleichen Rechte, Vorrechte und Immunitäten wie die von ihnen vertretenen Beamten genießen, unter den für letztere geltenden Bedingungen und Vorbehalten.

#### Artikel VIII.

Die Generalkonsuln und Konsuln sollen mit Genehmigung ihrer Regierung und vorbehaltlich der Zustimmung der Landesregierung Konsulsverweser als ihre Stellvertreter im Behinderungsfalle oder während zeitweiser Abwesenheit, sowie Konsularagenten in den Städten, Häfen und Plätzen innerhalb ihres Konsularbezirks bestellen dürfen.

Solche Konsulsverweser oder Konsularagenten sollen von dem Konsul, der sie bestellt, oder von

dessen Regierung mit einer Bestallung ausgestattet werden. Sie sollen die für die Konsularbeamten in diesem Vertrage vorgesehenen konsularischen Vorrechte genießen, unter den für solche geltenden Ausnahmen und Vorbehalten.

#### Artikel IX.

Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten sollen das Recht haben, wegen Abhilfe irgend einer Verletzung der zwischen beiden Ländern bestehenden Verträge und Übereinkünfte oder des Völkerrechts sich an die in ihrem Amtsbezirk fungierenden Gerichts- oder Verwaltungsbehörden des bezüglichen Landes zu wenden, Auskunft von denselben zu verlangen und an dieselben Anträge zum Schutz der Rechte und Interessen ihrer Landsleute zu richten. Falls ein solches Ansuchen die gebührende Beachtung nicht findet, sollen die vorgedachten Konsularbeamten bei etwaiger Abwesenheit eines diplomatischen Vertreters ihres Landes sich unmittelbar an die Regierung des Landes, wo sie ihren Sitz haben, wenden dürfen.

#### Artikel X.

dasselbst abzuschliessendes Geschäft beziehen.

3. Alle Schriftstücke, die von Behörden oder Beamten ihres Landes ausgegangen sind, zu übersetzen und zu beglaubigen.

Alle solche Urkunden, sowie Abschriften, Auszüge und Übersetzungen davon sollen, wenn sie von den gedachten Konsularbeamten gehörig beglaubigt und mit dem Amtssiegel des Konsulats versehen sind, in jedem der beiden Länder dieselbe Kraft und Geltung haben, als wenn sie von einem öffentlichen Notar oder vor einem anderen öffentlichen oder gerichtlichen, in dem einen oder dem anderen der beiden Länder zuständigen Beamten aufgenommen oder beglaubigt wären, mit der Massgabe, dass sie dem Stempel und anderen in dem Lande, in welchem sie zur Ausföhrung gelangen sollen, gesetzlich bestehenden Gebühren und Auflagen unterworfen sind.

#### Artikel XI.

Diplomatische Vertreter, Generalkonsuln, Konsuln und Vizekonsuln haben, soweit sie nach den Gesetzen des vertragschliessenden Theiles, welcher sie ernannt

Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten der beiden Länder oder deren Kanzler sollen, soweit sie nach den Gesetzen und Verordnungen ihres Landes dazu befugt sind, folgende Rechte haben:

1. In ihren Amtsräumen oder an ihrem Amtssitze, an dem Wohnorte der Betheiligten oder an Bord der Nationalschiffe die Erklärungen der Schiffsführer, der Schiffsmannschaften, der Schiffspassagiere, von Kaufleuten oder sonstigen Angehörigen ihres Landes entgegenzunehmen.
2. Einseitige Rechtsgeschäfte und letztwillige Verfügungen ihrer Landsleute sowie Verträge, die zwischen Angehörigen ihres eigenen Landes beziehungsweise zwischen diesen und Angehörigen oder anderen Einwohnern des Landes ihres Amtssitzes geschlossen werden, aufzunehmen und zu beglaubigen; desgleichen solche Verträge zwischen Personen der letzteren Kategorie, die sich auf ein im Gebiete der Nation, von welcher die gedachten Konsularbeamten bezeugtes Grundeigenthum oder auf ein

hat, dazu befugt sind, das Recht, Eheschliessungen von Angehörigen dieses Theiles nach Massgabe der Gesetze desselben vorzunehmen.

Diese Bestimmung findet nicht auf solche Eheschliessungen Anwendung, bei welchen einer der Verlobten Angehöriger desjenigen vertragschliessenden Theiles ist, in dessen Gebiet der betreffende Beamte seinen Sitz hat.

Von allen nach Massgabe der vorstehenden Bestimmungen vorgenommenen Eheschliessungen soll der betreffende Beamte den Landesbehörden alsbald Anzeige erstatten.

#### Artikel XII.

Diplomatische Vertreter, Generalkonsuln, Konsuln und Vizekonsuln sollen das Recht haben, in Gemässheit der Gesetze und Verordnungen des vertragschliessenden Theils, welcher sie ernannt hat, Geburten und Todesfälle von Angehörigen dieses Theiles zu beurkunden.

Die nach den Landesgesetzen bestehende Verpflichtung des Betheiligten, von Geburten und Todesfällen den Landesbehörden Anzeige zu machen, wird

hierdurch nicht berührt.

#### Artikel XIII.

Die Generalkonsuln, und Konsuln oder Vizekonsuln sollen Vormünder und Pfleger für ihre Landesangehörigen bestellen können, auch befugt sein, nach Massgabe der Gesetze ihres eigenen Landes die Führung der Vormundschaft oder Pflegschaft zu beaufsichtigen.

#### Artikel XIV.

Stirbt ein Angehöriger eines der vertragschliessenden Theile in dem Gebiete des anderen Theils, so sollen nachstehende Vorschriften beobachtet werden:

a. Im Falle, dass ein Japaner in Deutschland oder ein Deutscher in Japan in oder in der Nähe eines Ortes verstirbt, an welchem ein Generalkonsul, Konsul, Vizekonsul, oder Konsularagent der Nation des Verstorbenen seinen Amtssitz hat, so sollen die Lokalbehörden hiervon dem Konsularbeamten unverzüglich Nachricht geben.

Erhält der Konsularbeamte zuerst von dem Todesfall Kenntniss, so soll er in gleicher Weise die Lokalbehörden mit Nachricht versehen.

Die Konsularbeamten sollen das Recht haben, von Amtswegen oder auf Antrag der betheiligten Parteien alle Effekten, Mobilien und Papiere des Verstorbenen unter Siegel zu legen, nachdem sie zuvor die zuständigen Lokalbehörden davon gebührend unterrichtet haben, denen das Recht zusteht, bei dem Vorgange zugegen zu sein und ihre Siegel gleichfalls anzulegen.

Die beiderseits angelegten Siegel dürfen ohne Mitwirkung der Lokalbehörden nicht abgenommen werden. Sollte jedoch die Lokalbehörde auf eine von den Konsularbeamten an sie ergangene Einladung, der Abnahme der beiderseits angelegten Siegel bei zuwohnen, innerhalb acht und vierzig Stunden—vom Empfange der Einladung an gerechnet—sich nicht eingefunden haben, so können die Konsularbeamten allein zu der gedachten Amtshandlung schreiten. Nach Abnahme der Siegel sollen die gedachten Beamten ein Verzeichniss aller Habe und Effekten des Verstorbenen aufnehmen und zwar in Gegenwart der Lokalbehörde, wenn diese in Folge der vorerwähnten Einladung anwesend ist. Die Lokalbehör-

den sollen die in ihrer Gegenwart aufgenommenen Protokolle mitzeichnen, sie sind aber nicht befugt, für ihre amtliche Mitwirkung bei dieser Amtshandlung Gebühren irgend welcher Art zu beanspruchen.

b. Die zuständigen Lokalbehörden sollen die in dem Lande gebräuchlichen oder durch die Gesetze desselben vorgeschriebenen Bekanntmachungen bezüglich der Eröffnung des Nachlasses und des Auftrufs der Erben oder Gläubiger erlassen und diese Bekanntmachungen den Konsularbeamten mittheilen, ohne dadurch dem Beamte der letzteren auf Erlass gleichartiger Bekanntmachungen Abbruch zu thun.

c. Die Konsularbeamten können veranlassen, dass diejenigen beweglichen Gegenstände, deren Aufbewahrung in natürlichem Zustande mit erheblichen Kosten für die Nachlassmasse verbunden wäre, öffentlich in der durch Gesetz und Gebrauch des Landes vorgeschriebenen Weise versteigert werden.

d. Die Konsularbeamten sollen die inventarisirten Effekten und Werthgegenstände, den Betrag der eingegangenen Forderungen und Einkünfte, sowie den Erlös aus dem etwaigen Verkauf der Mobilien als

ein den Landesgesetzen unterworfenes, Depositum verwahren bis zum Ablauf einer Frist von zehn Monaten, von dem Tage der letzten Bekanntmachung angerechnet, welche Lokalbehörden hinsichtlich der Eröffnung des Nachlasses erlassen haben, oder in Ermangelung einer solchen Bekanntmachung, bis zum Ablauf einer Frist von zwölf Monaten seit dem Todestage.

Die Konsularbeamten sollen jedoch die Befugnis haben, die Kosten der ärztlichen Behandlung und der Beerdigung des Verstorbenen, den Lohn seiner Dienstboten, Miethzins, Gerichtskosten, Konsulatsgebühren und Kosten ähnlicher Art, sowie etwaige Ausgaben für den Unterhalt der Familie des Verstorbenen aus der Nachlassmasse sofort vorweg zu entnehmen.

e. Vorbehaltlich der Bestimmungen des vorhergehenden Absatzes sollen die Konsularbeamten das Recht haben, alle Massnahmen zu treffen, die sie zur Erhaltung des beweglichen und unbeweglichen Nachlasses des Verstorbenen als im Interesse der Erben liegend erachten. Sie können den Nachlass entweder

masse überliefert werden, wobei es die Aufgabe der Konsularbeamten bleibt, die Interessen ihrer Landesangehörigen wahrzunehmen.

g. Wenn mit Absatz d in Absatz d erwähnten Frist keine Forderung gegen den Nachlass vorliegt, so sollen die Konsularbeamten, nachdem alle den Nachlasse zur Last fallenden Kosten und Rechnungen nach den im Lande geltenden Tarifen bezahlt und berichtet sind, endgültig Besitz von dem Nachlasse ergreifen, ihn liquidiren und den gesetzlichen Erben überweisen, ohne dass sie anderweit als ihrer eigenen Regierung Rechnung abzulegen haben.

h. In allen Fragen, welche über die Eröffnung, Verwaltung und Liquidation der Hinterlassenschaft von Angehörigen eines der beiden Länder in dem anderen entstehen, sollen die betreffenden Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten von Rechtswegen zur Vertretung der Erben befugt sein und sind amtlich als deren Bevollmächtigte anzuerkennen, ohne dass sie verpflichtet wären, ihren Auftrag durch eine besondere Vollmacht nachzuweisen.

persönlich oder durch einen von ihnen erwählten und in ihrem Namen handelnden Vertreter verwalten, und sie sollen das Recht haben, die Auslieferung aller dem Verstorbenen zugehörigen Werthgegenstände zu verlangen, die sich in öffentlichen Kassen oder in den Händen von Privatpersonen befinden.

f. Wenn während der in Absatz d erwähnten Frist über etwaige Ansprüche von Landesangehörigen oder Angehörigen einer dritten Macht gegen den Nachlass Streit entstehen sollte, so haben die Landesgerichte ausschliesslich die Entscheidung über solche Ansprüche, soweit solche nicht auf einem Erbenspruch oder Vermächtniss beruhen.

Falls der Bestand der Hinterlassenschaft des Verstorbenen zur unverkürzten Bezahlung seiner Schulden nicht ausreichen sollte, sollen die Gläubiger, sofern die Gesetze des Landes es gestatten, bei den zuständigen Lokalbehörden die Eröffnung des Konkurses beantragen können. Nach erfolgter Konkursöffnung sollen alle Schriftstücke, Effekten oder Werthe der Nachlassmasse den zuständigen Lokalbehörden oder den Verwaltern der Konkurs-

Die Konsularbeamten können daher entweder in Person oder durch einen landesgesetzlich dazu befugten Vertreter vor der zuständigen Landesbehörde auftreten und in allen den Nachlass betreffenden Angelegenheiten die Interessen der Erben wahrnehmen, auch sich auf die gegen diese erhobenen Ansprüche einlassen.

Sie sind jedoch verpflichtet, etwa vorhandene Testamentsvollstrecker oder die gegenwärtigen beziehungsweise durch Bevollmächtigte vertretenen Erben von jedem Anspruch in Kenntniss zu setzen, der etwa bei ihnen gegen die Nachlassmasse erhoben wird, damit die Vollstrecker oder Erben ihre Einreden gegen solche Ansprüche geltend machen können.

Es ist indessen selbstverständlich, dass die Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten, da sie als Bevollmächtigte ihrer Landesangehörigen betrachtet werden, persönlich wegen einer den Nachlass betreffenden Angelegenheit gerichtlich nicht in Anspruch genommen werden könne.

i. Das Erbrecht sowie die Theilung des Nachlasses des Verstorbenen richten sich nach den Gesetzen

seines Landes.

Alle Ansprüche wegen der Erbrechts und der Nachlasstheilung sollen durch die Gerichtshöfe oder zuständigen Behörden dieses Landes und in Gemässheit der Gesetze des letzteren entschieden werden.

k. Wenn ein Deutscher in Japan oder ein Japaner in Deutschland an einem Orte verstirbt, an welchem oder in dessen Nähe kein Konsularbeamter seines Landes vorhanden ist, so haben die zuständigen Lokalbehörden nach Massgabe der Landesgesetze ein Verzeichniss der Hinterlassenschaft des Verstorbenen aufzunehmen und ihre Siegel anzulegen. Beglaubigte Abschriften der betreffenden Urkunden sind nebst der Todesurkunde und allen die Nationalität des Verstorbenen darthnenden Schriftstücken binnen kürzester Frist dem dem Nachlassorte nächsten Konsularbeamten zu übersenden.

Die zuständigen Lokalbehörden sollen hinsichtlich des Nachlasses des Verstorbenen alle durch die Landesgesetze vorgeschriebenen Massnahmen treffen, und der Nachlass soll sobald als thunlich nach Ablauf der in Absatz d bestimmten Frist den vorge-

dachten Konsularbeamten oder dessen Bevollmächtigten übermittelte werden.

Es versteht sich von selbst, dass von dem Augenblicke an, wo ein zuständiger Konsularbeamter oder dessen Vertreter an dem Nachlassorte erscheint, die Lokalbehörden, welche etwa inzwischen eingeschritten sind, sich nach den vorstehenden Bestimmungen dieses Artikels zu richten haben.

l. Die Bestimmungen des gegenwärtigen Vertrages sollen in gleicher Weise auf die Hinterlassenschaft von Angehörigen eines der beiden Länder Anwendung finden, die, ausserhalb des Gebietes des anderen Landes verstorben, dort bewegliches oder unbewegliches Eigentum etwa hinterlassen haben.

m. Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten jedes Landes sind ausschliesslich beauftragt mit der Inventarisirung und den anderen zur Erhaltung und Liquidirung erforderlichen Amtshandlungen bei Nachlässen von Seelenten, Passagieren und sonstigen Reisenden ihrer Nation, welche in dem anderen Lande, sei es am Lande, sei es an Bord eines Schiffes, gestorben sind.

## Artikel XV.

Die Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten können sich in Person an Bord der zum freien Verkehr zugelassenen Schiffe ihrer Nationalität begeben oder einen Bevollmächtigten an Bord senden, um die Offiziere und Mannschaften zu vernehmen, die Schiftpapiere zu prüfen, die Erklärungen über ihre Reise, ihren Bestimmungsort und die Zwischenfälle während der Reise entgegenzunehmen, Ladungsverzeichnisse (Manifeste) aufzunehmen, den Eingang und die Abfertigung ihrer Schiffe zu fördern, endlich mit den gedachten Offizieren und Mannschaften vor den Gerichts- und Verwaltungsbehörden des Landes zu erscheinen, um ihnen als Dolmetscher oder Agenten zu dienen.

Die öffentlichen Beamten des Landes dürfen in den Häfen, wo ein Generalkonsul, Konsul, Vizekonsul oder Konsularagent eines der beiden vertragschliessenden Theile seinen Amtssitz hat, an Bord von Handelsschiffen Untersuchungsverfahren, Verhaftungen, Beschlagnahmen, Durchsuchungen, Vernehmungen, oder Zwangsakte jeder Art, abgesehen von den

gewöhnlichen zollamtlichen und gesundheitspolizeilichen Besichtigungen, nicht vornehmen, ohne zuvor dem gedachten Konsularbeamten Nachricht gegeben zu haben, damit derselbe der betreffenden Amtshandlung beiwohnen kann. Ebenso müssen die Konsularbeamten behufs ihrer Anwesenheit rechtzeitig benachrichtigt werden, wenn die Offiziere oder zur Schiffsmannschaft gehörige Personen vor den Gerichten oder Behörden des Ortes Aussagen oder Erklärungen abzugeben haben. Die bezügliche Mittheilung soll die für das Verfahren bestimmte Stunde enthalten. Beim Nichterscheinen der gedachten Beamten oder ihrer Vertreter kann in ihrer Abwesenheit in der Sache vorgegangen werden.

## Artikel XVI.

Den Generalkonsuln, Konsuln, Vizekonsuln oder Konsularagenten steht ausschliesslich die Aufrechterhaltung der inneren Ordnung an Bord der Handelsschiffe ihres Landes zu; sie haben daher allein Streitigkeiten zwischen dem Schiffsoffizieren und Matrosen zu schlichten, insbesondere solche, welche sich auf die Heuer und die Erfüllung gegenseitiger

Verpflichtung beziehen. Weder ein Gerichtshof noch eine andere Behörde soll unter irgend einem Vorwande sich in solche Streitigkeiten mischen dürfen, ausser in Fällen, wenn die an Bord vorkommenden Streitigkeiten der Art sind, dass dadurch die Ruhe und öffentliche Ordnung in Häfen oder am Lande gestört wird, oder wenn andere Personen als Offiziere und Mannschaften des Schiffes an der Unordnung oder Streitigkeit theilhaftig sind.

Die Landesbehörden sollen indessen, sofern es sich nicht um Angehörige ihres Landes handelt, verpflichtet sein, den Konsularbeamten wirksame Hülfe zu leisten, wenn diese darum nachsuchen, um eine Person der Schiffsbesatzung ausfindig zu machen, zu verhaften und in Haft zu behalten, deren Festhaltung jene für erforderlich erachten. Solche Personen sollen auf eine schriftliche, an die Landesbehörden gerichtete und von einem beglaubigten Auszuge aus dem Schiffsregister oder Musterrolle begleitete Aufforderung der Konsularbeamten verhaftet und während des Aufenthaltes des Schiffes im Hafen zur Verfügung der Konsularbeamten gehalten werden.

gehören. Auf ein dergestalt begründetes Ersuchen, und ohne dass es einer Beerdigung von Seiten der Konsuln bedarf, sollen die Deserteure ausgeliefert werden—vorausgesetzt, dass dieselben weder zur Zeit ihrer Einschiffung, noch zur Zeit ihrer Ankunft im Hafen Angehörige des Landes sind, wo das Auslieferungsverlangen gestellt wird.

Ferner soll jeder Beistand und jede erforderliche Hülfe ihnen bei der Ermittlung und Festhaltung der Deserteure gewährt werden, welche in die Gefängnisse des Landes gebracht und dort auf Ersuchen und auf Kosten des Konsularbeamten solange festgehalten werden sollen, bis dieser eine Gelegenheit zu ihrer Fortsendung gefunden haben wird.

Wenn jedoch eine solche Gelegenheit innerhalb eines Zeitraumes von sechs Monaten, vom Tage der Gefangennahme an gerechnet, sich nicht findet, so sind die Deserteure freizulassen und aus dem nämlichen Gründe nicht wieder festzunehmen.

Sollten die Deserteure ein Verbrechen oder Vergehen in dem Lande, in dem sie aufgefunden werden,

Ihre Freilassung soll nur auf Grund eines schriftlichen Ansuchens der gedachten Beamten erfolgen. Die Kosten der Verhaftung und der Festhaltung dieser Personen sollen von den Konsularbeamten getragen werden.

#### Artikel XVII.

Die Generalkonsuln, Konsuln, Vizekonsuln oder Konsularagenten können die Offiziere, Matrosen und alle anderen zur Mannschaft der Krieger- oder Handelschiffe ihrer Nationalität gehörigen Personen, welche der Desertion von den gedachten Schiffen schuldig oder angeklagt sind, festnehmen lassen, um dieselben an Bord oder in ihre Heimath zu senden.

Zu diesem Zwecke sollen die Konsularbeamten sich an eine der zuständigen Behörden des Landes, in dem sie ihren Amtssitz haben, wenden und an dieselbe bezüglich der Deserteure ein Ersuchungsschreiben richten, begleitet von einem amtlichen Auszuge aus dem Schiffsregister und der Musterrolle oder von anderen amtlichen Urkunden, aus denen hervorgeht, dass die Leute, deren Auslieferung sie verlangen, zu der gedachten Schiffsmannschaft

begangen haben, so sollen sie nicht eher zur Verfügung der Konsularbeamten gestellt werden, bis das für den Fall zuständige Landesgericht die Entscheidung gefällt hat und diese vollstreckt worden ist.

#### Artikel XVIII.

Falls nicht Verabredungen zwischen Rhedern, Befrachtern und Versicherern entgegenstehen, werden alle während der Fahrt der Schiffe beider Länder erlittenen Havereien, sei es, dass Schiffe den Hafen freiwillig oder als Nothhafen anlaufen, von den Generalkonsuln, Konsuln, Vizekonsuln und Konsularagenten festgesetzt.

Hat indessen der gedachte Konsularbeamte ein Interesse an dem Falle, oder ist er Agent für das Schiff oder die Ladung ist ein Landesangehöriger oder ein Angehöriger einer dritten Macht bei der Sache theilhaftig und es lässt sich ein gütliche Einigung der Parteien nicht erzielen, so sollen die Landesbehörden entscheiden.

#### Artikel XIX.

Der gegenwärtige Vertrag soll in Kraft treten, sobald der zwischen den vertragschliessenden

Theilen vereinbarte Handels- und Schifffahrtsvertrag vom heutigen Tage in allen seinen Theilen Wirksamkeit erlangt. Er soll von seinem Inkrafttreten ab 12 Jahre in Geltung bleiben.

Jeder vertragschliessenden Theile soll das Recht haben zu irgend einer Zeit, nachdem 11 Jahre vom Tage des Inkrafttretens des Vertrages verflossen sind, dem anderen seine Absicht, diesen Vertrag aufhören zu lassen, anzukündigen, und mit Ablauf von 12 Monaten nach erfolgter Kündigung soll der Vertrag gänzlich aufhören und endigen.

#### Artikel XX.

Der gegenwärtige Vertrag soll ratifizirt, und die Ratifikationsurkunden sollen gleichzeitig mit jenen des zwischen den vertragschliessenden Theilen vereinbarten Handels- und Schifffahrtsvertrages vom heutigen Tage in Berlin ausgetauscht werden.

Zu Urkund dessen haben die beiderseitigen Bevollmächtigten diesen Vertrag unterzeichnet und mit ihren Siegeln versehen.

So geschehen zu Berlin in doppelter Ausfertigung am 4. April 1896.

(L. S.) VICOMTE AOKI.

(L. S.) FREIHERR VON MARSCHALL.

譯 後田川OR次書臣國書院藏參照

附圖書四

別紙甲號ノ一 領事裁判權消滅時期ニ關スル

德意志大國と日本

Berlin, den 30 März 1896.

Indem die Kaiserlich Deutsche Regierung für den Fall, dass im Übrigen eine Einigung über den neu abzuschliessenden Handels- und Schifffahrtsvertrag zwischen dem Deutschen Reich und Japan erzielt wird, sich bereit gezeigt hat, auf die gegenwärtig in Japan ausgeübte Konsulargerichtsbarkeit vom Zeitpunkt des neuen Vertrages ab zu verzichten, geht sie von der Voraussetzung aus, dass dieser Verzicht erst mit dem Wegfall der Konsulargerichtsbarkeit für alle übrigen fremden Mächte Wirksamkeit erlangt.

Der Unterzeichnete hält sich für verpflichtet, dem ausserordentlichen Gesandten und bevollmächtigten Minister Seiner Majestät des Kaisers von Japan,

(Il. 8091  
17335.) erhalten hat.

Zugleich benutzt der Unterzeichnete auch diesen Anlass, um Seiner Excellenz dem Herrn Staatssekretär die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

(Gezeichnet) AOKI.

Seiner Excellenz  
dem Staatssekretär des

Auswärtigen Amtes, Herrn Staatsminister,

FREIHERRN MARSCHALL VON BIEBERSTEIN.

附圖書六

別紙乙號 外人ヲ社員トシテ商會社ヘ土地

所有權ニ關スル青木公使ノ往翰

Berlin, den 31. März 1896.

Der unterzeichnete ausserordentliche Gesandte und bevollmächtigte Minister Seiner Majestät des Kaisers von Japan beehrt sich in Gemässheit der ihm von seiner Regierung erteilten Informationen Seiner Excellenz dem Staatsminister, Staatssekretär des Auswärtigen Amtes des Deutschen Reichs, Herrn

Herrn Vicomte Aoki, über diese Auffassung keinen Zweifel zu lassen, und verbindet damit die Bitte, ihm den Empfang dieser Note bestätigen zu wollen. Zugleich benutzt der Unterzeichnete diese Gelegenheit, um Herrn Vicomte Aoki die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

(Gezeichnet) MARSCHALL.

An den ausserordentlichen Gesandten  
und bevollmächtigten Minister

Seiner Majestät des Kaisers von Japan,

HERRN VICOMTE AOKI,

etc., etc., etc.

附圖書五

別紙甲號ノ二 獨逸外務大臣宛返翰

Berlin, den 31. März 1896.

Der Unterzeichnete beehrt sich, Seiner Excellenz dem Staatssekretär des Auswärtigen Amtes, Herrn Staatsminister Freiherrn Marschall von Bieberstein, hierdurch ganz ergebenst mitzutheilen, dass er die unter dem 30. d. Mts. an ihn gerichtete Note

Freiherrn Marschall von Bieberstein, behufs Beseitigung eines bei den Verhandlungen über den Abschluss eines neuen Japanisch-Deutschen Handels- und Schifffahrtsvertrages hervorgetretenen Zweifels, mitzutheilen, dass nach den geltenden japanischen Gesetzen eine nach japanischen Recht gebildete Handelsgesellschaft unter ihrer Firma auch dann Grundeigenthum in Japan erwerben und besitzen darf, wenn an ihr deutsche Reichsangehörige als Mitglieder theilhaft sind.

Der Unterzeichnete benutzt auch diesen Anlass, um Seiner Excellenz dem Herrn Freiherrn von Marschall die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

(Gezeichnet) AOKI.

An Seine Excellenz den Staatsminister,  
Staatssekretär des Auswärtigen Amtes des  
Deutschen Reiches,

HERRN FREIHERRN MARSCHALL VON  
BIEBERSTEIN.

臺灣總督

des Auswärtigen Amtes des Deutschen Reiches,  
Freiherrn Marschall von Bieberstein, hierdurch ganz ergebenst zu ersuchen, ihm geneigtest eine diesbezügliche Rückäusserung zugehen zu lassen.

Zugleich benutzt der Unterzeichnete auch diesen Anlass, um Seiner Excellenz dem Herrn Freiherrn Marschall von Bieberstein die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

(Gezeichnet) AOKI.

Seiner Excellenz dem Staatsminister,  
Staatssekretär des Auswärtigen Amtes des  
Deutschen Reichs,

HERRN FREIHERRN MARSCHALL VON  
BIEBERSTEIN.

駐臺總領事  
劉 雲 龍

Berlin, den 2. April 1896.

Der unterzeichnete Staatsminister, Staatssekretär des Auswärtigen Amtes des Deutschen Reiches, beehrt sich dem ausserordentlichen Gesandten und bevollmächtigten Minister Seiner Majestät des

陸奥外務大臣時代 對 劉 雲 龍 110 號

駐臺總領事  
劉 雲 龍 之 條 約 通 商 航 海 條 約  
之 廢 止 關 於 青 島 公 使 之 往 來

Berlin, den 31. März 1896.

Im Hinblick darauf, dass der Unterzeichnete, ausserordentlicher Gesandter und bevollmächtigter Minister Seiner Majestät des Kaisers von Japan, auf dem Punkte steht, den zwischen Japan und Deutschem Reiche vereinbarten neuen Vertrag zu unterzeichnen, drängt sich ihm zuvor noch der Wunsch auf, in Erfahrung zu bringen, ob die Kaiserlich Deutsche Regierung den am 24. Januar 1861 zwischen Japan und Preussen abgeschlossenen Freundschafts- und Schifffahrtsvertrag durch diejenigen, welcher am 20. Februar 1896 zwischen Japan einerseits und dem Norddeutschen Bunde sowie den zu diesem Bund nicht gehörigen Mitgliedern des deutschen Zoll- und Handelsvereins andererseits vereinbart ist, und von dessen Ausserkraftsetzung allein in dem Artikel XX des neuen Vertrages die Rede ist, als aufgehoben betrachtet.

Dengemäss gestattet sich der Unterzeichnete Seine Excellenz den Herrn Staatsminister, Staatssekretär

Kaisers von Japan, Herrn Vicomte Aoki, in Erwiderung auf die gefällige Note vom 31. v. Mts., ergebenst mitzutheilen, dass nach Auffassung der Kaiserlich Deutschen Regierung der Freundschafts-, Handels- und Schifffahrtsvertrag zwischen Preussen und Japan von 24. Januar 1861 seiner Zeit durch den Freundschafts-, Handels- und Schifffahrtsvertrag, welcher am 20. Februar 1869 zwischen dem Norddeutschen Bunde und den zu diesem Bunde nicht gehörenden Mitgliedern des Deutschen Zoll- u. Handelsvereins einerseits und Japan andererseits abgeschlossen wurde, in allen seinen Theilen aufgehoben worden ist, so dass es seiner Erwähnung in Artikel XX des jetzt vereinbarten neuen Handels- und Schifffahrtsvertrages zwischen dem Deutschen Reich und Japan nicht bedarf.

Zugleich benutzt der Unterzeichnete diesen Anlass, um Herrn Vicomte Aoki die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

(Gezeichnet) MARSCHALL.

An den ausserordentlichen Gesandten  
und bevollmächtigten Minister

三十三



Seiner Majestät des Kaisers von Japan,  
HERRN VICOMTE AOKI.

二〇五 明治三十九年四月八日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

日獨追加交渉ニ關スル件

No. 277. (25) German Minister in Japan under instructions asked me if there exists engagement between Japan and England for continuing to enforce existing tariff in conjunction with new conventional tariff. I, of course, denied its existence. German Minister in Japan also asked privately whether supplementary convention with Germany will be negotiated in Tokio or in Berlin. He appears to avoid to be its negotiator. Answer how that was arranged. Reuter's telegram says that by the terms of new treaties between Japan and Germany extra-territoriality is not wholly abolished. As I am confident that above report is entirely unfounded, I am to publish absolute contradiction.

Sent, April 8th, 1896. Mutsu.

第二項ニ關シ

民法ハ重ニ内國人ノ行爲ヲ規定スルモノタルニ由リ外國人ニ取リテハ格段大切ナル法律ニ非ス其他各種ノ法典ハ已ニ悉ク發布セラレ民法并商法ノ一部ヲ除キテハ總テ現ニ其効力ヲ有セリ且民法并商法ノ一部ハ目下單ニ修正ニ付サレタルニ過ス故ニ新條約有効前ノ通用期一年ヲ二年ニ延フル必要ナシ

第二項ニ關シ

民法中修正ノ條項モ亦追テ改譯セラルヘシ

ト回答サレタリ然レトモ第一項ノ回答タル當時獨逸政府員ノ提出シタル議論ニ對シテハ論鋒甚タ軟弱ニシテ司法行政政ニ關スル堅固緻密ナル駁撃ヲ斷壓スルニ足ラス又第二項ノ回答ニ於テハ修正ノ條項ヲ改譯スヘシト明言サレタルニモ係ラス獨逸政府員ハ豫メ日本ニ於ケル最近兩三年間排外者流ノ勢力稍々旺盛ニ傾向セリトノ事ヲ傳聞シ此輩其威ヲ貴衆兩院ニ逞スルニ至ラハ外國人ノ便宜ヲ謀ル爲メ前顯ノ改譯ヲ企圖スルコト勿ルヘシトノ邪推ヲ抱有セル由ニテ頻リニ法典翻譯ノ事ニ關シ今少シク確實ナル保證ヲ請求シテ止マサリキ然レトモ閣下ノ明確ナル宣言ニ優ル保證ヲ與フル

二〇六 明治三十九年四月十日 青木駐獨公使ヨリ  
陸奥外務大臣宛

追加條約ノ締結及領事裁判權廢止ノ件

(37) Understanding exists that supplementary convention shall be concluded in Tokio. Not only is the Reuter's telegram unfounded, but Japan assumes jurisdiction immediately upon the exchange of ratifications in regard to protection of patents, trademarks and commercial names.

(Via Peters.), April 10, 1896. Aoki.

二〇七 明治三十九年四月廿日 青木駐獨公使ヨリ  
陸奥外務大臣宛

談判ノ經過報告ノ件

附屬書一 原案修正願末書

二 二十八年五月青木公使ヨリ獨逸政府へ提出  
セル覺書

別信第二號 五月二十二日到

本官發昨二十八年一月二十七日ノ電信第五十號ニ對シ貴大臣ハ同二月二十八日電信第四十五號ヲ以テ

道ナシ左レハトテ商議員ノ満足ヲ博スルニ非ラサレハ全體ノ商議其歩ヲ進メサルヲ以テ本官ハ三月二十九日電信第七十號ノ稟申(該兩項ハ領事裁判廢止ニ對シ巨大ナル關係アリ云々)ニ基キ其後五月中別冊覺書ヲ製シ我司法行政ノ組織官能現行法律及修正ニ係ル民法等現今已ニ何程迄我社會ニ勢力ヲ施スヤノ情況ヲ陳述シテ之ヲ獨逸政府ニ提出シ終ニ商議員ノ疑念ヲ解キ掛念ヲ排シ得タリ故ニ七月以降ノ會議ニ於テハ前顯二項ノ疑題ニ關シ商議員ハ更ニ贅言ヲ費セシコトナキノミナラス府下駐在獨逸大使及白耳義公使ハ各々其本國政府ノ爲メ特ニ右覺書ヲ領收致度旨申出候ニ付兩使并在獨瑞西公使ヘモ各々二冊宛差遣置申候

第六項ニ關シ

外人ヲシテ土地所有權ヲ享有セシムルハ自由主義ノ政略タルヘキニ由リ將來内國ノ經濟ニ關シ危險ヲ見サルニ至ラハ外人ヲシテ此特權ヲ享有セシムヘシ云々

此項ニ關シテハ開議ノ始メヨリ獨逸政府員ハ頑固ニ其提議ヲ主張セリ而シテ其論鋒タル前年帝國政府ハ我内國ノ開放ヲ以テ領事裁判權廢止ノ報酬ニ擬スト公言シタルコトアルト二十二年間大隈條約ニ於テハ何等ノ制限モナク外人ニ對

シ土地所有權ヲ許可シタル事實アルニモ係ラス今回ハ帝國何等實利的ノ規約モ付添セス治外法權ノ撤去ヲ請求スルト同時ニ千八百八十二乃至四年間ノ協議ヲ以テ決定シタル輸入税ノ統系ヲ改メ纔ニ數十箇ノ輸入品ヲ規約税率ニ移シ多數ノ輸入貨物ハ總テ之ヲ「オートノミカル、タリフ」ヲ以テ支配スルトノ計畫ニ不服ヲ唱ヘ是非トモ相當ノ報酬ヲ領收スルニ非ラサレハ當ニ無期限締結ノ條約ヲ修正スルニ躊躇スルノミナラス領事裁判權ヲ撤去シ帝國ヲ待ツニ不羈卓立ノ開明國ヲ以テスル以上ハ帝國モ亦輒今各國ニ普通スル實際ノ慣例ヲ認メ千八百七十三年間ノ法律ヲ取消シ從前土地所有權ニ關シテ内外人ノ間ニ存立セル特殊ノ制限ヲ破棄スルノ外會テ英國ノ抗議ニ對シテ答辯シタル趣旨ヲ擴張シ經濟及社會學ノ原理ヲ引用シテ目下帝國ニ於ケル細分小割ノ土地制度タル恰モ貧弱ナル小民ヲシテ溝壑ニ轉セシメサルノ具ナルノミナラス該民ノ村閭ニ割據スルハ保守主義ヲ維持シ併テ一般ノ愛國心ヲ鼓舞シ維持スルニ關係アリ反之今ヤ資金ニ富メル歐米人ヲシテ帝國内執レノ地方ニ於テモ自由ニ貧民ノ所有地ヲ買收シ以テ巨大ナル土地ヲ占領セシメシニハ我社會ノ組織忽チ一變シ爲之其秩序紊亂スルニ至

強テ獨政府ノ提議ニ反抗セス云々申越サレタリ勿論條約本文中已ニ二箇所ニ於テ工業ノ文字掲載セラレタルニ由リ強テ提議ヲ拒ム必要ナキニ似タレトモ廣ク各國間ニ締結シタル最惠(國)條款ニ徴スレハ類似ノ例證甚タ少キニ由リ果然讓歩ヲ爲シタリトノ嫌ヲ避ル爲メ本官ハ強テ獨政府ノ要求ヲ排斥セリ

(三)

先便別信第一號ヲ以テ稟申シタル日獨通商航海條約第十七條ニ付特ニ閣下ノ御注意ヲ要スル點アリ即チ發明、模形、模型、製造標、商社號、及其他ノ商號ノ保護ニ關ジテ日本ニ於ケル獨逸人ハ日本法律所定ノ條件ニ遵由シ且ツ日本ノ裁判權ニ服從スヘキ都合タルニ由リ本條實施ノ爲メ發布スヘキ法令ニハ第一「獨逸臣民ハ發明、模形、模型、商標、製造標、商社號及其他ノ商號ニ關シ日本臣民ト同一ノ保護ヲ享ク但右事項ニ關シテハ日本ノ法律ニ遵由スヘシ」第二「本條ノ施行ニ先チ從來日本臣民ニシテ獨逸臣民ノ商標ヲ模擬シ自己ノ商標トシテ既ニ登録ヲ受ケタルモノハ第十七號ニ依リ其使用ノ効力ヲ失フ限ニアラス」トノ明文ヲ掲クルコト是ナリ但シ商標保護ニ關シテハ商議ノ際種々議論有之最初獨政府委員ノ請求ニテハ本條約批准前本件ニ關シテ

ルヘシ云々正シク獨政府ノ自國ノ爲ニ憂慮スル意ヲ迎ヘテ抗辯シタル處十二月初旬ニ際シテハ商議員終ニ其論鋒ヲ收メ強テ土地所有權ヲ請求セサルニ至レリ

## 第十六項ニ關シ

規約主義ヲ取ラサル以上ハ最惠ノ箇條ヲ通商航海ニノミ限ラントス

依テ本官ハ最初ヨリ此訓旨ヲ體シテ商議ヲ經過シタルニ本年三月六日七日ノ交貴地ニ於テ獨逸公使ノ建言採用相成タル後(此種ノ手段ハ獨逸政府ニ限ラス孰レノ政府ニ於テモ臨時之ヲ取レトモ昨年來獨政府ニシテ此舉動ヲ示シタルコト前後二回ニ及ヘリ即チ三國干涉ノ際獨外務大臣ハ本官ノ抗議ニ倂易シ遂ニ在英國獨逸大使ニ命シテ加藤公使ニ云々ヲ勸諭セシメタルコト及今回モ亦本官ノ頑固ナル抗議ヲ避ケ直ニ西園寺侯爵ニ迫リタルコト是ナリ)獨商議員ハ續々舊案ヲ復活シテ我許容ヲ得ント試ミタリ要スルニ其際獨逸政府員ハ從前本官ニ於テ云々抗議シタルハ全ク本官一己ノ頑固論ニ起由セルモノト推量シタルニ似タリ故ニ本項ニ關シテモ通商航海ノ外俄ニ工業ノ文字ヲ挿入スヘク要求セリ又西園寺侯爵ヨリモ本年二十一號ノ電信ヲ以テ我政府ハ

ハ互ニ外交文書ヲ以テ保護スルコトヲ約セント欲ス尤約束前日人ニシテ獨人ノ商標ヲ模擬シ使用セル者ニ對シテハ特殊ナル約束ノ効力ヲ實施スル必要ナキニ由リ日人ヲシテ豫メ模擬ノ商標ヲ登録セシメ以テ其所有物ト爲シ置ヘシ云々トノ事ニ有之候得共到底批准ノ期モ遠キニ非ス候間本官ハ斯ク至急ニ特約ヲ結フ必要ナシトノ旨ヲ以テ提議ヲ排斥シタル都合ニテ有之候

(三) (九)

領事權限條約ノ締結ニ關シテハ本年第十六及十八號電信ノ訓旨ニ基キ速ニ商議ヲ開キ退讓スルモ危害ナキ條項ニ對シテハ快ク獨逸政府ノ提議ヲ容レ以テ其局ヲ結ヒタリ要スルニ全體ノ約款悉ク互相ノ制裁ヲ以テ成立スルノミナラス其取極ハ歐洲大陸ノ各國間ニ存在スル條項タルニ由リ文字ノ修正及章句ノ置替等ニ付テハ強テ原案ヲ維持スルヲ努メサリキ尤獨政府員ハ該原案ハ明治二十年間本官之ヲ起稿シタルコトヲ詳知セルニ由リ文意不明瞭ナル廉ヲ除キテハ好意ニモ可成原稿ヲ保守スルニ勉タリ今ヤ商議ニ於テ訓旨ヲ遵守シ又ハ遵守セスシテ決定シタル箇條ヲ差別スレハ概ネ左ノ如シ

甲、原案第三條ヲ維持セシニハ獨國ノ輸入税則ニ差響ヲ

致スニ付寧ロ簡易ノ文字ヲ以テ修正致度旨獨政府員ヨリ提議セリ依テ本官ハ訓旨ヲ守リ寧ロ之ヲ廢止スヘク提議シテ其協意ヲ得タリ

乙、本條約第十四條ノ各項ニ關シ文字ノ修正加除等格段緊要ナラサル變更御訓令相成候ニ付協意ヲ收續スルニ妨ナキ限リハ令旨ヲ主張シ維持シタレトモ其D項第二段ノ取極ヲ消滅スルコトニハ獨政府員同意ヲ表セサルノミナラス我民法債權擔保編第三百七條(但シ明治二十三年三月二十七日公布ノ法律ヲ云フ)ニ於テモ業已ニ類似ノ取極アルニモ係ラス強テ訓旨ヲ保持センニハ重テ獨逸商議員ノ疑念(領事裁判廢止ノ後ハ内外人ニ通シ純ラ我民刑六典コソ通用スヘキ管ナルニ商法第一編第七十三條ノ明文アルニモ係ラス先般西園寺侯爵ノ回答此趣意ニ符合セサルヲ以テ獨逸政府ハ俄ニ疑念ヲ起シ帝國政府ハ條約締結ノ後ニ至リ外人ニ對シ民法ノ通用ヲ制限スル內意アリト推察シ遂ニ本官ニ迫テ本年三月三十一日附ノ書帖ヲ要求セリ)ヲ挑發シ甚タ不都合ヲ惹起スルノ戒アリタルヲ以テ依然原案ヲ存シ置キタリ

ノ外他ノ搜索或ハ監視ヲ許サスト云フ獨逸合衆國條約ニ於テハ其取極稍々煩雜ニシテ主旨明瞭ナラス爲之獨希間特ニ獨米間ニハ屢々誤解相生シ相互ノ船舶兩ナカラ自由ナル交通ヲ妨害サレタルコトアリ故ニ獨米政府ハ遂ニ外交文書ヲ以テ本條約本文ノ取極ヲ交換シタルニ由リ今回ノ條約ニハ同一事件ヲ稍々明細ニ取極ント欲ス云々獨逸商議員ヨリ懇望ヲ提出シタルヲ以テ本官之ヲ許容シタル都合ナリ

戊、本條約付添覺書ノ第一項ニ關シテハ本官ノ稟申ニ對シ本年第二十一號電信ヲ以テ一回ハ獨政府ノ建議ヲ御擯斥相成タレトモ其後第二十二號ノ電信ヲ以テ更ニ貴意ノ所在ヲ明斷シタルニ由リ特ニ「尙ホ孰レノ國ノ民籍ヲモ所有セサル元日本人若クハ元獨逸人」ト云ヘル明瞭ナル文意ヲ掲ケ再度ノ稟申ヲ經ス直ニ獨逸政府ノ提議ヲ容レタリ

將又罪人引渡事件ニ關スル第二項ハ我ニ取リテ左程大切ナル事體ニ非サレトモ事文明國ノ幾望若クハ慣習ニ稱ヘルヲ以テ歐洲特ニ獨逸ノ輿論ハ我政府ノ措置玆ニ出テタルヲ嘉セサル者ナシ但英國政府モ本件ニ關シ一

丙、本條約第十四條E項ノ末段ニ關シテ云々訓令アリタレトモ是亦獨商議員ノ同意ヲ得ルニ至ラス依テ原案ヲ其儘ニ存シ置タリ然レトモ本官ノ意見ニテハ將來來諭ニ類似スル如キ不都合生スルノ患ナシ何トナレハ公私廳ニ於テ保管シ若クハ抵當トナセル貨物貨財ニ關シテハ豫メ一定ノ法律勿ル可カラス又公私廳ハ必ス此法律ノ規程ニ據テ貨物若クハ財産ヲ取扱フ筈ナリ故ニ領事官ニシテ死亡者ノ遺產タル貨財ノ返付ヲ請求スルモ該官先ツ規程ノ義務ヲ充スニ非レハ公私廳ハ其請求ヲ容スシテ可ナリ

丁、本條約第十五條ノ第一項ニ於テ「自由ナル交通ニ任セル船」ノ數字ヲ加ヘタルハ他ノ意ニ非ラス「カランテーン」又ハ其豫戒等ニ罹リタル船ニ對シテハ領事ト雖モ自由ニ交通セシメサル趣意ナリ

其第二項ハ獨逸希臘間ノ條約第十條第二項及獨逸合衆國間ノ條約第十二條第二及三項ヲ折衷シテ修正シタルモノナリ其理由ハ我原案ニ於テハ稅則或ハ他ノ法律ナル漠然タル文字ヲ使用シテ事判然タラス獨逸希臘條約ニ於テハ「尋常ナル租稅官の若クハ衛生警察の監視

昨年七月十四五日ノ際同一ノ議ヲ提出シタレトモ當時此類ノ瑣事ヲ顧ル餘暇ナキニ由リ斷然其議ヲ擯斥シタリ然レトモ將來同政府ヨリ重テ本案ヲ提出セハ快ク御許容相成度不堪幾望候

右申進度如斯ニ御座候 敬具

明治二十九年四月十四日

在獨逸 特命全權公使 青 木 周 藏

外務大臣伯爵 陸 奥 宗 光殿

註 1 括弧内ノ數字ハ本書ニ於ケル文書番號ナリ

2 「本年三月三十一日附ノ書帖」トハ二〇四附(六)

別紙乙號(獨文)ヲ指スモノノ如シ

#### 附屬書一

原案修正願末書

別信第二號附屬

通商航海條約書并議定書原案ニ修正變更ヲ加ヘタル理由及願末左ノ如シ

條約書第三條

第二項、本項ニ於テ Industry ナル文字ヲ挿入シアル

ハ二十八年電信第一四八號ヲ以テ獨政府ノ要求ヲ具報シタルニ同年貴電第七四號ヲ以テ該文字ノ挿入ヲ承諾スル旨回訓アリタルニ基ケリ

第三項、本項中 Open to the importation and exportation of merchandise from & to ノ文字ハ二十八年電信第一五五號ヲ以テ Ports open to foreign Commerce ノ意義ニ關シ獨政府ノ要求ヲ具報シタルニ右ニ對シ同年貴電第八二號回訓ノ趣意ニ基キ修正セリ

又本項中末節ニ於ケル Industry ナル文字ノ挿入ハ二十八年電信第一六〇號ヲ以テ獨政府ノ要求ヲ具報シタルニ右ニ對スル同年貴電第八二號ヲ以テ承諾ノ旨回答アリタルニ據ル

#### 條約書第四條

第一項、本項ニ於テ Industry ノ文字ヲ挿入シアルハ二十八年電信第一四八號ニ對スル同年貴電第七四號ノ回訓ニ基クナリ

#### 條約書第八條

本條商品ノ標本無稅輸入ノ義ニ就キ獨伊條約(千八百

九十一年締結)第五條ニ類似シタル互相條款ヲ掲載スルノ件ハ二十九年電信第一三號ヲ以テ具申シ同年貴電第一二號ヲ以テ承認ヲ經タリ

#### 條約書第九條

本條ノ修正ハ二十八年電信第五〇號具申ニ對シ同年貴電第四五號ニ以テ「承諾ス但條約書ニ之ヲ掲載スヘシ」トノ回訓アリタルニ基ケリ

#### 條約書第十三條

本條ノ修正ハ第三條第三項中ノ說明ニ同シ

#### 條約書第十七條

本條ニ於ケル互相規約ハ二十九年電信第十三號ヲ以テ承諾ノ旨回答アリタルニ據ル

#### 條約書第十八條

第五項、本項ノ修正ハ外國人居留地ニ於ケル永代借地權ハ將來其所有主ヨリ之ヲ日本人ヘモ隨意ニ讓渡スコトヲ得ルヤ否獨政府ニ於テ明確ノ宣言ヲ要スル件ニ付二十八年電信第一四八號具申ニ對シ同年貴電第七四號回答ノ趣旨ニ基ケリ

#### 議定書第二項

護ニ關シテハ獨逸ハ Fern ニ於テ締結セラレタル萬國條約ニ加盟スト雖モ發明、模形、及商標ノ保護ニ關シテハ萬國條約ニ加盟セス即チ是等ノ事項ニ關シテハ萬國條約ノ約款ニ依テ牽制セラル、コトナク須ク後日ヲ期シ日、獨、兩國間ニ便宜ノ條約ヲ締結セント欲スルモノナリ故ニ二十八年電信第五〇號ニ對スル同年貴電第四五號并ニ二十九電信第十三號及十八號ニ對スル同年貴電第十二號及十三號ノ趣旨ニ依リ條約第十七條ノ規定ヲ締約シ且ツ議定書ニ於テ本項ノ如ク宣言セリ

#### 議定書第五項

本項ハ條約書第二十條領事裁判制度廢止ニ關係ス領事裁判制度廢止ノ時既ニ領事裁判廷ニ於テ受理シ現ニ審理中ニ係ル事件即チ Lis pendens ニ就テハ其事件ノ完結スルマテ領事裁判廷ヲシテ之ヲ取扱ハシムルノ明約ハ獨逸政府ノ固ク要求スル所ナリ依テ二十八年電信第五〇號ヲ以テ其旨ヲ具報シ同年貴電第四五號ヲ以テ「承諾ス但シ議定書ニ之ヲ掲載スヘシ」トノ回答ヲ領セリ

#### 議定書第四項

本項ハ條約書第十七條ニ關係ス版權(copyright)ノ保

## 附屬書二

二十八年五月青木公使ヨリ獨逸政府ニ提出セル覺書譯文  
日本國ニ於ケル司法現況

司法權ハ天皇ノ名ニ於テ法律ニ依リ裁判所之ヲ行フ

裁判所ノ構成ハ法律ヲ以テ之ヲ定ム

裁判官ハ法律ニ定メタル資格ヲ具フル者ヲ以テ之ニ任ス

裁判官ハ刑法ノ宣告又ハ懲戒ノ處分ニ由ルノ外其ノ職ヲ免  
セラルハコトナシ

懲戒ノ條規ハ法律ヲ以テ之ヲ定ム

裁判所ノ對審判決ハ之ヲ公開ス但シ安寧秩序ヲ害スルノ惧  
アルトキハ法律ニ依リ又ハ裁判所ノ決議ヲ以テ對審ノ公開  
ヲ停ムルコトヲ得

特別裁判所ノ管轄ニ屬スヘキモノハ別ニ法律ヲ以テ之ヲ定  
ム

行政官廳ノ違法處分ニ由リ權利ヲ傷害セラレタリトスル訴  
訟ニシテ別ニ法律ヲ以テ定メタル行政裁判所ノ裁判ニ屬ス  
ルモノハ司法裁判所ニ於テ受理スルノ限ニアラス

千八百八十九年二月十一日ヲ以テ公布セラレ翌千八百九十  
年十一月二十五日帝國議會ノ開會ト同時ニ施行セラレタル

裁判所ノ構成ハ千八百九十年十一月一日ヲ以テ實施セラレ  
タル裁判所構成法ニ基テ全然之ヲ決行シタリ其ノ法ハ多ク  
ハ獨逸帝國ニ行ハルノ所ノ制度ヲ模範トセシモノニシテ獨  
逸帝國ノ「アムツゲリヒト」(區裁判所)ノ組織及權限ヲ  
有スル地方裁判所ノ外ハ第一審裁判所、控訴院及大審院共  
ニ悉ク合議裁判ノ制ヲ取り各種ノ訴訟事件ハ三名若ハ七名  
ノ判事ヲシテ之ヲ裁判セシメ陪審人ヲ置テ裁判ニ干渉セシ  
ムルヲ許サス思フニ此職業判事ノ裁判ハ外國人ニ對シテ事  
實ニ適シ情實ニ流レサル公平ノ判決ヲ與フルモノトノ保證  
トナルヘシ又各裁判所ノ存廢及其ノ管轄區域ハ法律ヲ以テ  
之ヲ定メ裁判所内各部ノ設置事務ノ分掌及代理ノ規則ハ毎  
年所長會議ヲ開キ多數ニ由リテ之ヲ決ス司法行政ノ監督權  
ハ法律ヲ以テ之ヲ定メ而シテ裁判ノ監督ハ法律ニ明文アリ  
テ之ヲ許サス又裁判官ノ地位ニ付テハ一般ニ近世ノ國家學  
及法律學ノ觀念ニ據リ高等ノ裁判事務ニ從事スル者(裁判  
官及檢事)ハ豫メ二箇ノ試験ヲ受ケ第一回試験後ニハ三年  
間裁判所及檢事局ニ於テ事務ヲ見習フコトヲ要ス而シテ第  
一回試験ハ帝國大學ノ卒業生ニ限リテ之ヲ免シ其他ハ博士  
及三年五年若ハ十年(裁判所ノ階級ニ依リ)間代言ノ業ニ

憲法中ノ前記各條(第五章第五十七條ヨリ第六十一條ニ至  
ル)ハ決シテ法治國ノ根本ヲ創定スルノ目的ヲ以テ多年發  
達進歩セシメントシタル完成ヲ表スルモノナリ抑モ我カ  
皇帝陛下ノ政府カ我カ國ヲシテ開明進歩ノ恩澤ニ浴セシメ  
ムトノ決心ヲ爲スヤ此ノ目的ニ適合スル所ノ整然タル法典  
ヲ制定スルヲ以テ至要ノ任務ト認メタリ何トナレハ法典ハ  
從來之レナキニアラサリシト雖モ司法權ハ行政權ト分離セ  
ラレス而シテ現行諸規則中ニハ完全ナル法典ノ體裁ヲ爲サ  
サルモノアリシノミナラス千八百六十八年ノ變革ニ由リテ  
漸ク一變スルヲ得タル積年ノ凝結ノ爲メ近世ノ國家ト社會  
トノ上ニ行ハルノ觀念ニ副ハサルモノアリシヲ以テナリ此  
ノ故ニ帝國政府ハ全然裁判權ヲ獨立セシメ而シテ帝國ノ臣  
民(一時司法ニ關スル大權ノ執行ヲ讓歩シタル外國人ニ對  
シテモ)ニ保證スルニ其ノ權利上ニ係ル事件ニ付不偏不黨  
能ク實際ニ適フ所ノ正當ノ裁判ヲ與フヘキコトヲ以テシタ  
リ巨多ノ人力ト資力トヲ費シ殆ト二十五年餘ノ星霜ヲ以テ  
此任務ニ附隨セル組織上及立法上ノ事業已ニ完成シタレハ  
今ヤ帝國政府ハ概シテ其ノ目的ノ彼岸ニ達シタルモノト云  
フヘキナリ

從事シタル辯護士ニ限リ裁判官トナルコトヲ許ス此ノ他法  
律ニ依リ裁判官ハ獨立ニシテ終身官トシテ本人ノ意志ニ反  
シ停職免職又ハ減俸ニ處スルハ懲戒ノ處分又ハ刑法ノ宣告  
アルニ限ル懲戒處分ハ千八百九十年八月二十日公布ノ懲戒  
法ニ從ヒ通常裁判所(控訴院及大審院)ニ於テ行フ裁判官  
ニハ俸給及恩給ヲ支給シ控訴院又ハ大審院ノ總會ノ決議ニ  
由ルニアラサレハ退職セシムルコトヲ得ス裁判官ハ千八百  
九十年六月二十日公布ノ法律及同年八月二日ノ勅令ニ依リ  
最下級ノ裁判官ニ至ルマテ其ノ身分ニ應シ生活ノ程度ト國  
内ノ物價トヲ斟酌シテ定メタル俸給ヲ支給ス而シテ司法、  
監獄及警察上ニ費スル所ノ費額ハ千八百七十六年度ニハ五百  
十四萬四千四百五十五圓ニ過キサリシカ千八百八十七年度  
ニハ昇リテ千二百八萬六千八百八十圓トナリ千八百九十二年度  
ノ豫算表ニヨレハ更ニ増シテ千三百九十萬七千二百二十一  
圓トナリタリ

(註空白)  
手續キニ關スル法律モ

裁判ハ民事事共ニ裁判所ノ構成ト均シク已ニ其完成ヲ告ケ  
全然歐洲ノ法學上ノ觀念殊ニ裁判ノ公開口頭審問及訴訟手  
續ニ關スル原則ヲ基トシテ制定シタル刑事訴訟法ハ千八百

八十二年ノ初メ以來已ニ實際ニ行ハレタリシカ其後裁判所構成法ニ適セシメンカ爲メ之ヲ改正シ構成法ト共ニ施行シタリ又民事訴訟法モ獨逸法ニ倣フテ之ヲ起草シ其草按ハ千八百八十六年中之ヲ公ニシ千八百九十一年一月一日以來之ヲ實施セリ

又公法上ニ關シテモ普ク人民ノ權利ヲ保護シ古來日本國ニ行ハレタル地方自治ノ制度ヲ獨逸國ニ倣フテ制定シタル市町村制及府縣制ニ依リテ大成シタル後千八百九十年六月三十日ヲ以テ公布シ同年十月一日ヲ以テ實施シタル行政裁判法ニ依リ獨立ノ裁判官ヲ置ク所ノ特別ノ行政裁判所ヲ設置シ并ニ行政訴訟法ヲ設ケタリ

實質的法律ニ付テ言フトキハ刑法ハ千八百八十二年以來刑事訴訟法ト同シク仁慈ノ精神ヲ以テ制定セラレ該法ト同時ニ施行セラレタリ而シテ當初直ニ着手シタル民事ニ關スル法典ノ編纂ハ非常ノ困難ヲ生セシモ千八百八十四年ニハ早ク已ニ破産法ヲモ包含スル所ノ商法草按ヲ公ニシ千八百八十二年以來ハ時々民法中一部ノ草按ヲ公ニスルヲ得ルニ至リ其ノ後此ノ二草按ハ充分ノ審査ヲ經タル後千八百九十年三月二十七日及十月六日ノ二回ニ之ヲ公布シ商法ハ千八百

ニ相續法ニ付テハ國籍主義ヲ取リタリ尤モ該法律ノ効力ハ民法及商法ト均シク一時之ヲ停止シタリト雖モ日本國現行ノ法律ニハ右萬國私法上ニ關スル規定ナク且ツ先例モ之ナキヲ以テ元ヨリ裁判例アルノ理ナキカ故ニ近世ノ法學上ノ主義原則ニ從フノ慣例ナル我カ國ノ裁判所ニシテ法例施行前若シ萬國私法ニ關スル事件ヲ裁判スヘキ場合ニ遭遇スルコトアラハ該法例ニ依ルノ外ナキナリ況ンヤ法例ノ原則ハ現今行ハル、所ノ學理ニ適合スルニ於テオヤ故ニ獨逸國ノ臣民ニシテ自國ノ法律ニ從ヒ裁判ヲ受クルヲ至當トスル以上ハ今日ト雖モ已ニ之ヲ保證セラレタルモノト言フヘク此ノ點ニ關シテハ兩國ノ間ニ締結セラルヘキ領事官條約ニ於テ尙ホ一層明瞭スル所アルヘキナリ

刑法及私法ノ編纂ハ前概言スルカ如ク千八百九十年迄ニ悉皆其ノ業ヲ終ヘ千八百八十二年以來ハ日本國ノ裁判所ハ歐洲法學ノ觀念ニ基ク所ノ刑法及刑事訴訟法ヲ實行シ其後五年(一)ヲ經テ獨逸法ニ從フテ制定シタル民事訴訟法施行セラレタリ而シテ實質的私法ハ十餘年前ヨリ日本ノ法律家ニ其ノ起草ヲ命ジタリシカ其ノ内商業上ニ最も主要ノ分ハ殆ト二年以來實際ニ行ハレ其ノ他ノ部分モ一旦已ニ法律ト

九十一年一月一日ヨリ民法ハ同九十三年一月一日ヨリ施行スルコトトナリタリ然レトモ其年開會シタル帝國議會ノ請求ニ依リ千八百九十三年一月一日迄商法ノ施行ヲ停止シ次テ千八百九十二年十一月二十五日ノ法律ヲ以テ議會ヲシテ前記ニ法律ヲ審査セシムル爲メ實施ノ期ヲ千八百九十七年一月一日迄延期シタリ然レトモ右延期法律中ニハ專ラ修正ノ爲ニスルヲ以テ當時已ニ修正ノ業ヲ終ヘタルモノハ直ニ施行スヘキ旨ヲ明定シタリ因リテ商法中商號、商事會社、爲換及破産ニ關スル分即チ外國人トノ交通上最も重ナル法律ハ一二ノ修正ヲ加ヘタル上千八百九十三年三月四日公布ノ法律ヲ以テ已ニ同年七月一日ヨリ實施セラレタリ而シテ其ノ他ノ修正ノ業ハ力メテ之ヲ進メラル、ヲ以テ其完結ヲ告クルハ思フニ當初豫期セル時期ヨリモ速カナラン蓋シ從前ノ經驗ニ依レハ議會ノ修正ハ各條ニ涉ルコト極テ少ナカルヘント豫想セラルレハナリ

前記ノ法典ニ附帶シテ千八百九十年十月六日ヲ以テ十七ヶ條ヨリ成立スル法例ヲ公布セラレ萬國私法ニ關スル一二ノ條規(第三條及第四條)ヲ掲ケタリ即該法律ニ於テハ人ノ能力、身分、親族ノ關係及其ノ關係ヨリ生スル權利義務并

シテ公布セラレンシモ時日ト事項トヲ制限シテ修正ニ付セラレタリ思フニ該法ヲ速ニ完成スルハ内國及萬國ノ利益ノ爲メ必要ナルヲ以テ豫定ノ制限ヲ逸出スルカ如キハ蓋シ之レナカラシ又裁判官及檢事ハ殆ト皆獨逸法、佛法又ハ英法ヲ學ヒ而シテ法典編纂ノ業ハ主トシテ該法學者ノ從事シタル所トス大審院ニハ獨逸國ニ於テ獨逸法ヲ研究シ爾來獨逸國ノ法學者ト交際ヲ絶タサル獨逸語ヲ解スル法學者ヲ以テ長トス帝國大學ニハ獨逸、英、佛法ノ三部ヲ分チ學生ニハ其ノ中ノ一部ニ就テ學ハシメ其日本國法ノ講義ハ現ニ施行中ノ法律ト一時施行ヲ停止シタル法律トニ基キテ之ヲ爲シ多數ノ裁判官檢事及代言人ヲ出シタル私立法律學校モ帝國大學ト同一ノ方法ヲ行フ高等司法官及行政官登用試験ノ際ニハ施行停止中ト否トニ拘ハラス法律ノ全部ニ涉リテ試験ヲ施ス故ニ民法及商法ハ方今尙施行停止中ニ係ルト雖モ日本ノ裁判官ハ別ニ由ルヘキノ條規ナキトキハ民事訴訟事件ニ付テモ亦該法ニ由ルヲ以テ事實上ヨリ觀察スルトキハ此ノ二法モ已ニ實施セラレタルト異ナル所アラサルナリ之ヲ要スルニ領事裁判權ヲ廢スルモ日本ノ裁判官ハ別ニ準備ノ時日ヲ要セスシテ直ニ充分ニ能ク法典ヲ適用スルノ能力ヲ有スル

モノトス

又外國人カ日本語ヲ解スルハ困難ナラサルニアラスト雖モ現今日本ノ高等官中過半ノ司法官及代言人ハ少ナクモ歐洲ニ於ケル重ナル語中ノ一ヲ解スルヲ以テ彼等ハ強テ不便ヲ感セサルノミナラス日本ニ於テハ外國語ヲ學ブノ便ヲ設ケタルヲ以テ増々其不便ヲ減スルコトヲ得ヘキナリ已ニ今日ノ現狀ニ在リテモ開港場ニ在留スル外國人ハ日本諸官廳トノ交渉事件及内國人ニ對スル訴訟事件アルニ當リ獨逸語佛語又ハ英語ヲ以テ用便シ得ル代言人ヲ得タルノ例ハ一ニシテ足ラス加之ナラス前記諸法律ノ草按ハ悉ク英獨又ハ佛語ヲ以テ起稿セラレ其ノ法律トナルニ及テ我カ司法省ハ之ヲ英佛ノ文ニ反譯セシメ目下修正中ノ法律ニ改正セラルノ所アラハ其改正ノ分モ亦同シク之ヲ反譯セシメラルヘキモノトス

千八百九十五年五月

青木

註 本覺書原文(獨文)ハ之ヲ省略ス

二〇八 明治三十九年四月二十七日

青木駐獨公使ヨリ  
陸奥外務大臣宛

sion of Consular officials and as to the rights, privileges and immunities which these officials are to enjoy in Germany and Japan in the exercise of their duties, have agreed to conclude a Consular Treaty and for this purpose have appointed as their Plenipotentiaries:

His Majesty the Emperor of Japan; His Envoy Extraordinary and Minister Plenipotentiary accredited to His Majesty the German Emperor, King of Prussia, Viscount Siuzo Aoki;

His Majesty the German Emperor, King of Prussia; His Minister of State, Secretary of State for Foreign Affairs, Adolf Baron Marschall von Bieberstein;

Who, after having communicated to one another their full powers which were found in due and proper form have agreed upon and determined the following Articles:

#### Article I.

Either of the Contracting Parties may appoint Consuls-General, Consuls, Vice-Consuls, and Consular Agents in all harbours, towns and places in the territory of the other Party, with the exception of

陸奥外務大臣時代 對獨交渉 二〇八

領事權限條約及附屬議定書英譯其他送付ノ件

附屬書一 英譯領事權限條約及附屬議定書

二 日獨稅目ニ關スル說明書

別信第五號

六月一日到

別紙日獨領事權限條約及附屬議定書英譯文并日獨稅目ニ關スル說明書及御送付候 敬具

明治二十九年四月二十七日

在獨逸 特命全權公使子爵 青木 周藏

外務大臣伯爵 陸奥 宗光 殿

附屬書一

別信第五號附屬

領事權限條約

Translation.

Consular Convention between Japan and Germany, April 4, 1896.

His Majesty the Emperor of Japan and His Majesties the German Emperor, King of Prussia, in the name of the German Empire, actuated by the common desire to make regulations as to the mutual admis-

sion of localities where it may not appear desirable to recognize such officials. This restriction, however, shall not be put in force against either of the Contracting Parties without also being applied to every other Power.

Consuls-General, Consuls, Vice-Consuls, and Consular Agents of both Parties, as well as the Chancellors, Secretaries, officials and Attachés of the Consulates shall enjoy in both countries all rights, immunities and privileges which are accorded or shall in future time be accorded to the officials of corresponding rank of the most favoured nation.

#### Article II.

The Consuls-General, Consuls, Vice-Consuls and Consular Agents shall be reciprocally received and recognized on producing their commissions in the form established in their respective countries. The necessary exequatur shall be delivered to them free of cost, on exhibiting which they shall enjoy the rights, prerogatives and immunities reciprocally granted. Notice shall be given, on producing the commission, of the limits of district allotted to the

consular officer and subsequent notice shall be given of the changes that may be made therein.

The Government granting the exequatur shall be at liberty to withdraw the same on stating the reasons for which it has thought proper to do so.

### Article III.

Consular officers, if citizens of the state by which they were appointed, shall be exempt from arrest or imprisonment in civil cases and from preliminary arrest in penal cases, except in the cases of offences which the local law qualifies as crime. They shall be exempt from military quarterings and contributions, and provided they be not engaged in commerce or manufacture, or any other business or pursuits for profit not belonging to their consular functions, they shall also be exempt from capitation or sumptuary taxes and from all other duties or contributions of a direct or personal character; but this immunity shall not extend to customs, excise, or octroi duties, nor to taxes upon real property, which they may acquire or own in the country in which they reside.

Consular officers who engage in business or com-

in the period prescribed to him, and communicate his written deposition to the court, signed and with his official seal attached.

### Article V.

Consuls-General, Consuls, Vice-Consuls, and Consular Agents may place over the entrance to their offices, or of their dwellings, the arms of their nation, with the proper inscription indicative of the office. They may also hoist the flag of their country over the house in which the consular office is. They may also hoist their flag on board any vessel employed by them in port for consular services.

### Article VI.

The consular archives shall be at all times inviolable, and under no pretence whatever shall the local authorities be allowed to examine or seize the papers forming part of them.

When, however, a consular officer is engaged in business, the papers relating to the Consulate shall be kept separately locked up, apart from his private papers.

The offices and dwellings of consular officers who

merce shall not plead their consular privileges to avoid commercial liabilities.

In case of the arrest of a Consul or Consular officer, the Legation of the Country to which he belongs shall be immediately informed thereof by the Government of the Country in which the arrest have taken place.

### Article IV.

Consuls-General, Consuls and their Chancellors or clerks, as well as Vice-Consuls and Consular Agents are bound to appear as witnesses before a court, if the court of the country in which they reside so desire. But the judicial authorities must request them in writing, officially, to appear before them.

In case the Consular officer is prevented from attending by his official duties or by illness, the *official authority* (?) of the court (but only in civil suits) must go to his residence and take his evidence orally, or ask for his written deposition in conformity with the formalities prescribed by the laws of the respective countries. The officer in question must comply with the request of the court authority with-

are citizens of the country by which they were appointed and are not engaged in commerce or manufacture or any other professional business shall be at all times inviolable. The local authorities shall not, except in the case of pursuit for crimes, invade them under any pretext whatever. In no case shall they examine or seize the papers there deposited. In no event, however, may the consular offices or dwellings be used as places of asylum.

### Article VII.

In the event of the death, prevention or absence of Consuls-General, Consuls, Vice-Consuls, and Consular Agents, their Chancellors or Secretaries, whose official character may have previously been made known to the authorities in Germany or Japan respectively, may temporarily exercise the consular functions and, while thus acting, shall enjoy the same rights, prerogatives, and immunities as the officers whose places they fill, on the conditions and with the reserves prescribed for those officers.

### Article VIII.

Consuls-General, and Consuls may, with the assent



of their respective Governments and with the concurrence of the Government of the country in which they reside, appoint Acting Consuls as their substitutes in case of hindrance or temporary absence, and Consular Agents in the cities, ports and places within their Consular Districts. Such Acting Consuls or Consular Agents shall be furnished with a commission by the Consul appointing them or by his Government.

They shall enjoy the consular privileges stipulated in this *convention* (?) for consular officers, subject to the exceptions and reservations provided for the same.

#### Article IX.

Consuls-General, Consuls, Vice-Consuls, and Consular Agents shall have the right to apply to the authorities of the respective countries, judicial or executive within their consular districts, for redress in case of any infraction of the treaties and conventions existing between the two countries or of international law, and to ask the said authorities for information or to address the same with a view of

official residence. They can also take and attest the acts of agreement between persons of the latter category if such contracts relate to property situated in, or to business to be transacted in the territory of the nation by which the said consular officers were appointed.

3. To translate and legalize all documents emanating from the authorities or functionaries of their own country.

All such instruments and also copies, extracts and translations, when duly authenticated by the said consular officers under the official seal of the Consulate, shall have in the two countries the same force and effect as if drawn up or authenticated by a notary public or other competent public or judicial officer of one or the other of the two countries provided they are subject to the stamp or other duties and charges imposed by the laws of the country in which they are to take effect.

#### Article XI.

Diplomatic Representatives, Consul-General, Consuls and Vice-Consuls shall have the right in conformity

protecting the rights and interests of their countrymen. If due attention should not be given to these applications, the consular officers aforesaid, in the absence of a Diplomatic Agent of their country, may apply directly to the Government of the country where they reside.

#### Article X.

Consuls-General, Consuls, Vice-Consuls, or Consular Agents of the two countries, or their Chancellors, shall have the following rights, so far as they are thereto authorized by their national laws and ordinances.

1. To take at their office or official residence or at the residence of the parties or on board of vessels of their own nation the dispositions of the captains and crews, of passengers on board, of merchants, or any other citizens of their own country.

2. To take and attest unilateral deeds, wills and bequests of their countrymen, and any acts of agreement entered into between their own nationals or between their nationals and the subjects or other inhabitants of the country in which they have their

with the laws of the country by which they were appointed to celebrate marriages between subjects of the said country according to the laws of the same.

This provision shall not apply to marriages where one of the parties is a subject of that country in which the officer has his official residence.

The officer must give immediate notice to the competent local authorities of all marriages celebrated in accordance with the above provisions.

#### Article XII.

Diplomatic Representatives, Consul-General, Consuls or Vice-Consuls shall have the right conformably to the laws and ordinances of their country, to certify births and deaths of their countrymen.

The above provision does not affect the existing duty of the parties concerned to report births and deaths to the local authorities.

#### Article XIII.

Consuls-General, Consuls, or Vice-Consuls shall have the right to appoint guardians and curators for their countrymen, and to exercise control over the conduct of guardianship and curatorship according to the

laws of their own country.

#### Article XIV.

In case of the death of a subject of either of the Contracting Parties within the territories of the other the following rules shall be observed:

a) In the event of the death of a Japanese in Germany or of a German in Japan, at or near the place where a Consul-General, Consul, Vice-Consul, or Consular Agent of the country of the deceased resides, the local authorities shall immediately give notice of the fact to the consular officer.

If the consular officer is the first to receive information of the death he shall give like notice to the local authorities.

The consular officers shall have the right of affixing their seals, either by the authority of their office or at the request of the parties interested, to all the effects and furniture, as well as the papers of the deceased, after having duly notified the competent local authorities who shall have the right of being present on the occasion and of affixing their seals also.

thereby the right of the latter to issue a similar advertisement.

c) The consular officers may cause the movable property, the preservation of which in its natural state would involve onerous charges upon the estate, to be sold at public auction in the manner prescribed by the law and usage of the country.

d) The consular officers shall keep on deposit, subject to the laws of the country, the effects and articles of value entered in the inventory, the amount received in payment of debts and incomes, as well as the proceeds of the sale of furniture, if any, until the expiration of a term of ten months, counting from the date of the last advertisement issued by the local authorities in regard to the estate of the deceased, or, in the absence of such advertisement, until the expiration of a term of twelve months from the date of the death.

The consular officers shall, however, have the power of immediately deducting from the assets, the expenses of medical treatment and of the funeral of the deceased, wages of his servants, house-

The double seals thus affixed shall not be removed without the cooperation of the local authorities. If, however, the local authorities after having been invited by the consular officers to assist in removing the double seals do not present themselves within 48 hours from the receipt of the invitation, the consular officers may undertake the said operation unassisted.

After having removed the seals, the consular officer shall draw up an inventory of all the goods and effects of the deceased in the presence of the local authorities, if the latter are present in consequence of the aforesaid invitation. The local authorities shall sign the procès verbal drawn up in their presence but shall have no right to claim any fee whatever for their official cooperation in the transaction.

b) The competent local authorities shall advertise, in the manner usual in the country or in the manner prescribed by law, in regard to the succession and the convocation of the heirs and creditors, and the said authorities shall inform the consular officers of their advertisement without, however, affecting

rent, costs of courts and consular fees, and other expenses of similar nature, as well as expenses which may have been incurred for the support of the family of the deceased.

e) Except as provided in the last preceding paragraph, the consular officers shall have the right of taking all measures, which they may deem to be for the interest of the heirs, for the preservation of the movable and immovable property left by the deceased. They may administer such property either in person or through an agent selected by them and acting in their names, and they shall have the right of demanding the delivery of all articles of value belonging to the deceased, whether such articles be in the public treasury or in the hands of private persons.

f) If during the term mentioned in paragraph d hereof, there should arise any dispute as to the claims made by the subjects of the country or of a third power against the estate of the deceased, then, in this case, the Courts of Justice of the country shall have exclusive jurisdiction, provided such

claims do not involve questions of inheritance or legacy.

In case the value of the estate of the deceased is insufficient for the entire payment of his debts, the creditors may, if it is permitted by the laws of country, ask the competent local authorities to declare the estate insolvent. This declaration having been obtained, all the documents, effects, and articles of value forming a part of the estate shall be delivered to the competent local authorities or to the assignees of the insolvent's estate, and the consular officers shall be charged with the duty of representing the interests of the subjects of their country.

g) If, at the expiration of the term fixed by paragraph d hereof, there should exist no claims against the estate, the consular officers, after having paid and discharged, according to the tariff in force in the country, all the dues and expenses chargeable against the estate, shall take definitive possession of the said estate, which they shall liquidate and transmit to the legal heirs, without being obliged to give account to any person except to their own Govern-

ment.

h) In all questions, relating to the opening, the administration, and the liquidation of the estate of the subjects of one of the two countries arising in the other, the respective Consuls-General, Consuls, Vice-Consuls and Consular Agents shall be legally entitled to represent the heirs, and shall be officially recognized as their representatives, without being obliged to confirm their powers by a special document.

The consular officers may, therefore, present themselves, either in person or through an agent who are duly qualified for the purpose by the law of the country, before the competent authority of the country, and they may watch the interests of the heirs in all matters concerning the estate, and may deal with the claims raised against the interests of the heirs.

They are, however, bound to bring to the knowledge of the executors of the will, if any exist, or to the heirs present or duly represented, any claim which may be presented against the estate, so that the executors or heirs may bring forward any objec-

tion they may have thereto.

It is, however, hereby understood that the Consuls-General, Consuls, Vice-Consuls, and Consular Agents, being considered as the authorized representatives of their countrymen, cannot be personally sued for matters relating to estates.

i) The right of succession, as well as the partition of the estate of the deceased, are to be determined by the law of his country.

All claims relating to the right of inheritance and partition of the estate are to be determined by the courts of justice or by the competent authorities of the same country, and in conformity to the laws of that country.

j) If a German dies in Japan or a Japanese in Germany at a place where there is no consular officer of his country, the competent local authorities shall proceed, in accordance with the local law, to take an inventory of the property left by the deceased, and to affix their seals thereto. Authentic copies of the documents pertaining to the case together with the certificate of death and all documents show-

ing the nationality of the deceased, shall be sent, as soon as possible, to the consular officer nearest to the place where the estate is.

The competent local authorities shall take, in respect to the estate of the deceased, all the measures prescribed by the law of the country, and the estate shall be handed over as soon as possible, after the expiration of the term fixed by paragraph d hereof, to the aforesaid consular officer or his agent.

It is understood that from the moment a competent consular officer or his agent arrives at the place where the estate is, the local authorities, who may have interposed in the meanwhile, shall conform to the foregoing provisions of this Article.

k) The provisions of the present Treaty shall equally apply to the estate of subject of either of the two States who, though dying outside the territorial limits of the other, may have left movable or immovable property therein.

l) The Consuls-General, Consuls, Vice-Consuls, and the Consular Agents of either country shall have

the exclusive charge of making inventories and of taking other steps necessary for the preservation and liquidation of the estates left by seamen, passengers, and travellers of their nationality, who may have died in the other country, either on land or on board of vessels.

#### Article XV.

The Consuls-Generals, Consuls, Vice-Consuls, and Consular Agents shall be at liberty to go either in person or by proxy on board vessels (with which free communication is permitted) of their nation to take the evidence of officers and seamen to examine the ship's papers, to receive declarations concerning their voyage, their destination, and the incidents of the voyage, also to draw up manifests and lists of freight, to facilitate the entry and clearance of their vessels, and finally to accompany the said officers or seamen before the judicial or administrative authorities of the country, to assist them as their interpreters or agents.

In ports where a Consul-General, Consul, Vice-Consul or Consular Agent of either of the Contracting

Parties has his official residence, the local authorities shall not undertake on board merchant ships, legal investigations, arrests, seizures, searches, enquiries, or order any coercive act whatever beyond the customary Customs and sanitary police regulations, without first informing the above mentioned Consular Authority, in order that he may be present at the official act in question.

In like manner timely notice must be given to the Consular Authority in order to enable him to be present, if the officers or any members of the crew have to make depositions or give evidence before the courts or local authorities. The notification in question must specify the hour at which the hearing is to take place. In the event of the nonappearance of the officer or of his representative, the hearing can be proceeded with in his absence.

#### Article XVI.

The Consuls-General, Consuls, Vice-Consuls, or Consular Agents shall have exclusive charge of the internal order of the merchant vessels of their nation and shall have the exclusive power to take cogni-

zance and to determine differences between the captain, officers, and crews, especially in questions referring to wages and the fulfillment of agreements reciprocally made. Neither shall any court or authority, on any pretext, interfere in these differences, except in cases where the differences on board ship are of such a nature as to disturb the peace and public order in port or on shore, or when persons other than the officers and crews of the vessel are parties to the disturbance or difference. The local authorities shall, however, be bound except as regards their own nationals, to render efficient aid to consular officers when the latter shall request it, in order to find out, arrest, and imprison any person belonging to the crew whom they (the local authorities) may deem it necessary to detain. These persons shall be arrested at the request of the consular officers, made in writing to the local authorities and supported by a certified extract from the ship's register or the list of the crew, and shall be held during the stay of the vessel in the port at the disposal of the consular officers. Their release shall be

granted only at the written request of the said officers. The expenses the arrest and detention of the persons in question shall be paid by the consular officers.

#### Article XVII.

The Consuls-General, Consuls, Vice-Consuls, or Consular Agents may arrest the officers, sailors, and all other persons forming part of the crew of the merchant or war vessels of their nation, who may be guilty or under suspicion of having deserted from said vessels, for the purpose of sending them on board or back to their country. To that end the consular officers shall apply to any of the competent authorities of the country where they have their official residence, and make or request in writing for the deserters, supporting it by an official extract of the register of the vessel and the list of the crew, or by other official documents, to show that the persons claimed belong to the said crew. Upon such request thus supported, and without the exaction of any oath from the consular officers, the deserters shall be given up, provided that they are not

subjects of the country where the request is made either at the time of their shipping or of their arrival in port.

All assistance and necessary aid, however, shall be furnished for the pursuit and arrest of said deserters, who shall be taken to the prisons of the country and there detained at the request and at the expense of the consular officer, until he finds an opportunity of sending them away.

If, however, such opportunity should not present itself within the space of six months from the day of the arrest, the deserters shall be set at liberty and shall not again be arrested for the same cause.

If the deserters shall have committed any crime or offence in the country within which they are found, they shall not be placed at the disposal of the consular officers until the proper tribunal having jurisdiction in the case shall have pronounced sentence and such sentence shall have been executed.

#### Article XVIII.

In the absence of an agreement to the contrary between the owners, freighters, and insurers, all

dater of such denunciation, the Treaty shall absolutely cease and end.

#### Article XX.

The present Treaty shall be ratified and the ratifications exchanged at Berlin at the same time as those of the Treaty of Commerce and Navigation concluded this day between the Contracting Parties.

In testimony whereof the Plenipotentiaries have signed the same and have affixed their seals thereto. Done in Berlin in duplicate on the 4th of April, 1896.

L. S. Viscount Aoki.

L. S. Freiherr von Marschall.

別信第五號附屬

議 定 書

#### Protocol.

The undersigned Plenipotentiaries, simultaneously with the Consular Treaty concluded this day, have agreed on the following arrangements:

I. In case, on the day when the Consular Treaty

damages suffered at sea by the vessels of the two countries, whether they enter port voluntarily or by stress of weather, shall be determined by the Consuls-General, Consuls, Vice-Consuls, and Consular Agents of the respective countries. If, however, the said consular officer has an interest in or is an agent for said vessel or cargo, or if any inhabitant of the country, or subject or citizen of a third power should be interested therein and the parties can not agree, the local authorities shall decide.

#### Article XIX.

The present Treaty shall come into force as soon as the Treaty of Commerce and Navigation between the Contracting Parties signed this day shall be brought into operation in all its parts. It shall be operative twelve years from the date of its coming into force.

Either of the Contracting Parties shall have the right, at any time after eleven years have elapsed from the date of the Treaty's coming into force, to inform the other of its intention to revoke the same and, after the lapse of twelve months from the

concluded-to-day comes into force, there are found, on the territories of the one or the other of the Contracting Parties, persons who, without being possessed of any nationality, are recognized as the protected subjects of the other, the rights and privileges accorded by the Consular Treaty as regards their nationals to the Consular officers of either party, shall be extended for the term of their life, to the above-mentioned protected subjects. The two Governments shall communicate to each other a register of such persons.

II. A separate agreement will be concluded between the Contracting Parties on the subject of the mutual extradition of criminals and commissions of request in criminal cases. Till the date of the coming into force of this arrangement, the same rights and privileges shall be accorded in Japan to the German Empire as are or may in future time be accorded by Japan to any other Powers, so far as *reciprocity is accorded by Germany to Japan's requests* (Germany in making such request promises to accord reciprocity to Japan ?) in similar cases.

The undersigned Plenipotentiaries agree that this Protocol shall be submitted to the Contracting Parties at the same time as the Consular Treaty signed to-day, and that, if the said Consular Treaty is ratified, the agreements contained in the Protocol shall be regarded as in like manner accepted, without the necessity of a further formal ratification.

It is also agreed that the provisions of this Protocol shall cease to be in force at the same time as the said Treaty is no longer in operation.

In testimony whereof the Plenipotentiaries have signed the same and affixed thereto their seals.

Done in duplicate at Berlin on the 4th of April, 1896.

L. S. Viscount Aoki.  
L. S. Freiherr von Marschall.

## 附屬書二

別信第五號附屬

日獨稅目ニ關スル説明書

稅目 第一、第三、第一三、第一四、第一五、第一六、第

稅目 第五、第六、第八、第一〇、第一二、第二八、  
以上ハ二十八年八月六日附第一六號來訓ニ基ク

稅目 第二三、

之ハ我提出案ノ Nails iron ト二十八年來電第七七號ノ

Wire Nails ヲ折衷シタルモノナリ

稅目 第三六、

之ハ二十八年來電第七七號<sup>3</sup>ニ據ル

稅目 第三七、

之ハ二十八年來電第八三號<sup>4</sup>ニ基ク

稅目 第四五、

之ハ二十九年來電第二二號<sup>5</sup>ノ趣旨ニ據ル

稅目 第四六、

之ハ我提出案ノ Paper, Printing ト二十八年八月六日  
附第一六號來訓<sup>2</sup>ノ Paper other than printing paper  
ヲ折衷シタルモノナリ

註 1 2 3 4 5 夫々「一八二」「一六七」「一七五」「一七九」  
一九八文書ナリ

一七、第二五、第二六、第二七、第二九、第三二、第四  
二、第四九、第五〇、第五一、第五二、第五三、第五四  
第五五、第五七、第五八、  
以上ハ要スルニ我提出案ニ基クモノニシテ唯字句ニ關シ  
テハ日英追加條約ニ倣ヒタル所アリ

稅目 第二、第一一、第一八、第一九、第二〇、第二一、  
第二四、第三〇、第三二、第三四、第三五、第三八、第  
三九、第四〇、第四一、第四四、第四七、第四八、第五  
六、第五九、

以上ハ日英稅目ニ據ル但シ右ノ内第二一、ニ Kalisalpe-  
terノ文字ヲ用ヒタルハ日英追加條約第四二目ノ Nitrate  
of Potashヲ翻譯シタルモノトス第一九、ハ日英追加條約  
第二八目ノ Sheet, Galvanized, both plain and corru-  
gated ヲ翻譯シタルモノナリ第二四、ハ日英追加條約第  
二七目ノ Screws, bolts, and nuts, plain and galva-  
nized ヲ翻譯シタルモノトス又第三四、ハ日英追加條約  
第五一ヲ轉載シタルモノナリ

稅目 第四、第七、第九、第二二、第四三、  
以上ハ二十九年來電第三號<sup>2</sup>ニ基ク

二〇九 明治三十九年五月十五日 青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)

## 新條約聯邦會議通過ノ件

(46) New treaties having passed Federal Council  
presented to Reichstag. (以下省略)

Berlin, May 15, 1896. Aoki.

二一〇 明治三十九年五月十五日 陸奥外務大臣ヨリ  
青木駐獨公使宛(往電)

## 特許權其他ニ關スル裁判管轄權即時回復問題ノ件

No. 409. (33) In telegram 13 you recommended acceptance of German proposal regarding inventions &c. because jurisdiction over the matter can be immediately resumed by Japanese Courts. In finally accepting German proposal. Japanese Government stated they did not understand that resumption of jurisdiction would follow as necessary consequence of proposed stipulation and they accordingly suggested that if you and German Government concurred on the subject your joint opinion might be reduced

to writing. Treaty and accompaniments do not show any express understanding providing for resumption of Japanese jurisdiction regarding inventions &c. so long as existing treaty continues in force. Consequently as jurisdiction is essential to due protection of inventions &c. and as it may be assumed from your telegram 13 and 37 that no difference of opinion exists between you and German Government regarding resumption of jurisdiction, you are requested to ascertain from German Government if they would be willing at (the) time of exchange of ratifications of Treaty to declare by Protocol that it is understood that Japanese Courts resume all jurisdiction respecting Article XVII from the date such Article takes effect. (以下省略)

May 25th, 1896. Mutsu.

註 青木公使來電二十九年二月二十二日着第十三號  
三文書同年四月十一日着第三十七號ハニ〇六文書ナリ

二二一 明治三十九年五月二十日 青木駐獨公使ヨリ  
陸奥外務大臣宛(來電)  
裁判管轄權問題ノ件

二二二 明治三十九年六月十三日 宮岡書記官ヨリ  
西園寺外務大臣宛(來電)

#### 新條約議會通過報告並ニ批准交換時期命令ノ件

(56) Treaties passed Reichstag June 12th. German Government desire to know when they may expect exchange of ratifications.

Berlin, June 13, 1896. Miyaoaka.

註 明治三十九年五月三十日文部大臣侯爵西園寺公望外  
務大臣兼任

二二三 明治三十九年六月十三日 西園寺外務大臣ヨリ  
青木駐獨公使宛(往電)

#### 特許權其他ニ關スル裁判管轄權問題ニ付訓令ノ件

No. 474. (47) Imperial Ordinance providing for operation of Article 17 must be promulgated in time, so that said Article may take effect simultaneously with exchange of ratifications of the treaty. Consequently, necessary to decide (the) question of jurisdiction respecting Article 17 before exchange of

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(50) Articles 17 and 21 of the Treaty warrant no inference that local laws are to be administered by consular courts as in Turkey. They expressly stipulate that *the conditions prescribed for the purpose by law* must be fulfilled and new Japanese enactment; should therefore prescribe that (the) protection of foreigners' patents &c. depends upon submission to Japanese jurisdiction, since the matter lies outside consular jurisdiction. Organs of opposition parties in Germany base their agitation to prevent ratification principally on the grounds that ownership of land is not allowed and that Article 17 creates parity between Japanese and Germans before the law. Consequently, it is highly impolitic to make overtures on the subject because it would only encourage German Government to take advantage of your hesitation over Article 17. Besides, international engagements must leave sufficient elbow room for automatic actions and engagements should not be more precise than necessary. (以下省略).

Berlin, May 31, 1896. Aoki.

ratifications takes place. Japanese Government believe that if German Government are of opinion that we have right, under new treaty, to resume such jurisdiction by means of domestic legislation, German Government would willingly unite in definitive declaration to that effect. On the other hand, if German Government think Japanese Government have no right to resume such jurisdiction by means of unilateral act, then promulgation of Imperial Ordinance providing for exercise of such jurisdiction would inevitably provoke strong protest and remonstrance from German Government. In (the) latter event it would be necessary either to withdraw Ordinance or to maintain our interpretation of the treaty. It would be very awkward to withdraw Imperial Ordinance and it would be extremely undesirable to have disputes respecting meaning of treaty especially while main part of treaty is still in abeyance. Treaty having passed Reichstag, danger from opposition, foreseen in your telegram 50, no longer exists. Under these circumstances Japanese Government think definitive understanding respect-

四〇三

ing jurisdiction under Article 17 (is) highly desirable. Accordingly, you are requested to endeavor to conclude such understanding. Question of form of such understanding as well as method of negotiations are left to your discretion.

June 23, 1896. Satonji.

二一四 明治三十九年七月四日 西園寺外務大臣ヨリ  
青木駐獨公使宛(往電)

特許權其他二國へ回答權限ノ件

No. 505. (52) Regarding my telegram 47, as question of jurisdiction over patent &c. left unsettled seriously impedes ratification, you are desired to send your reply on the subject without further delay.

(Via Eastern) Sent, July 4, 1896. Satonji.

二一五 明治三十九年七月四日 青木駐獨公使ヨリ  
西園寺外務大臣宛(來電)

特許權其他二國スル裁判管轄權問題ノ件

(62) Regarding Article 17, I will call your attention to (the) decisive and most important sence in (the)

in the matter of patents &c. should be exercised by ordinary courts instead of by *Senbai tokhio kiohu*, German Government have no preference whether jurisdiction be exercised by ordinary courts or by *Senbai tokhio kiohu* so long as full protection is impartially accorded. Under these circumstances I hope ordinance will be issued at once making Article 17 operative from the date of exchange of ratifications. Believe me I have made no mistake, on the contrary it was the deliberate result of my small ambition to secure immediately at least partial abolition of consular jurisdiction and I will hold myself fully responsible for interpretation of that Article.

(Via Petersburg), July 4, 1896. Aoki.

Tokio, July 9, 1896.

二一六 明治三十九年七月六日 西園寺外務大臣ヨリ  
青木駐獨公使宛(往電)

裁判管轄權問題ノ件

No. 527. (53) Explanations and assurances in your telegram 62 gratifying and satisfactory so far as they

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first paragraph of Section 4 of Protocol, "der Schutz von Erfindungen etcetera dann gewahrt werden muss, wenn die hierfuer vom Gesetz vorgesehenen Bedingungen erfuelle sind." If Germans will not stand on parallel ground with Japanese by refusing to submit to Japanese jurisdiction as required by our enactment, then our obligation to protect their patents &c. will cease.

Recognizing this logical consequence, both German Government and I have treated, from the beginning, (the) resumption of jurisdiction under Article 17 as a matter of course as fully explained in my *Kimitsu dai-nigoshin* dated April 14th and my telegram 50. Therefore, any attempt on my part to make formal agreement on this point is self-contradictory. Besides, the debate in Reichstag also took for granted that Article 17 gives jurisdiction to Japan but, as your telegram 47 shows great uneasiness over possible dispute, I have been sincerely anxious to carry out your instructions in some way. Accordingly, I tested attitude of German Government by cautiously sounding whether they consider it desirable that jurisdiction

go, but additional information is desired. Jurisdiction respecting industrial property (is) divisible into three categories.

1st Jurisdiction of Patent Bureau which is purely administrative and practically limited to granting, refusing and cancelling patents &c.

2nd Jurisdiction of Judicial Courts, respecting all Germans in Japan so far as concerns enforcement of Japanese laws relating to industrial property.

3rd Jurisdiction of Judicial Courts, limited to those Germans who apply for protection. Regarding first category, administrative jurisdiction is essential incident of protection and is exercisable without consent of German Government.

Regarding second category, you will remember Japan has hitherto demanded this jurisdiction as condition sine qua non to protection of industrial property of foreigners, but considering (the) exercise of this general jurisdiction would require express consent of German Government, it is supposed that such jurisdiction was not contemplated by Article XVII.

Regarding third category, jurisdiction hereunder at



best would be of extremely limited character only existing in cases where Germans had fraudulently obtained protection, but Japanese Government foresee difficulties in exercise of even this limited jurisdiction. Japanese Government equally with Treaty Powers have, in connection with Consular Jurisdiction, repeatedly recognized (the) principle that treaties and not consent of individuals determines jurisdiction, in other words, that in actual presence of Consular Jurisdiction assent of Powers concerned is essential to re-establishment of Japanese jurisdiction. Application of that principle has prevented Japan from opening (the) interior to individual foreigners on condition of submitting to jurisdiction. For the same reason application of (2) German doctor some years ago to publish medical journal in Japanese was rejected, although (the) doctor engaged to submit to Japanese jurisdiction. Supposing (2) German securing patent by consenting to submit to jurisdiction should become criminally liable respecting such patent and should resist Japanese jurisdiction declaring insufficiency of personal consent and should appeal

probable His Majesty will take action shortly. Japanese Government will be obliged, however, to ask German Government to sign with them at the time ratifications are exchanged explanatory declaration.

1st limiting application of (the) engagement providing for six months previous notice of modifications of General Statutory Tariff.

2d excluding from operation of Section 1 of Consular Convention Protocol, persons acquiring new national character.

3d defining meaning of words "rights legally acquired" appearing in note from German Minister for Foreign Affairs.

Instructions on the subject will be sent at the same time as ratification.

Sent, July 16, 1896. Saionji.

二二八 明治三十九年七月二十日 大前書記官ヨリ 西園寺外務大臣宛(來電)

裁判管轄權問題ノ件

(66) Your telegram 53 having pointed out precise

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to German Government for protection, would German Government reversing previous contentions reject (the) appeal saying individual consent alone without their express concurrence was sufficient to set aside German jurisdiction and re-establish Japanese jurisdiction?

Japanese Government accepting your recommendations assurances will no longer insist upon formal agreement. But, under actual circumstances and in order to prevent future complications in connection with issuance of ordinance and exercise of jurisdiction, Japanese Government desire to know exact extent of jurisdiction contemplated by Article XVII, also if acquiescence of German Government could certainly be counted on, in cases such as above hypothetical case.

Sent, July 16, 1896. Saionji.

二二九 明治三十九年七月二十日 西園寺外務大臣ヨリ 青木駐獨公使宛(往電)

青木公使健康勝リサレニ付便宜大前書記官ニ於テ事務ヲ代行(臨時代理公使ニシマス)ニ居タルモノ如シ

No. 529. (54) Treaty passed Privy Council and it is

nature of possible difficulties, I made cautions overtures to German Government. They, already being irritated by our delay of ratification, have immediately taken advantage of your hesitation as anticipated in my telegram 50 and apparently intend to call into question Japan's right to exercise jurisdiction. I will make best endeavours to effect some understanding although not sure of success.

(Via Petersburg), July 22, 1896. Ohmaye.

青木公使健康勝リサレニ付便宜大前書記官ニ於テ事務ヲ代行(臨時代理公使ニシマス)ニ居タルモノ如シ

二二九 明治三十九年七月二十日 西園寺外務大臣ヨリ 青木駐獨公使宛(往電)

獨政府ノ我裁判管轄權公式承認方ニ關シ訓令ノ件

No. 547. (57) Your telegram 66 renders the position serious. On the strength of your repeated assurances contained in *Kimitsu Dai-nigooshin* dated April 14th and telegrams 50 and 62, I have already taken neces-

sary steps to give effect to Article XVII. Any possible dispute on the part of German Government as to Japan's right of jurisdiction would therefore place Japanese Government in (a) very awkward position and you are hereby instructed to effect by all means formal understanding with German Government in the matter and telegraph at once (the) result of your endeavours.

(Via Peters.) Sent, July 25, 1896. Saionji.

11110 明治二十九年七月三十一日

大前書記官ヨリ  
西園寺外務大臣宛(來電)

裁裁判權承認問題ニ付訓令ノ件

(67) Your telegram 53 resolves itself into following questions :

In cases of offenses against Japanese laws of patents, designs and trade-marks, are such Germans only as have made application for protection amenable to Japanese jurisdiction or are all Germans in Japan subject to our jurisdiction so far as administration of patent law etc. is concerned? Upon this basis I made overtures which provoked disagreeable

discussion. German Government, seeing that the admission of the above distinction would lead to consequences inconvenient to them, at once declared Japan has no jurisdiction and characterized my distinction as subtle sophism. Whereupon I cited records of debate in the Reichstag as cogent proof of the fact that my interpretation of Article XVII coincides with that of the Reichstag. Besides I reminded German Government that their negotiators once said "die deutschen unterwerfen sich den japanischen gesetzen." German Government pointed out that it is impossible for them to enter into definite understanding on the subject without setting ponderous legislative machinery into motion and therefore suggested that the difficulty could be best overcome by speedy conclusion of special convention stipulated in Section IV of Protocol. I declared that, apart from such convention, Japan's jurisdiction under Article XVII must be recognized. The final result is as follows :—

German Government, while refusing to commit themselves by any written instrument, confidentially

give us to understand that they have no intention to call into question Japan's right to exercise jurisdiction if it is limited to those Germans only who,

add (the following?) at (the) instance of (the) Cabinet.

by making application for protection of their patents &c., place themselves under direct administrative and judicial control of Japanese Government. In the face of such clear though tacit understanding, I recommend you not to demand more precise engagement because further discussion would only circumscribe free elbow room which has happily been left to us by the wording of the Treaty. Besides, further discussion is impossible for some time, all prominent officials of Foreign Office having left Berlin. I therefore hope you will send me ratification as soon as possible, especially as your delay has already produced very unfavorable impression.

(Via Peters.), July 27, 1896. Ohmaye.

11111 明治二十九年七月三十一日

西園寺外務大臣ヨリ  
青木駐獨公使宛(注電)

裁裁判權承認問題ニ付訓令ノ件

No. 556. (58) Referring to my telegram 57, I now

In your telegram 62, you report testing (the) attitude (of the) German Government by cautiously sounding. Again, in your telegram 66, you report making cautious overtures &c. This procedure appears strange in view of assurances respecting jurisdiction in several of your telegrams. It is not understood why caution was necessary in approaching German Government when, according to (your) telegram 62, and (?) German Government treated from (the) beginning (the) resumption of jurisdiction by Japan under Article XVII as (a) matter of course. In view of (the) existence of common understanding respecting jurisdiction, it is not perceived why frank and direct negotiations were impracticable. It was not to be imagined that Germany would hesitate to reduce to writing (the) understanding which she had invariably treated as (a) matter of course. Much less was it to be expected that desire of Japanese Government to put that matter-of-course understanding into writing to prevent future misunderstanding

ings could serve as pretext for Germany to repudiate such understanding. What Japanese Government wish you to secure is plain unequivocal understanding as to jurisdiction respecting industrial property, pending abolition of consular jurisdiction. If Germans are to enjoy advantages of Japanese industrial property laws, it goes without saying they must yield obedience to those laws and some courts must be given jurisdiction to enforce such obedience. Japanese Government do not think (the) delay in ratification under actual circumstances furnishes any grounds for irritation on (the) part of Germany, since such delay is (the) necessity of (the) situation and is destitute of even (a) suggestion of bad faith. In (my) telegram 47, I informed you that it was necessary to decide question of jurisdiction before ratification, because Article XVII takes effect simultaneously with exchange of ratifications. I will add for your information (that) Japanese Government may find it convenient to allow Powers signing new treaties to share, upon same terms and conditions, benefits of Article XVII. Consequently it is essential to know, before (the) treaty

二二三 明治三十九年八月四日

西園寺外務大臣ヨリ  
大前書記官宛(往電)

## 裁制權承認問題ノ件

No. 566. (59) I have received your telegram 67, but am still waiting for your answer to (my) telegrams 57 and 58 before giving final reply of Japanese Government. In the meantime I am bound to observe that the fact that German Government characterized your distinction as "subtle sophistry" seems to exclude (the) idea that definite understanding had ever existed between yourself and German Government respecting Article XVII. Again, where conditions are liable to change and future situation can not be clearly foreseen "elbow room" in treaties is desirable, but in dealing with fixed, concrete questions such as (the) exercise of jurisdiction explicitness is of utmost importance.

Sent, August 4, 1896. Satonji.

二二四 明治三十九年八月七日

青木駐獨公使ヨリ  
西園寺外務大臣宛

## 日獨通商航海條約第十七條ノ件

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takes effect, exact nature and limits of the terms and conditions which are actually to apply to Germany. I trust you will be able to come to understanding without delay.

Sent, July 31, 1896. Satonji.

二二二 明治三十九年八月四日

青木駐獨公使ヨリ  
西園寺外務大臣宛(來電)

## 新條約ノ批准ニ關スル件

(69) My telegram 67 and your telegram 57 having crossed each other, I have deemed (it) unnecessary to answer the latter, trusting that my recommendation based on valuable tacit understanding will be accepted. Your delay is producing more unfavorable impression and present state of uncertainty, if continued longer, will lead to grave consequences. Therefore, please inform me at once when ratification may be expected.

(Via Peters.), Aug. 4, 1896. Aoki.

別信第十號

九月二十八日到

日獨通商條約第十七條ヲ獨政府ヨリ提議セルニ方リ未タ之ヲ閣下ニ稟議セサル以前本官ハ「保護ヲ與フヘシトノコトナレハ獨逸人ハ日本ノ法律ニ服從セサル可ラス」ト主張シタル處獨政府商議員ハ當時容易ニ之ヲ納得シ閣下モ亦尋テ稟議ヲ承認サレタルニ由リ第十七條ノ外更ニ議定書第四款第一項ノ規約文ヲ協定セリ但シ當時來第十三號<sup>(1)(2)</sup>ノ電信ヲ以テ「該規約ヲ新設スルモ之ニ由リ本件ニ關スル我裁判權挽回スルモノトハ理解シ得ス故ニ本官ノ建議果シテ獨政府ノ意思ト一致セハ強テ要求スルニ非ントモ時誼ニヨリ兩者ノ間ニ存在スル一致ノ意思ヲ書付トナシテ保證シ置クヘシ」ト訓令アリタリ然レトモ電訓中強テ要求セストノ明文アルノミナラス凡ソ法律家ノ用語ニ徴スレハ法律ニ服從スルトノ意味ハ裁判權ニ服從スルトノ意味ニ外ナラス要スルニ保護懲治相待チタル上ニテ裁判權始メテ完全ナルハ勿論ノ義ニ有之候而シテ獨人日本ノ法律ニ服從スヘシトノ事ハ商議中協議相整候ノミナラス議定書ノ約文ハ condition ノ字ヲ複數ニ用ヒ文體モ亦 conditional ニ作リテ兩者ノ間互ニ餘地ヲ占メタリ故ニ細カニ之ヲ解釋スレハ condition ヲ充サ

サル獨人ニ對シテハ帝國政府ハ其權利ヲ保護スルノ義務ナキヤ明ナリ是レ調印ノ際右書付ヲ取付クル必要ヲ認メサリシ所以ナリ其後第三十三號<sup>(110)</sup>ノ電訓ニ對シテハ往第五十號<sup>(111)</sup>ヲ以テ獨政府ニ對シ更ニ商議ヲ開クハ之ヲ *Impolitic* トシテ其不可ナルヲ述ヘタリ何トナレハ當時獨人中條約反對黨ハ嚮キニ公信第五十五號<sup>(112)</sup>ニ添ヘ郵送シタル議院ノ議事録二四六八葉ニ記載サル、如ク各種ノ新聞紙ヲ以テ第十七條ノ規約ヲ不可トナシ不利ト爲シ頻リニ獨政府ヲ攻撃シテ止マサルニ由リ之ニ添フルニ我ヨリモ第十七條ニ關シ來訓ノ掛念ヲ示サハ獨政府ハ之ヲ利用シテ何等ノ措置ヲ爲スモ難計ト判斷セラレタリ然ルニ其後一ヶ月ヲ閱シテ接受セル來電信第四十七號<sup>(113)</sup>ノ訓令ニ對シテハ往第六十二號<sup>(114)</sup>ヲ以テ再ヒ商議ヲ開クノ不可ナルヲ開陳セリ要スルニ其節ニ至リテハ本件ノ *Situation* 更ニ一變シ議事録二四六九葉ニ記載サル、如ク獨外務大臣ハ公然議場ニ於テ反對說ヲ斷壓シ本件ニ關シ獨人ハ日本ニ於テ日本人同様ノ地位ニ立テ帝國政府ノ保護ヲ受クルト明言セリ而シテ同一ノ地位ニ立ト云明言ト議定書第四款ノ規約トヲ合シテ事ノ眞意ヲ判定センニハ「保護ヲ要求スル獨人ハ邦人ト齊ク我法律ニ服從シテ同一ノ取

扱ヲ受ケサル可ラス」ト云ニ外ナラス此ノ如ク法意明瞭ナル事ニ疑念ヲ起シ更ニ獨政府ト商議ヲ開クハ恰カモ法意ノ見解ニ關シテ我カ不慥ナル所ヲ示スノ嫌アルノミナラス之ヲ本官ノ口頭ヨリ申出サンニハ提議忽チ最初ヨリノ協議ト矛盾スルノ戒アルニ由リ右往第六十二號<sup>(115)</sup>電信ヲ以テ其事情ヲ開陳セリ然ルニ閣下ハ來第五十三號<sup>(116)</sup>電信ヲ以テ三箇ノ疑問ヲ起シ更ニ其見解ノ範圍如何ヲ質問サレタリ而シテ其第二疑問 *general jurisdiction* ヲ執行センニハ獨政府ノ *express consent* ヲ要スントモ該 *express consent* ハ第十七條ニ含有セサルモノト斷言ス又一箇人ノ隨意的 *consent* ハ我法律ニ取リテハ無効ナリ云々來諭サレタレトモ覺書第四款ニ於テ「我法律ノ規程ヲ遵奉シ始メテ保護ヲ得ル」ト兩國ノ間公約明文ヲ以テ取極ヲ爲シタル以上ハ本件ニ關シ箇人の *consent* ノ疑問可相起理由無之又法律上 *strict* ニ論スレハ保護ヲ要求スル獨人即チ我法律ニ服從スル者ニ對シ我裁判權ヲ執行スルモ此場合ハ閣下ノ引證サレタル醫師ノ新聞紙云々ノ事例ト全ク相違スルニ由リ獨政府更ニ挿嘴スルノ權ナシ勿論 *patent* 等ノ保護ニ關シ尋常刑法ヲ執行スル場合ハ千萬稀少ナルヘケレトモ右電信中 *criminally*

*liable* ノ文字アリタルト閣下ノ *hesitation* 未タ全ク其跡ヲ滅セサルヲ察知シタルニ由リ訓旨ヲ重シ貴意ヲ安慰スル爲メ樞密顧問官兼通商局長ライハルト氏ニ對シ穩ニ「*patent* 商標登記等ニ關シ刑事的の我法律ニ違反シタル獨人ハ固ヨリ之ヲ當該日本ノ法律ニ照シ我裁判所ニ於テ其罪ヲ治メサル可カラス之ニ關シ獨政府ハ異議ナキモノト知レトモ我外務及司法部ノ間種々協議最中ナルニ由リ懇ロニ貴意ニ質ス」ト申聞候處同氏ハ忽チ獨國反對黨ノ本件ニ不服ナル云々ヲ回想シ且ツ明カニ之ヲ吐露シ *criminal case* 迄モ之ヲ放棄セルニ非ラスト主張シ併セテ *criminal case* ノ出來スヘキ戒ナシ云々申聞候ニ付之カ爲メ我彼ノ間頓ニ一場ノ法律的難問相起リ一時ハ始末相纏リ難ク互ニ *casus debilis* ヲ提出シテ爭論シタル末通商局長ハ終ニ本官ノ立論即チ「日本ニ於テ *patent* 商標等ノ保護ヲ受クル獨人ハ獨逸ニ於テ同一ノ保護ヲ受クル日本人ト齊シク我彼ノ法律ニ服從セサル可カラストハ最初ヨリノ協議ナリ且ツ新條約全體ノ精神ニ徴スルモ所謂治外法權撤去ハ改正談判ノ骨子ナリ本條約實施ノ期ニ先チ第十七條ノ除外的の直ニ實施スル以上ハ該條ハ本條約ノ精神ニ憑據シテ之ヲ取扱フニアリ之ヲ獨國議院ノ

討議ニ徵スルモ更ニ疑ナキノミナラス有名ナル某々法律家

ノ見解モ亦此外ニ出ス云々」ノ議ヲ破ルコト能ハス結局懇話ヲ以テ我權利ヲ認諾セリ其結果ハ往第六十七號<sup>(117)</sup>電信ヲ以テ稟申セリ然ルニ閣下ヨリハ更ニ來電五十七及八號<sup>(118)</sup>電信ヲ以テ何等ノ手段ニ由リテモ第一獨政府ト有形的ノ協議ヲ遂クヘント云ヒ第二獨政府ニ對シ用捨遠慮のニ本件ヲ提議スルノ必要ヲ見スト云ハレタリ然レトモ第一ノ訓旨ハ憲法政治上決行サレ難キ理由ハ往第六十七號<sup>(119)</sup>ヲ以テ既ニ稟申シタリ第二用捨遠慮ノ必要ナル所以ハ他ナシ領事裁判權廢止ノコトハ我司法部ノ信用ニ關シ遲疑スル所アルヨリ獨政府並ニ人民共商議ノ最初ヨリ之ヲ承諾スルヲ難シタル處今日ニ至リ法意ノ見解ニ關シ我不慥ナル處ヲ示サンニハ獨政府或ハ我ニ取リ甚タ不快ナル *observation* ヲ吐露シ又ハ之ヲ利用シテ反對者ノ攻撃ヲ防クノ具ト爲ントスルモ計リ難ケレハナリ約シテ以上ノ縷々ヲ換言スレハ條約ノ明文上我ハ保護ニ關スル裁判權ヲ實施スル權アル勿論ニ候處獨政府不意ニ *criminal case* 云々ノ提議ヲ聞キ該權ノ執行ヲ認諾スルニ躊躇シタレトモ終ニ所謂 *confidential assurance* ヲ以テ之ヲ承認シタルニ依リ此上ハ速ニ批准交換ヲ決行シテ

事務局ヲ結了スル方可然被存候要スルニ保護者ハ毎ニ輒チ active ノ位置ニアリ保護請求者ハ passive ノ位置ニアルヲ以テ我農商務大臣ハ當該勅令ノ功用ヲ毀傷セシメサル權利ヲ其手裏ニ握レリ又法官ハ保護請求者ニ關シ遠慮ナク裁判權ヲ執行シ得ヘシ偶々重大緊要ノ criminal case 出來シ之カ爲メ獨政府異議ヲ提出セハ纔ニ二年餘ノ時間ヲ期シ diplomatic way ニテ協定スルモ不可ナシ之カ爲メ批准交換ヲ延引スル必要無之ト存候是亦通商局長ノ懇和ニ有之候此類ノ事例ハ各國間交渉上其例寡カラス兎ニ角本件ノ爲メ已ニ狐疑ヲ抱持スル獨政府ト引續キ云々ノ協議ヲ試ムルハ事ノ全體ニ危害可有之候外務次官其他尙ホ新條約ニ反對スル者不少候處批准交換前ニ於テハ彼等ノ勢力未タ必スシモ蔑視シ難キモノアルハ往第七一號電信ヲ以テ閣下ノ注意ヲ喚起シタルカ如シ故ニ政略上考一考ヲ重ネラフ須ラク本官ノ建議ヲ採納相成速ニ事務局ヲ結了被致候事不堪希望候將來偶々各種ノ爭議相生候共閣下ノ操縱次第容易ニ協議可相整候是レ通商局長及樞密參事官「フオン、ムニールベルヒ」氏ノ懇話ニ基キ茲ニ申添置候之ニ反シ獨政府ニ對シ依然遲疑ヲ示サンニハ同政府ハ益々不快ナル感觸ヲ起シ其末批准

交換ヲ謝絶スルニ躊躇セサルヘシ是亦右兩氏ノ語氣ニ悟ル所アリテ豫報申進置候  
(三九)  
將又來第五十七號 On the strength of your repeated assurances & & I have already taken necessary steps to give effect to Article 17 & &.....  
(三三)  
及第五十九號 I am bound to observe that the fact & & seems to exclude that definite understanding had ever existed between yourself and German Government respecting Article 17 & &.....電信中閣下ノ observation ニ對シテハ可否トモニ重大ノ事務局結了セサル間ハ前顯縷述ノ外敢テ抗議ヲ試ムル了簡無之候得共閣下ニシテ本官ノ稟申ニ信據難被成意思ヲ表示サレタルハ本官ノ頗ル遺憾トスル所ニ有之候此段豫メ申進置候  
右及稟申候 敬具  
明治二十九年八月七日  
在獨逸 特命全權公使子爵 青木 周藏  
外務大臣候爵 西園寺 公望 殿  
註 1 旁記括弧内ノ數字ハ本書ニ於ケル文書番號ナリ

二二五 明治二十九年八月九日

青木駐獨公使ヨリ  
西園寺外務大臣宛(來電)

## 裁判權承認問題ノ件

(71) Regarding protection of industrial property, I demanded from the beginning submission to Japanese law as absolute condition. This was conceded by German Government, hence first paragraph Section 4, Protocol. In your telegram 13, you only suggested and did not insist that the joint opinion of German Government and myself should be reduced to writing. Accordingly, I deemed (it) unnecessary to secure written engagement because, in legal phraseology, submission to law necessarily implies submission to jurisdiction and submission to Japanese industrial property laws has been agreed to. Not only does the clause in the Protocol use the word condition in the plural form but the clause is itself conditional, implying that industrial property of Germans who do not fulfil prescribed conditions shall not be protected. In (my) telegram 48, I pointed out (that it is) impolitic to raise the question because opposition parties were attacking German

Government on account of Article XVII using the argument reported on page 2468 of the proceedings of Reichstag enclosed in my letter no. 55. It was therefore apparent that should Japanese Government manifest any doubt regarding Article XVII German Government would immediately take advantage of that doubt.  
Your telegram 47 directed me to effect some understanding but I again pointed out unadvisability of broaching the subject at that time. Situation had changed and German Minister for Foreign Affairs unequivocally declared in Reichstag that, as regards protection of industrial property, Germans are placed on the same footing as Japanese. See page 2469 of proceedings. It follows from this declaration that Germans who seek protection must submit to the laws of Japan. This being German interpretation of Section 4, Protocol, attempt on our part to secure explicit understanding would convey to German Government an impression of incapacity to judiciously interpret treaties. In (your) telegram 53, you raised three categorical questions pointing out that

individual consent is insufficient to re-establish jurisdiction, but as regards Germans who seek our protection the consent of German Government has been secured by Section 4, Protocol. The question of individual consent therefore cited (the question cited, therefore, of individual consent?) does not arise and the case of German doctor has no analogy to the exercise of jurisdiction based on Article XVII. Criminal cases for infraction of industrial property laws will rarely occur, but this question being raised and perceiving your continued hesitation, I was anxious to execute (your) instruction in some way. Accordingly, I saw German Chief of the Commercial Bureau of the Foreign Office and, calling his attention to the fact that all criminal offences against Japanese industrial property laws will be dealt with according to their penal provisions, I said that it is understood that German Government have no objection but, as the matter of putting Article XVII into operation is now being considered by our proper departments, I desired to ascertain his views on this particular point. The chief of Commercial Bureau at once

referred to (the) opposition in Reichstag regarding jurisdiction and declared that criminal cases which would never occur in practice lie outside Japan's jurisdiction. This precipitated violent discussion which was not closed until he informally admitted (the) force of my argument in the matter described in my telegram 67. On the other hand, your telegrams 57 and 58 direct me first to secure by all means some formal understanding and secondly *it is not* (you do not?) understand why cautions and circumlocutory approach was necessary.

Impossibility of securing formal agreement has been explained in my telegram 67. Cautions proceeding certainly was necessary because direct and ill-aimed overtures afford tempting opportunity for German Government to oppose our position. You are aware German Government and people have little confidence in our judicial administration, hence great reluctance to agree to abolition of consular jurisdiction. Even partial re-establishment of Japan's jurisdiction under Article XVII has called forth severe attack on German Government, therefore every

reason to suspect that German Government will turn to their advantage Japan's uncertainty of interpretation. To summarise, Japan has, under the express terms of the treaty, right to exercise jurisdiction. German Government was reluctant to admit that the jurisdiction conceded extend to criminal cases but, by admission, recognized Japan's right. Japanese Government, in affording protection, stands in active position while applicants are always in the passive as (it) has absolute power to refuse protection unless conditions required for protection are fulfilled and Japanese courts can certainly exercise jurisdiction over Germans enjoying same protection as (the) Japanese. But suppose for the sake of argument that a serious criminal case arise and that German Government intervene, then solution of that difficulty could be left to diplomatic contention covering a period of two or three years. German Chief of Commercial Bureau of the Foreign Office also confidentially assented to this plan which has many precedents in the intercourse of independent nations and pointed out that in the presence of such sure

plan of solution there is no reason to delay exchange of ratifications. Further attempt to negotiate with German Government will be worse than fruitless because in the course of delay German Government might be induced to refuse exchange of ratifications owing to the unfavorable influence of German Vice-Minister for Foreign Affairs and others who opposed to the treaty. I call your earnest attention to these important reasons and hope that ratifications will be exchanged without delay, more especially as I have reason to believe that eventual contentions in future will be easily adjusted.

(Via Peters.), Aug. 9, 1896. Aoki.  
Tokio, Aug. 14, 1896.

註 二十九年七月十三日附青木公使來信公第五十五號、  
省略ス

二二六 明治三十九年八月十五日 西園寺外務大臣ヨリ  
青木駐獨公使宛(往電)

裁判權問題ニ付獨逸公使ト會談ノ件

No. 598. (60) German Minister in Japan having

enquired on August 4th why ratification of new treaty is being delayed, I replied that it was owing solely to anxiety of Japanese Government to make clear (the) interpretation of Article XVII with (a) view of preventing future misunderstanding which necessitated lengthy correspondence with you and that I would see him on receipt of final reply from you. On August 10th he made verbal communication that "Japanese Authorities decide according to Japanese laws about the nullity or retaking of patents etc. conceded to Germans on condition of equality between Germans and Japanese. As this follows as a matter of course from the meaning of the Treaty provisions in question a special written declaration appears unnecessary" and on August 11th he made another communication that "as nothing is said in the Treaty about granting of material jurisdiction to Japanese courts, there is no possibility to put such new matter into the text after Viscount Aoki has signed Treaty with full powers and German Reichstag approved it. Japanese Government shall bear full responsibility if they delayed ratification any

longer." On August 14th I had interview with him when he stated that "promise to renounce consular jurisdiction in all questions relating to patents etc. would be contrary to Constitution and consequently impossible because such renunciation, which has never been in question during negotiations for new treaty, could not be pronounced without consent of Reichstag, that is, without new negotiations for treaty. German Government positively hope Japanese Government will be content with (the) declaration made on August 10th." After fully explaining to him actual situation and also announcing that Treaty will be ratified without further delay, I pointed out the tacit understanding given by German Government, reported as final result of your negotiations in your telegram 67, and stated that Japanese Government would be satisfied if this understanding is confirmed."

The above is for your information. You will not that (the) statement made by German Minister in Japan conflicts in many points (more especially with reference to the renunciation of jurisdiction having

never been in question during negotiation for new Treaty) with that of your previous telegrams. So far however as ratification is concerned it will now be made immediately but the understanding, as per your telegram 67, ought at least to be confirmed before exchange of ratifications.

Sent, Aug. 15, 1896. Saionji.

二二七 明治三十九年八月六日

西園寺外務大臣ヨリ  
大前書記官宛(往電)

新條約批准済ノ件

No. 604. (61) New Treaty has been ratified August 18th and ratification will be mailed soon.

Sent, Aug. 18, 1896. Saionji.

二二八 明治三十九年八月二十四日

西園寺外務大臣ヨリ  
青木駐獨公使宛

新條約批准交換差控方訓令ノ件

附屬書一 二十九年八月九日獨逸公使館員口上筆記

二 二十九年八月十一日獨逸公使館員口上筆記

三 二十九年八月十四日獨逸公使口上書

陸奥外務大臣時代 對獨交渉 二二七 二二八

四 二十九年八月十四日西園寺大臣口上書

日獨通商航海條約第十七條ニ規定ノ事項ヲ批准交換後直チニ有効ナラシムルコトニ關シテハ本年二月中第十三號貴電ヲ以テ始メテ獨國政府ニテ右ノ提議アリタルコトヲ申出ラレ同時ニ右ニ關スル裁判權ハ直チニ日本國裁判所ニテ執行スルコトヲ得ヘケレハ帝國政府ニテ之ヲ承諾致候様閣下ヨリ御勸告有之候得共彼ヨリ提出ノ文言丈ニテハ日本國裁判所ニテ裁判權ヲ有スルコトニ付一モ明確ナル處無之又右ノ約定ヨリ生スル自然ノ結果トシテ必ス裁判權ヲ回復シ得ヘキコトトモ解セラレス候ニ付他日ノ誤解ヲ防ク爲メ可成ハ其事ヲ書面ニテ約束被致置度旨及電訓置候

(二二九)

然ルニ其後條約書類到達之ニ伴フ閣下ノ機密別信第二號ニ據レハ「獨逸人ハ日本ノ裁判權ニ服從スヘキ都合」ナル旨御記載相成居候得共右條約并附屬文書ニ就テ査覈スルニ更ニ右裁判權回復ノ件ニ付明約無之ノミナラス反テ一方ニハ外交文書ヲ以テ獨逸國領事裁判權ノ消滅ハ他國ノ該權消滅スルト同時タルヘキ旨明言有之斯クテハ彌々該十七條ヲ實施スル場合ニ至リ右ニ關スル裁判權問題ニ付彼我ノ間ニ如何ナル論争ヲ引起スコトアルヤモ計ラレス而シテ其時ニ至

リ若シ我カ企望ニ反スル結果ヲ見ルニ至ルコトアルモ總テ事後ニ屬シ臍ヲ噬ムトモ及フナキ次第ニ有之而カノミナラス閣下ニハ談判ノ際其意味合ニテ獨國政府ト御協議アリタリトノコト故改メテ其事ヲ書面ニテ約束スルコトハ別段難事ニモ有之間敷因テ是非共此際書面ニテ確定致置度ト存シ其旨屢及電訓候處閣下ハ貴電第六十二號ヲ以テ「本件ハ決シテ本使ノ過失ニ出タルニ非ラス之ニ反シ本使カ少クモ領事裁判權ノ一部ヲ直チニ廢棄セシメントノ志望ヲ實行センカ爲メ熟慮計畫ノ結果ニ外ナラス本使ハ該條ノ解釋ニ付テハ充分其實ニ任スヘキヲ以テ信任アリタシ」ト迄斷乎タル御證言有之候ニ付本大臣ニ於テモ一先ツハ安意致候得共何ト申スニモ隨分重大ナル事柄ニシテ我カ解釋ニ依テ之ヲ實行シタリトスルモ萬一彼我ノ間ニ解釋上ノ爭議ヲ起シタルトキハ明約ノナキ限ハ詰リ我カ不利ニ歸スヘク其結果場合ニ依リテハ帝國ノ面目ニモ關係スル次第ニ付尙更ニ第五十三號電<sup>(三六)</sup>ヲ以テ委曲申進候義有之候處何ゾ圖ラン第六十六號貴電<sup>(三七)</sup>ニテ「獨逸政府ハ日本國ニテ該裁判權ヲ執行スルノ權利ニ對シ爭議ヲ試ミントスルモノ、如シ」云々御來示相成而シテ閣下ヨリ獨國政府ノ斯ル企圖アルハ我ニ於テ批准

ヲ遷延スル爲メナリト御加言アリタルニ至テハ尤意外ニ存候何トナレハ當初談判ノ際雙方ノ間ニ合意アリタルコト果シテ閣下ノ言ノ如クナレハ右合意ノ實ハ何時迄モ存在スルコト勿論ニシテ假令我ニ於テ幾分カ批准ヲ遷延シタリトテ之カ爲メニ容易ニ右合意ヲ消滅スル筋ノモノニ無之然ルヲ批准ノ遷延ヲ名トシテ合意ノ跡ヲ掩ハントスルハ奇怪千萬ノ事ト存居候然ルニ尋ヒテ第六十七號貴電<sup>(三九)</sup>ヲ接閱シ「獨逸政府ハ前記ノ區別ヲ首肯スルトキハ自國ニ不便ナル結果ヲ生スルニ至ルヘキヲ認メ直チニ日本國ハ裁判權ヲ有セスト宣言シ本使ノ右ノ區別論ヲ精妙ナル附會說ナリト稱セリ」トアルヲ見且ツ閣下カ當初確カニ合意ノ實アルニ拘ハラ十分之ヲ舉テ論爭セラレシ模様ナキヲ觀本大臣ハ果シテ最初ヨリ閣下ト同政府トノ間ニ明確ナル合意ノ存在セシヤ否ヲ疑フノ已ムヲ得サルニ立到候

抑右裁判權ノ有無如何ニ依テハ申迄モナク我當該官廳ニ於テ取扱上自ラ大差有之候ヲ以テ右問題ノ何レニカ確定シタル上ニテ御批准ノ御都合ニ相成候處既ニ第六十號電<sup>(三六)</sup>ニテ申進候通目下旅行中ノ獨逸公使ヨリ本月四日別紙一號<sup>(四〇)</sup>ノ通信ニテ申出候ニ付翌五日二號<sup>(四一)</sup>ノ通回答致置候處九日及十

註1 旁記括弧内ノ數字ハ本書ニ於ケル文書番號ナリ

23 省略

#### 附屬書一

第三號 二十九年八月九日獨逸公使館員口上筆記

本書ハ八月九日獨逸公使ノ命ニ依リ同館譯官見習ヲ  
ールトヨリ小村次官ヘ口頭ヲ以テ申出タルヲ筆記セ  
シモノナリ

#### Verbal Communication.

As a matter of course the Japanese Authorities decided according to the Japanese laws about the nullity (nichtigkeit) or the re-taking (zuruecknahme) of patents or rights of marks &c. conceded to Germans on condition of equality between Germans and Japanese.

As this follows as a matter of course from the meaning of the Treaty provisions in question a special written declaration appears unnecessary.

#### 附屬書二

第四號 二十九年八月十一日獨逸公使館員口上筆記

本書ハ八月十一日獨逸公使ノ命ニ依リ同館譯官見習  
ヲールトヨリ小村次官ヘ口頭ヲ以テ申出タルヲ筆記

一日ニ於テ同公使館員ヲ以テ口頭ニテ三號四號ノ通申出尙十四日同公使來省五號ノ口上書差出候ニ付第六十七號貴電<sup>(三〇)</sup>ノ趣旨ニ基キ六號ノ通同ク口上書ヲ以テ相答置候次第ニ有之候  
然ルニ右五號ノ口上書中ニハ「蓋シ右ノ如キ撤去ハ新條約ノ談判中曾テ問題トナリタルコトナシ」ト有之果シテ然レハ閣下カ是迄書信又ハ電信ニテ被申越居候次第トハ事實大差致居リ閣下ノ證言ハ全ク根據ナクシテ何ノ價值ヲモ有セスト思考スルノ外無之斯ノ如キ重大ナル事項ヲ確然先方ノ意思ヲモ突留メス閣下一已ノ考ヲ以テ斷言被致居候トハ甚タ危險ナル次第ニ有之候ノミナラス大ニ帝國政府ヲ誤ラシムルモノナリト言ハサルヲ得ス如何ニモ失望ノ至ニ存候鬼三角右ノ如キ行懸ニ相成居候ニ付而ハ何レ追テ獨逸公使ヨリ本大臣ニ向テ何分ノ回答可有之右接受ノ上ハ直チニ其旨電報可致候得共若又本信御接收ノ後ニ至ル迄未タ彼ノ回答ニ接セサル節ハ本問題ノ決定スル迄ノ間假令別通機密信ニテ可及訓令宣言ノ件妥協致候トモ批准ノ交換方御見合置可被成候  
右及訓令候 敬具



オシギノナニ

German Government expect our Treaty will be ratified immediately. As nothing is said in the treaty about the granting of material jurisdiction to Japanese Courts, there is no possibility to put such new matter (novum) into the text, after Viscount Aoki has signed the Treaty authorized by the Imperial full powers and after the German Reichstag has approved it. Japanese Government should bear full responsibility if they delayed the ratification any longer under various pretexts.

附屬書三

第五號 二十九年八月十四日獨逸公使口上書

二十九年八月十四日獨公使持參

Une promesse de renoncer à la juridiction Consulaire dans toutes les questions ayant trait aux patentes, marques de fabriques etc. serait contraire à la constitution et par conséquent impossible, parcequ'une pareille renonciation, dont il n'a jamais été question pendant les négociations pour le nouveau traité,

Government sought to arrive at a definitive understanding with the German Government.

Under the Treaty German subjects are to enjoy, equally with Japanese subjects, the advantages of the laws of Japan respecting Industrial Property. It seemed to the Japanese Government to be proposition requiring no demonstration, that a person seeking the benefits of a law, was bound to observe the law and equally that some Court should be clothed with the necessary jurisdiction to enforce such observance.

The Treaty itself is not free from ambiguity regarding the important point of jurisdiction and the Japanese Government solely with a view to remove doubts and thus to prevent future misunderstandings, endeavoured to reach an accord with the German Government on the subject. They did not wish to introduce any new stipulations into the Treaty, nor to modify any of the existing engagements. They merely desired by means of an Explanatory Note to give an interpretation of an obscure clause, a course of procedure which is not without precedent. And

ne pourrait être prononcée sans le consentement du "Reichstag," c'est à dire sans l'ouverture de nouvelles négociations pour un traité.

Le Gouvernement de S. M. l'Empereur espère donc positivement que le Gouvernement Japonais sera contenté de la déclaration faite à Monsieur le Vice-Ministre des Affaires Etrangères le 9 Août.

附屬書四

第六號 二十九年八月十四日西園寺大臣口上書

二十九年八月十四日西園寺大臣ヨリ獨公使へ交付セ

ラントリ (但佛譯ノ分)

The Japanese Government share in the view entertained by His Excellency the German Minister, that as the Japanese authorities will, in accordance with the provisions of the Treaty, as a matter of course exercise all administrative functions in connection with the protection of the Industrial Property of Germans, no special written declaration on that subject appears to be necessary.

But it was not in that direction that the Japanese

as Article XVII is to take effect simultaneously with the exchange of the ratifications of the Treaty it naturally seemed to the Japanese Government to be highly desirable that the understanding, if made, should not postdate such exchange. Accordingly the final action of H. I. M. respecting the Treaty has been somewhat delayed, in order to give time for a common understanding as to the scope of the Article in question.

Prior to the signature of the Treaty Viscount Aoki telegraphed to the Minister for Foreign Affairs that the Japanese Courts would at once resume jurisdiction under Article XVII. Upon receipt of the Treaty in Tokio, however, it was found that it contained no express provision respecting such jurisdiction. Viscount Aoki upon being asked regarding this apparent *casus omisus*, said that the understanding with the German Government was tacit.

The Imperial Government could not consider such an understanding, respecting a question where explicitness seemed essential, as wholly satisfactory and they accordingly instructed Viscount Aoki to approach

German Government with a view to having the verbal understanding regarding the meaning of Article XVII reduced to writing. Viscount Aoki reported as the result of his negotiations as follows:—

“German Government while refusing to commit themselves by any written instrument confidentially give us to understand that they have no intention to call into question Japan's right to exercise jurisdiction if it is limited to those Germans only who by making application for protection of their patents &c. place themselves under direct administrative and judicial control of Japanese Government.”

The Japanese Government would be satisfied if the understanding reported by Viscount Aoki is confirmed.

(原語) 西園寺大臣ヨリ本文ノ次第ナレバ因リ御批准へ  
遅延シタル趣ヲ告タリテ且ツ近日御批准相成メ  
ノキニ談話ノ上本文ノ趣ヲ口頭ヲ以テ通知シ  
覺メ爲メ佛蘭文書ヲ獨公使ノ交付相成リタリ  
二十九年八月十四日 本野

Vicomte Aoki a télégraphie au Ministre des Affaires Étrangères que les Tribunaux japonais recouvreront immédiatement la juridiction d'après l'article XVII. Lorsqu'on a reçu le Traité à Tokio, on a vu qu'il ne contenait aucune disposition spéciale concernant la dite juridiction. Le Vicomte Aoki, ayant été interrogé sur cette omission apparente, a répondu que l'entente avec le Gouvernement allemand était tacite. Le Gouvernement Impérial n'a pas pu considérer une pareille entente relativement à une question où il était essentiel d'être explicite, comme pleinement satisfaisante et il a, en conséquence, envoyé des instructions au Vicomte Aoki en l'invitant à entrer en pourparler avec le Gouvernement Allemand afin de consigner dans un écrit l'entente verbale concernant le sens de l'article XVII. Le Vicomte Aoki a rapporté comme résultat de ses négociations ce qui suit:

“Le Gouvernement Allemand, bien que refusant à s'engager par aucun document écrit, nous donne tenue d'observer cette loi et qu'un tribunal quelconque devait être muni de la juridiction nécessaire pour la faire observer.

(日佛譯文)

二十九年八月十四日西園寺大臣口上書佛譯文

Le Gouvernement Impérial partage les vues exprimées par S. E. le Ministre d'Allemagne à savoir que, comme les Autorités japonaises exerceront toutes les attributions administratives relatives à la protection de la propriété industrielle des Allemands comme une conséquence naturelle des dispositions du Traité, aucune déclaration écrite sur ce sujet ne lui semble pas être nécessaire.

Mais ce n'est pas à ce point de vue que le Gouvernement Japonais a cru devoir arriver à une entente définitive avec le Gouvernement Allemand.

D'après le nouveau Traité, les sujets allemands vont jouir, de la même manière que les sujets japonais, des avantages des lois du Japon concernant la propriété industrielle. Il a semblé au Gouvernement Impérial qu'il était incontestable qu'une personne cherchant à jouir des avantages d'une loi, était pour arriver à un commun accord quant à l'entendue de l'article en question.

Antérieurement à la signature du Traité, le

Le Traité lui même n'est pas exempt d'ambiguïté concernant le point important de la juridiction et le Gouvernement Impérial, uniquement dans le but de faire disparaître les doutes et de prévenir ainsi tout malentendu futur, a essayé d'arriver à un accord avec le Gouvernement Allemand sur ce sujet. Il n'a désiré introduire aucune nouvelle stipulation dans le traité ni en modifier les dispositions déjà existantes. Il a simplement désiré donner, au moyen d'une note explicative, une interprétation à une clause obscure. Cette manière de procéder n'est pas sans précédents. Et comme l'article XVII doit entrer en vigueur en même temps que l'échange des ratifications du Traité, il a naturellement semblé au Gouvernement Impérial très désirable que l'entente ne devait pas, le cas échéant, être postérieure à cet échange. C'est pour cette raison que l'acte final de S. M. I. concernant le Traité a été eu quelque sorte retardé, à l'effet de donner le temps confidentiellement à entendre qu'il n'a point d'intention de mettre en question le droit du Japon à exercer la juridiction si cela était limité aux seuls Allemands qui, en demandant la protection de leurs

patentes etc. se placent sous le contrôle direct administratif et judiciaire du Gouvernement Japonais.”

Le Gouvernement japonais sera satisfait si l'entente rapportée par le Vicomte Aoki était confirmée.

二二九 明治三十九年八月二十日

青木駐獨公使ヨリ  
西園寺外務大臣宛(來電)

### 裁判權問題ニ付獨逸外務大臣ト會談ノ件

(73) I called upon German Minister for Foreign Affairs on August 19th when he, expressing surprise over the delay of our ratification, declared that never in his career has he met with such a strange proceeding. I answered that Japanese Government bona fide intend to ratify, sole cause of delay being anxiety regarding Article XVII. He declared that in casuistically dealing with the Article the Japanese Government is simply losing time over consideration of the hypothetical cases. Neither German Government nor Japanese Government can prevent law courts from placing their own interpretation on international engagements, but should any difficulty

arise as the result of such interpretation, he points out, it is (the) function of diplomats to adjust, nor can he foresee any difficulty in the adjustment of possible contentions. He informed me that telegrams were received from German Minister in Japan saying (that) the Japanese Government finally ask whether German Government consider individual consent sufficient for (the) exercise of Japanese jurisdiction, (but?) he will give no answer on the subject, it being the intention of German Government to leave to the Japanese Government all responsibilities for future events resulting from Japan's unwillingness to ratify within reasonable time. After appeasing the excitement of German Minister for Foreign Affairs, I asked whether he confirms tacit understanding between myself and German *Chief of the Commercial Bureau of the Foreign Office* (?) reported in my telegram 67. He willingly confirms, but any written instrument on that subject is out of question because unconstitutional for German Government. In this connection once more I call your attention to the political situation

reported in my telegram 72, while as regards the manner in which Article XVII was negotiated I need only refer to my telegram 71.

(Via Peters.), Aug. 21, 1896. Aoki.

註 青木公使來電第七二號ハ本綴込中ニ見當ラヌ

二二〇 明治三十九年八月二十九日

西園寺外務大臣ヨリ  
青木駐獨公使宛

### 批准交換ニ關シ訓令ノ件

附屬書 批准交換ニ當リ署名スヘキ宣言書案

日獨新條約ノ談判ニ付テハ獨國政府ヨリ其進行ニ隨ヒ種々ノ新事項ヲ提議セシ爲メ閣下力折衝上一層御困難ヲ感セラレ候半トハ帝國政府ノ熟察スル所ニシテ閣下力能ク忍耐ト材能トヲ以テ此難業ヲ處理セラレシコトモ亦本大臣ノ深ク認ムル所ニ有之候得共抑該條約重モニ附屬議定書外交文書中ニ規定ノ事項ニ付テハ帝國政府ノ意ヲ得サル所數點有之夫等ノ爲メ疑問頻リニ起リ樞密院ヘ御諮詢ノ節杯モ同院ニ於テ隨分議論有之候得共竟ニ首尾能ク通過シ御批准相成候ニ付玆ニ兩條約御批准書及批准交換全權御委狀并批准交換證書案<sup>1</sup>及御送付候間御落手相成度候

前記帝國政府ノ意ヲ得サル所ノ數點トハ通商航海條約第三條及第十三條中ニ在ル「輸出入」ノ語ノ上ニ「外國ヨリ又ハ外國ヘ」ノ語ヲ挿入セサリシコト長期ノ借地權地上權及物權ノコトニ付片務的ノ取極ヲ爲セシコト抵當權ヲ土地ノミニ限ラサリシコト無制限ニ獨逸國領事裁判權ノ繼續ヲ許セシコト及普通稅則及其改正法律ヲ實施前六ヶ月ニ公布スルコトヲ約セシコト等ニ有之又犯罪人引渡ノ件ノ如キモ其文言上ヨリ言フトキハ我ヨリ先チテ其請求ヲ爲スコト能ハス必ス先ツ獨逸國ヨリ請求アリタルヲ待テ始メテ我ヨリモ同様ノ請求ヲ爲スコトヲ得ヘキモノナリト解釋セサルヲ得ス左スレハ之ヲ以テ純粹ナル互相の規定ト謂フコトヲ得サル次第ニ有之候又兩締盟國ノ一方ノ保護民ト見認メラレタル無籍者取扱ノ件ニ付テモ其生存中云々ト有之候處若シ右等ノ者ニシテ一旦孰レノ國ヘカ歸化セシ場合ハ該約定ヲ適用スルノ限ニ在ラサルハ勿論トハ存候得共是亦或ハ他日ノ疑問ト可相成哉モ不被計候ニ付今一層明確ニ致置度又既得權存續云々ノコトノ如キモ其意義餘リ空漠ニシテ動モスレハ殊日紛議ヲ招クノ恐有之候ニ付多少其意義ヲ明瞭ニ致置度又就中普通稅則及其改正法律ヲ公布後六ヶ月ヲ經テ始

メテ實行スル規定ノ如キニ至テハ其解釋ノ廣狹如何ニ因テ我ニ受クル所ノ束縛ノ度ニ大差有之候義ニ付是非共其解釋ヲ明確ニ致置度因テ既ニ第五十四號電信<sup>2</sup>ニテ申進置候通閣下ニハ兩條約ノ批准ヲ交換セラル、ニ當リ別紙案<sup>3</sup>ノ通り宣言セラレ雙方全權委員ニテ之ニ記名セラレ候様御盡力相成度現ニ千八百七十九年九月十九日獨逸帝國ト布哇國トノ間ニ締結セシ修好通商航海條約ニモ批准交換ノ節即チ翌千八百八十年二月十日一ノ宣言ヲ付シ又千八百七十一年十一月十一日獨米兩國間ニ締結セシ領事職務并商標ニ關スル條約ニモ批准交換ノ節即チ翌千八百七十二年四月二十九日一ノ議定書ヲ付シテ各條約中ノ規定ヲ明確ニセシ先例モ有之候ハハ閣下ノ御盡力次第ニテハ同政府ニ於テモ強チ拒絕致聞敷ト致思考候但シ萬一同政府ニテ右宣言ニ付異議ヲ主張シ到底之ヲ承諾スヘキ見込無之場合ニハ批准交換ヲ見合セ置直チニ本大臣ノ電訓ヲ被乞度候

將又外交書ニ相見居候「*Emphithentisches Recht*」ナル語ハ我新民法ニテハ永代小作權ニ相當リ居候得共獨逸國民ニ對シテハ條約中農業權ヲ許與致シ居ラサヘハ其目的タルヤ單ニ長期限ノ借地權ヲ指シタルモノタルニ過キサルハ

tions of the General Statutory Tariff of Japan " must be promulgated and published six months in advance before they can become operative on German imports " was not intended and shall not be construed to apply:

1st To any reduction or abolition of Customs duties;

2d To the re-establishment of Customs duties previously reduced or abolished;

3d To special or extraordinary modifications of said Tariff having for their actual object;

a) The conservation of existing systems of internal revenue;

b) The maintenance of public peace and security, or

c) The protection of public health or morals; animal or vegetable life, or right relating to industrial property or copyright.

Second. The words "for their life time" which appear in the first Section of the Protocol annexed to the said Convention, are not intended to apply to persons after they shall have acquired a new nation-

論ヲ待タサル義ニ付「長期ノ借地權」ト譯シ置候間是亦御含置相成度候

右及訓令候 敬具

註 1 御批准書及批准交換全權御委任狀寫並ニ批准交換

證書案ハ之ヲ省略ス

2 二二七

3 附屬書參照

附屬書

批准交換ニ當リ署名スヘキ宣言書案

#### Declaration.

The undersigned, Plenipotentiaries, negotiators of the Treaty of Commerce and Navigation and the Consular Convention between the Empires of Japan and Germany, of the 4th April, 1896 have met to-day and agreed with the consent of their respective Governments, to the following explanatory notes regarding some dispositions of the annexes to the said Treaty and Convention:

First. The stipulation in the Protocol annexed to the said Treaty providing that subsequent modifica-

al character.

Third. The words "rights legally acquired" appearing in the Note of the 4th April, 1896, from the Minister of State, Secretary of State for Foreign Affairs of the German Empire, to His Imperial Japanese Majesty's Envoy Extraordinary and Minister Plenipotentiary, had reference only to those vested or substantive rights, which being actually enjoyed, exist independently of treaty stipulations and which, consequently would not be affected by the termination of the Treaty.

明治三十九年十月十日 大隈外務大臣ヨリ  
青木駐獨公使宛(往電)

裁判管轄權問題ニ付訓令ノ件

附屬書 二十九年十月八日大隈外務大臣ヨリ獨逸公使ニ

交付シタル覺書

(69) On October 8th I delivered to German Minister in Japan (a) memorandum on (the) subject of jurisdiction under Article XVII of new treaty. Memorandum urges recognition of jurisdiction of Japanese

courts. Memorandum declares that persons seeking benefits of law should obey its provisions. Memorandum expresses hope, if German Government (is) unable to recognize Japanese jurisdiction, that German Government will engage formally that, during (the) continuation (of) Consular jurisdiction, laws of Japan concerning protection of industrial property will be enforced by German Consular courts. German Minister in Japan expressed personally approval of (the) alternative proposal. He promised to recommend it to German Government and thought it would be acceptable. He was, however, disinclined to telegraph on the subject owing to inability to explain fully. You are hereby authorized to negotiate on (the) basis of (the) alternative proposal if you still find it impossible to induce German Government to expressly recognize our jurisdiction. Japanese Government will be satisfied if Japanese industrial property laws are enforced by German Consular courts in (the) same manner as Japanese game law is now enforced by (the) said courts.

(Via Peters.), Oct. 10, 1896. Okuma.

competence of the Japanese Judicial Tribunals might very properly be recognized, and they accordingly venture to hope that the Imperial German Government may find it possible to share the same view.

The Imperial Government do not permit themselves to doubt but what the Imperial German Government will agree with them that persons who seek the benefits of a law should themselves be bound to obey its provisions. If, therefore, the Government of Germany should be unable to recognize, in the desired direction, the authority of the Japanese Judicial Courts, the Imperial Government trust that they will experience no difficulty in engaging in some formal manner that during the continuation of German Consular jurisdiction, the laws of Japan relating to the protection of Industrial Property are, so far as German subjects are concerned, to be enforced by the German Consular Courts in Japan.

The Guainusho,

Tokio, Oct. 8th, 1896.

註 明治二十九年九月二十二日西園寺公望兼官ヲ免シ大隈重信外務大臣ニ任ス

附屬書

二十九年十月八日大隈外務大臣ヨリ獨逸公使ニ交付セラレタル覺書

Memorandum.

In the terms of the Treaty recently concluded between Japan and Germany, German subjects will, even before the abolition of German Consular jurisdiction, enjoy, equally with Japanese subjects, protection in respect of their Industrial Property.

The Treaty left indecisive unintentionally so far at least as the Imperial Government were concerned — the question of jurisdiction in connection with such protection.

That question, however, seems to be one which especially lends itself to a definitive arrangement and the Imperial Government are anxious, in the interest of good understanding, that it should be removed from the field of future discussion.

They think that in the actual situation, the

二二三 明治二十九年十月一日 青木駐獨公使ヨリ大隈外務大臣宛(來電)

新條約批准交換方ニ付稟請ノ件

(81) In *Kinnisu* no. 24 dated Aug. 24th Saionji directs me to postpone exchange of ratifications, unless, in the meantime, he should receive from German Minister in Japan reply to his memorandum, which is enclosure no. 6 of the above despatch. In that memorandum Saionji says Japanese Government would be satisfied if the understanding reported by Aoki is confirmed. That understanding having already been confirmed by German Minister for Foreign Affairs as reported in my telegram 73, it is most strange that, in the face of firm declaration made by German Minister in Japan to *Gaimuikan* on August 11th, Saionji should have waited for further reply which German Government could never give. Should exchange of ratifications be nevertheless delayed, we would diplomatically have nothing but worse results. In view of such grave disadvantage and of manifest futility of any attempt to approach German Government with difference of

interpretation between Saionji and myself, I appeal to your fair judgment, trusting that you will at once authorize me to exchange ratifications, more especially as negotiation can not even be opened on points mentioned in Saionji's *Kimitsu* No. 25 dated August 29th, unless Japanese Government is prepared to exchange ratifications. I invite your special attention to my telegrams 71 and 73 and my *Kimitsu* No. 10 dated August 7th while you will discover from Saionji's telegrams 13 and 47 the curious fact that he did not attach serious importance to the question until he learned to be deemed (to deem it) unnecessary to reduce to writing (the) interpretation of Article XVII.

(Via Peters.), Berlin, Oct. 10, 1896. Ohmaye.

三三三 明治三十九年十月十七日 青木駐獨公使ヨリ  
大隈外務大臣宛(來電)

裁判官轉權問題ニ付訓令ヲ發シテ

(83) Your telegram 69 crossed my telegram 81. To act upon the confirmation of German Minister for

your telegram 73, insufficient and unsatisfactory, considering such confirmation was accompanied by refusal to state whether individual consent was sufficient and also by declaration that written confirmation would be unconstitutional and considering also declaration (of?) German Minister (in Japan) as reported to you in (my) telegram 60. Japanese Government consider some definitive adjustment of the question desirable. They naturally wish to secure formal recognition of Japanese jurisdiction, but if that is impossible they must accept alternative proposal in my telegram 69. Accordingly, in that situation, if you can secure consent of German Government to that alternative proposal and also to other points mentioned in *Kimitsu* No. 25 dated August 29th, Japanese Government will authorize exchange of ratifications. Therefore you will report (the) result of (your) negotiations and await (my) final instructions before making exchange of ratifications. If negotiations are successful, it will be necessary to fix date of exchange of ratifications some little time ahead to enable *Noshonusho* to

Foreign Affairs is, in my opinion, preferable to enforcement of Japanese law by German Consular Courts, an arrangement somewhat derogatory to our freedom. But if you prefer your plan, I recommend consular enforcement shall cease upon conclusion of industrial property convention which should be concluded at once as suggested in my telegram 67, taking for model German-Italian Convention. Disinclination of German Minister in Japan to telegraph is perhaps due to the fact that German Minister for Foreign Affairs strongly declared, as he did to me, that ratification must not be delayed by casuistic consideration. I ask instruction once more.

Berlin, Oct. 12, 1896. Aoki.

三三四 明治三十九年十月十六日 大隈外務大臣ヨリ  
青木駐獨公使宛(往電)

裁判官轉權問題ニ付訓令ノ件

No. 760. (70) In reference to your telegrams 81 and 83, Japanese Government regard verbal confirmation of German Minister for Foreign Affairs, reported in

make final arrangements and also to enable me to communicate with other Powers.

(Via Eastern) Sent, Oct. 14, 1896. Okuma.

三三五 明治三十九年十月十六日 大前書記官ヨリ  
大隈外務大臣宛(來電)

工業所有權保護條約ニ關スル件

(84) There is an understanding between German Government and myself that special convention, referred to in my telegram 67 and 83, shall expressly abrogate Consular jurisdiction as regards industrial property before Treaty of Commerce and Navigation takes effect. Therefore, in executing your telegram 70, I will reserve the right to conclude such convention, which right can be exercised without delay if you desire.

(Via Peters.) Berlin, Oct. 16, 1896. Ohmaye.

三三六 明治三十九年十月十九日 大前書記官ヨリ  
大隈外務大臣宛(來電)

裁判權問題交渉ノ結果報告スル件

宣言案ニ付意見書申入ノ件

(85) As the first step in the execution of (your) instructions I explained your wishes to German Chief of Commercial Bureau on October 16th. He points out that to direct consular courts to enforce any particular law is a legislative act which can not be done without the vote of Reichstag. It is (the) function of courts to determine what law shall be applied; hence administrative interference with that judicial function is unconstitutional. Perceiving that our hesitation still continues, he repeated his assurance, which was confirmed by German Minister for Foreign Affairs, and expressly added that so long as Japanese Industrial Property Laws are justly enforced by Japanese Courts, not the slightest objection will come from any quarter. This shows that, from the German standpoint your alternative proposal is no more possible than original proposal for constitutional reasons. Therefore, speedy decision is necessary accepting confirmation of German Minister for Foreign Affairs and my previous recommendation.

Regarding draft declaration enclosed in *Kinnisu* No. 25 dated August 29th, I find upon careful exami-

nation:—

First section, first point, no declaration necessary because no tax payer would complain of reduction or abrogation.

First section, second point, all questions could be avoided by declaring at the time of reduction or abolition that such changes are temporary in accordance with usage prevailing everywhere.

First section, third point, subdivision A, regarding (the) word conservation, the meaning is not clear but, in my opinion, system of internal revenue should be independent of customs duties; subdivision B and C, even (the) right of absolute prohibition is reserved by Section 3, Protocol, and Article V of Treaty.

Second section merely repeats treaty stipulation because persons having nationality are excluded by express terms of first section, Protocol.

Third section, note of German Minister for Foreign Affairs refers in plain terms to those rights which sprang from and became vested under older or present Treaty, hence words "independently of treaty

stipulations" are out of place. Besides, engagement as established by exchange of notes substantially means "vested rights should not be affected by termination of treaty." Therefore, to define "vested rights" by the very terms of that engagement would only be speaking in circle. If such theoretical and casuistic considerations having no actual value for autonomic state should be still upheld and German Government again officially approached, I can only assure you that our hesitation will be attended by grave failure. I profoundly regret to find at last that German text of Treaty and accompaniment has not been intelligently understood.

(Via Peters.) Berlin, Oct. 19, 1896. Ohnaye.

二三七 明治三十九年十月九日

大隈外務大臣ヨリ  
青木駐獨公使宛

工業所有權ニ關スル裁判管轄權問題ノ件

日獨通商航海條約第十七條ノ實施ニ關スル義ニ付テハ本年八月二十四日附機密送第二十四號信ヲ以テ前任者ヨリ申進置候義有之候處尋ヒテ第七十三號貴電ヲ以テ縷々御申出

陸奥外務大臣時代 對獨交渉 三三六

ノ次第有之且ツ又右貴電中ニ被申越候通在本邦獨乙公使ヨリハ今日ニ至ル迄當方ヨリ差出セシ口上書ニ對シ何等答辦無之然ルニ一方ニハ右條約ノ御批准書モ最早閣下ノ手元ニ達スヘキ日取ニ相迫候ニ付テハ何時迄モ過去ニ屬スル水掛論同(然)前ノ議論ニ時日ヲ消費致居場合合ニ無之何トカ決定施行スルコト必要ト存候ニ付去ルハ日獨乙公使ヲ招キ別紙ノ英文覺書ヲ交付シ篤ト致面議候處同公使ハ自分一己ノ意見ニテハ右ノ提議ニ異議無之ニ付其旨本國政府ヘ可申立多分本國政府ニテモ異存有之間敷旨申居候ニ依リ尙本件ハ可成速ニ取極度ニ付電信ニテ獨乙政府ヘ申出吳候様相頼候處隨分込入リタル問題ニ付電信ニテハ所詮詳細ニ申盡スコトヲ得ス依テ最近便ヲ以テ委細書簡ニテ可申送旨答候ニ付已ニ第六十九號尋ヒテ又第七十號電信ヲ以テ及訓令置候通帝國政府ニ於テハ口頭の確認ノミニテハ不十分ト存候ニ付若シ最初ヨリ冀望ノ如ク我カ裁判管轄權ニ付正式の確認ヲ得ルコト能ハサル上ハ別紙覺書ニ所載ノ旨意ヲ以テ獨乙政府ト御協定相成度候

此新辦法ニ依ルトキハ獨乙國領事裁判權ノ存在スル間ハ獨乙人ニシテ帝國法律ニ定ムル所ノ條件ヲ遵守スルトキハ工

業上所有權ニ付帝國臣民ト同様ノ保護ヲ受ケ而シテ之ニ關スル犯罪アルトキハ獨ニ國領事裁判所ニ於テ自國法ニ依テ處分スルコトト相成即チ現行狩獵法カ各外國人(但シ領事裁判權ヲ有スル國ニ限ル)ニ於ケルト同様ノ取扱振ニ可相成候

右申進候 敬具

註 1 2 3 4 5 夫々二三八、二三九、二三一附屬書、二三一、二三四文書參照

二三八 明治三十九年十月十三日 大隈外務大臣ヨリ  
青木駐獨公使宛(往電)

#### 裁判權問題ニ付訓令ノ件

No. 781. (74) Regarding (the) first part of your telegram 85, Japanese Government do not ask German Government to direct (German) Consular Courts to enforce any particular law. Paragraph 4, Law (of) July 10, 1879, Authorizes German Consuls to issue regulations with penalties. Accordingly German Consuls under instructions of German Minister issued regulations providing for enforcement by

Consular Courts of Japanese Game Law. What Japanese Government ask in the alternative is that same course shall be adopted regarding Industrial Property Laws. German Minister (in Japan) considers our alternative proposal as possible. Can you obtain agreement of German Government thereto.

Regarding second part of (the) same telegram, Japanese Government consider proposed declaration as highly important. Accordingly telegraph yes or no whether you can obtain consent of German Government to said declaration. You must clearly understand that Japanese Government are not purposely delaying exchange of ratifications. On the contrary, they are anxious to make (the) exchange as soon as possible, but it is also important that doubtful points should first be settled.

(Via Eastern) Oct. 22, 1896. Okuma.

二三九 明治三十九年十月十三日 大龍書記官ヨリ  
大隈外務大臣宛(來電)

#### 裁判權及何言問題交渉ノ結果報告ノ件

(88) Several days' negotiation, in which German

Government manifested very benevolent spirit, resulted as follows:—

In examining feasibility of your alternative proposal, German Government took up for consideration, for instance, the violation of trade mark. They thought at first Japanese Law protecting trade marks might be enforced by Police ordinance, as you had in mind, although penalty thus enforceable is limited to 150 marks' fine, whereas maximum Japanese penalty is 8 months' imprisonment. Upon further examination they regret that your alternative proposal is not possible. In case of game law, Japanese law could be enforced, because German game laws, being of local character, have no application in Japan. On the other hand, German law protecting trade marks is a law of general application which govern, likewise, German Consular courts in Japan. Hence, if you do not avail yourself of the confirmation of German Minister for Foreign Affairs, German consular jurisdiction will continue in (its?) entirety, unimpaired even is this respect.

Regarding declaration, German Minister for For-

eign Affairs says precisely the same thing that I have stated in my telegram 85. Proposed wording respecting vested rights made him a little suspicious of Japan's intentions. In dispelling his suspicion, I said that the question whether certain right is a vested right, right entitled to protection after termination of the Treaty, is a legal question to be determined by Japanese courts German Minister for Foreign Affairs assented to this remark. German Government would be prepared to make declaration of the kind proposed where necessity exists, but in (the) case of our Treaty they consider it mere repetition of the same meaning embodied in the Treaty, hence superfluity to be avoided. Nevertheless, if you insist upon some written instrument German Government will not object to exchange confidential notes on the subject.

(Via Peters.), Berlin, Oct. 30, 1896. Ohmaye.

二四〇 明治三十九年十月十四日 大隈外務大臣ヨリ  
青木駐獨公使宛(往電)

#### 批准交換方訓令ノ件



No. 802. (78) Japanese Government still consider points in treaty respecting which you were instructed to approach German Government as very important, but as you appear unable to secure any explicit understanding from German Government, it is useless to longer delay exchange of ratifications. Accordingly you are hereby authorized to exchange the ratifications of the Treaty fixing November 15th or as early date thereafter as possible for the purpose and telegraphing me in advance actual date as soon as arranged for the reason stated in my telegram 70. You are hereby instructed to say to German Government in writing that delay in exchange was caused solely by desire of Japanese Government to have more explicit understanding regarding certain doubtful points in Treaty. Japanese Government still convinced that such understanding would contribute to smooth and harmonious working of (the) treaty. But desiring to set at rest all doubts respecting their intentions and wishing above all to testify their appreciation of friendly disposition of German Government, Japanese Government have authorized ex-

by his Government to make during the last months, concerning supplementary declarations to the Treaty could partly by the German Government not be complied with on constitutional grounds and partly they concerned question that could be answered from the text of the Treaty itself or by general principles of international law and logical deductions. To make these latter the subject of the formal declaration desired by Japan would have been contrary to all diplomatic practice and usage.

The strenuous and persistent efforts Viscount Aoki made in this direction had to fail for the above-mentioned reasons, notwithstanding the desire of the Imperial German Government to meet his wishes. Out of consideration for the Imperial Japanese Government and its Representative the German Government has avoided to lay down the above standingpoint in notes.

The German Government cannot but render full and entire justice to the continued efforts made by Viscount Aoki to carry out the instructions he received in this direction from his Government.

change of ratifications, reserving the points in question for discussion, in full conviction that they will be able to satisfy German Government regarding necessity of proposed understanding.

(Via Reuters.), Nov. 4, 1896. Okuma.

二四一 明治三十九年十一月六日 青木駐獨公使ヨリ  
大隈外務大臣宛(來電)

批准交換口取ノ件

(90) Ratifications will be exchanged on November 18th.

Berlin, Nov. 9, 1896. Aoki.

二四二 明治三十九年十一月十四日

獨逸公使口上書

本書ノ十一月十四日獨逸公使ヨリ大隈大臣へ手交

セシギヘナリ

*Verbal Communication.*

The demands which Viscount Aoki was charged

No blame whatever ought to attach to Viscount Aoki for not having been able to attain what under the circumstances, it was impossible for him to attain.

二四三 明治三十九年十一月六日 青木駐獨公使ヨリ  
大隈外務大臣宛(來電)

批准交換口取ノ件

(92) Ratifications have been exchanged on November 18th without giving note mentioned in your telegram 78, but I verbally declared its sense, because German Government not only deemed written statement unnecessary but confidentially intimated that their reply could only be derogatory to Japan's dignity.

Berlin, Nov. 18, 1896. Aoki.

二四四 明治三十九年十二月二十六日調印

日獨追加約定

註 明治三十一年十二月二十六日東京ニ於テ調印(英文)  
同 年同 月同 日公布

(譯文)

日本國皇帝陛下ノ政府及獨逸國皇帝普漏西國皇帝陛下ノ政府ハ千八百九十六年四月四日柏林ニ於テ締結シタル通商航海條約附屬議定書第三條第二項ニ基キ左ノ通約定セリ

第一 本約定ニ附屬スル稅目ハ前記千八百九十六年四月四日締結ノ議定書附屬從價稅目ニ代ルヘキモノトス本稅目ハ該議定書第三條ノ規定ノ適用セラルル限ハ總テ該規定ニ從フヘキモノトス又本稅目ハ明治三十一年一月一日即千八百九十九年一月一日ヨリ實施セラルヘキモノトス

第二 本約定ハ千八百九十六年四月四月締結ノ條約及議定書ノ補足ニシテ之ト同一ノ有效期限ヲ有スルモノトス右證據トシテ茲ニ之カ爲メ正當ノ委任ヲ受ケタル下記ノ日本國皇帝陛下ノ外務大臣子爵青木周藏及獨逸國皇帝普漏西國皇帝陛下ノ特命全權公使伯爵「カシミール、フオン、ライデン」ハ本約定ニ記名調印スルモノナリ

明治三十一年十二月二十六日即千八百九十八年十二月二十六日東京ニ於テ本書ニ通ヲ作ル

子爵 青 木 周 藏記名印  
伯爵 フオン、ライデン記名印

號

同上附屬稅目

品

目

稅率

明治三十九年四月四日調印從價稅率

綿布類  
綿天露絨類……………一方「ヤ」  
〇、〇四一「十」

本稅目ニ掲載セサル各種純綿布及亞麻、大麻若ハ羊毛其ノ他ノ紡績シ得ヘキ物料ヲ交ヘタル各種ノ綿布、但シ綿ノ重ナル雲齋布……………同  
〇、〇一六

綿帆布……………同  
〇、〇五三

連續手巾……………同  
〇、〇一一

更紗……………同  
〇、〇一二

綿繻子(無地、有紋若ハ形付ノ、綿、「ブローケ」ド、綿「イタリアン」及紋金巾……………同  
〇、〇一七

色金巾……………同  
〇、〇一三

生金巾……………同  
〇、〇一六

綾金巾……………同  
〇、〇一一

晒金巾……………同  
〇、〇一〇

天竺布……………同  
〇、〇〇九

緋金巾……………同  
〇、〇一二

寒冷紗……………同  
〇、〇〇六

十四

甲 鐵若ハ軟鋼ノ電線  
若ハ電鐵線……………百斤  
〇、二五六  
乙 其ノ他各種ノ電線從價  
電線ニアラサルモノ  
鋼ノ細竿……………百斤  
〇、五〇三

甲 鐵及軟鋼線及徑一  
「インチ」ノ四分ノ  
一「ラ」超エサル鐵及軟  
鋼ノ細竿……………百斤  
〇、五〇三

乙 鋼線(軟鋼ニアラ  
サル)及徑一「イン  
チ」ノ四分ノ一「ラ」超  
エサル鋼細竿(軟鋼  
ニアラサル)……………同  
一、八一九

附記 本稅目ノ軟鋼  
トハ「シメンス」  
「ベセマー」  
「シツク」若ハ之ニ  
類シタル方法ヲ以  
テ製シ其ノ價格本  
稅目中ノ同項目ニ  
アル鐵ニ近キ軟鋼  
ヲ謂フナリ

十五

鐵、軟鋼及鋼鐵  
甲 鐵及軟鋼ノ……………百斤  
〇、〇八三

乙 鋼(軟鋼ニアラサ  
ル)ノ……………從價  
五分

十六

軌條  
軌條……………從價  
五分

十三

電線

十二

撒里矢爾酸

從價

一割「十」

十一

硝酸剝篤亞斯(硝石)

從價

〇、四九〇「五」

十

沃度剝篤亞斯

從價

一割「十」

九

「ダイナマイト」

同

〇、〇五六「十」

八

格魯兒酸剝篤亞斯

同

二、二六七「十」

七

規尼涅

從價

八分「八」

六

貌羅護化物

同

〇、〇九三

五

次硝酸蒼鉛

同

〇、二〇六「十」

四

赤燐

一斤

〇、一六五「十」

三

鉛(塊、錠ノ別ナク)

百斤

〇、三一六「五」

化學製品及藥品

附記 既製ノ衣服及  
他ノ全製品ハ綿布  
類ノ項目ニ屬セサ  
ルコト勿論ナリ

其ノ他本稅目ニ掲載セ  
サル各種ノ純綿布及亞  
麻、大麻若ハ羊毛其ノ  
他ノ纖維ヲ交ヘタル各  
種ノ綿布但シ綿ノ重量  
過スルモノ……………從價  
一割

|     |                               |                                       |    |          |
|-----|-------------------------------|---------------------------------------|----|----------|
| 十七  | 條、竿、板<br>鐵及軟鋼ノ                | 甲 鐵及軟鋼ノ……………                          | 百斤 | 〇、二二九    |
|     |                               | 乙 鋼(軟鋼ニアラサ<br>ル)ノ……………                | 從價 | 五 分      |
| 十八  | 鋼(軟鋼ニアラサル)ノ……………              | 甲 條及竿(徑一「イ<br>ンチ」ノ四分ノ一ヲ<br>超エタル)…………… | 百斤 | 〇、二六六    |
|     |                               | 乙 板……………                              | 同  | 〇、二九六    |
| 十九  | 鋼(軟鋼ニアラサル)ノ……………              | 電鍍板(波形ト否トノ別<br>ナク)……………               | 從價 | 七分五厘「七半」 |
|     |                               | 甲 鐵及軟鋼ノ……………                          | 百斤 | 〇、七四〇    |
|     |                               | 乙 鋼(軟鋼ニアラサ<br>ル)ノ……………                | 從價 | 一 割      |
| 二十  | 葉鐵及葉鋼<br>鐵及軟鋼ノ                | 甲 尋常ノ……………                            | 百斤 | 〇、六九一    |
|     |                               | 乙 晶鍍ノ……………                            | 從價 | 一 割      |
| 二十一 | 筒及管……………                      | 鋼(軟鋼ニアラサル)ノ同                          | 同  | 一 割      |
| 二十二 | 鐵道客車及同部分品……………                | 同                                     | 同  | 一 割      |
| 二十三 | 鐵及軟鋼釘及線釘(大釘、<br>無頭釘、平頭釘及曲頭釘共) | 同                                     | 同  | 五 分      |

|     |                                         |                           |             |          |
|-----|-----------------------------------------|---------------------------|-------------|----------|
| 二十四 | 鐵及軟鋼螺絲釘及牝螺<br>旋釘(電鍍シタルト否ト<br>ノ別ナク)…………… | 甲 尋常ノ……………                | 百斤          | 〇、五七三    |
|     |                                         | 乙 電鍍シタル……………              | 從價          | 一 割      |
| 二十五 | 窓玻璃(尋常ノ)                                | 無色及無著色……………               | 百方「フ<br>ット」 | 〇、三〇二「八」 |
| 二十六 | 有色、著色及砂磨ノ……………                          | 染料、彩料及色油……………             | 從價          | 一 割      |
| 二十七 | 「アニリン」……………                             | 「アリザリン」……………              | 同           | 一 割      |
| 二十八 | 「ログウード」越幾斯……………                         | 色油……………                   | 同           | 一 割      |
| 二十九 | 色油……………                                 | 織絲類(無地若ハ染付)<br>綿ノ……………    | 百斤          | 四、一八〇「八」 |
| 三十  | 織絲類(無地若ハ染付)<br>綿ノ……………                  | 甲 織物用亞麻ノ……………             | 同           | 六、五二七「八」 |
| 三十一 | 織物用亞麻ノ……………                             | 乙 織物用大麻若ハ「ジ<br>ュート」ノ…………… | 從價          | 八 分      |
| 三十二 | 羊毛(梳理シタル若ハ「ウ<br>ルスデッド」)ノ……………           | 織物用ノ……………                 | 百斤          | 八、〇〇〇「八」 |
| 三十三 | 織物用ノ……………                               | 其ノ他ノ……………                 | 同           | 九、一六九「八」 |
| 三十四 | 其ノ他ノ……………                               | 附記 (三十一、三                 |             |          |

|     |                                              |                  |          |
|-----|----------------------------------------------|------------------|----------|
| 三十五 | 本稅目ニ掲載セサル各種<br>ノ織絲……………                      | 從價               | 一 割      |
| 三十六 | 絹綿織子……………                                    | 同                | 一 割      |
| 三十七 | ホップ……………                                     | 一斤               | 〇、〇二九「五」 |
| 三十八 | 帽子(氈帽共)……………                                 | 從價               | 一 割      |
| 三十九 | 護謄製品……………                                    | 同                | 一 割      |
| 四十  | 麻布類……………                                     | 一方「ヤ<br>ード」…………… | 〇、〇四七    |
|     | 其ノ他各種ノ麻布……………                                | 從價               | 一 割      |
|     | 附記 既製ノ衣服及他<br>ノ全製品ハ麻布類ノ<br>項目ニ屬セサルコト<br>勿論ナリ |                  |          |
| 四十一 | 靴底皮……………                                     | 百斤               | 五、六九〇「五」 |

|     |                               |                              |                                                                  |
|-----|-------------------------------|------------------------------|------------------------------------------------------------------|
| 四十二 | 其ノ他ノ……………                     | 從價                           | 一 割                                                              |
| 四十三 | 鐵道機關車及同部分品……………               | 同                            | 五 分                                                              |
|     | 牛乳……………                       | 「コンデンスド」又ハ<br>「デンケ！デッド」…………… | 一「ボン<br>ド」罐十二<br>個ハ他ノ<br>重量ノ<br>比ハ此ノ<br>依ル                       |
| 四十四 | 「コンデンスド」又ハ<br>「デンケ！デッド」……………  | 從價                           | 〇、二二三「五」                                                         |
| 四十五 | 「ステライズド」……………                 | 從價                           | 五 分                                                              |
| 四十六 | 紙類……………                       | 甲 印刷料紙……………                  | 一「一枚千〇八十六萬<br>「インチ」ヨリ少カ<br>ラサルモノ五百枚毎<br>ニ二十四「ポンド」<br>以下ノ重量ヲ有スル百斤 |
|     |                               | 乙 其ノ他各種ノ印刷<br>料紙……………        | 同                                                                |
| 四十七 | 無味香油……………                     | 從價                           | 一 割                                                              |
| 四十八 | 無味香蠟……………                     | 同                            | 一 割                                                              |
| 四十九 | 「ボルトランドセメント」……………             | 百斤                           | 〇、五四四「五」                                                         |
| 五十  | 時計(懷中時計ヲ除ク)及<br>同部分品……………     | 從價                           | 〇、〇六五「五」                                                         |
|     | 各種ノ毛布類(「ウルステッ<br>ド」絲ノ織物共)純毛ト他 | 從價                           | 一 割                                                              |

物ヲ交セタルトノ別ナク、  
但毛ノ重ナル

五十二

「ブランケット地」及絲  
ニテ縫シタル「フラン  
ケット」(平織ノ) 百斤 七、四五八「十」

五十三

フランネル

五十四

甲 純毛ノ 一方「ヤ  
ード」 〇、〇四四  
乙 毛綿交織ノ 同 〇、〇三〇

五十五

縮緬吳呂

甲 生地及白地ノ 同 〇、〇一八  
乙 其ノ他各種ノ 同 〇、〇二二

五十六

羅紗

甲 「プロード、クロ  
ース」、「ナルロー、  
クロース」、「アミ  
シミア」、「トウキ  
ード」及「ウルステツ  
ド、コーチング」ノ如  
キ毛絲若ハ「ウルス  
テツド」絲ヲ以テ或  
ハ毛絲ト「ウルステ  
ツド」絲トヲ以テ織  
タル 一方「ヤ  
ード」 〇、〇九三

乙 「パイロット、ク  
ロース」、「プレシデ  
ント、クロース」及「ユ  
ニラン、クロース」

五十七 塊及鏡若ハ板 百斤 〇、四〇〇「五」  
五十八 簾板 同 〇、八三〇「七半」

亜鉛

其ノ他本税目ニ掲載セ  
サル各種ノ毛布(純毛  
ト他物ヲ交ヘタルノ  
別ナク但毛ノ重量超過  
スルモノ) 同 一 割

附記 既製ノ衣服及  
他ノ全製品ハ毛布  
類ノ項目ニ屬セザ  
ルコト勿論ナリ

五十五 「イタリアン、クロース」  
(綿ノ重量超過シタル)イ  
タリアン、クロース(其) 同 〇、〇二九「十」

五十六 他ノ織物  
「アルパカ」 同 〇、〇七五  
旗布 同 〇、〇三一  
羅世伊多 同 〇、〇三六

「セルジ」  
甲 從ニ「ウルステ  
ツド」絲横ニ毛絲  
ヲ以テ織タル 同 〇、〇五六  
乙 其ノ他各種ノ 從價 一 割

五十九 精糖

甲 和蘭標本色相ノ第十  
五號ヨリ第二十號ニ至  
ル 百斤 〇、七四八

乙 和蘭標本色相ノ第二  
十號ニ超エタル 同 〇、八二七

重量及尺度

本税目ニ記載シタル斤ハ日本ノ秤量ニシテ「メートル」法秤  
量ノ六百「グラム」即英國ノ「アヴァイルデユボイズ」秤  
量「「ポンド」ト三二二七七ニ同シ  
「ポンド」ハ英國ノ「アヴァイルデユボイズ」秤量トス  
方「ヤード」方「フット」及方「インチ」ハ英國ノ定法平  
面尺度トス

重價税算定ノ規定

本税目ニ從ヒ輸入物品ニ課スヘキ從價税ハ其ノ物品ノ仕入  
地、產出地若ハ製造地ニ於ケル原價ニ其ノ仕入地、產出地  
若ハ製造地ヨリ陸揚港ニ到ル迄ノ保險料及運送費ヲ加ヘ又  
手数料アルトキハ之ヲモ加ヘ算定スヘキモノトス

布帛類尺度ノ規定

税關ニ於テ布帛類ニ對シ課税スヘキ幅ヲ檢定スルニハ半  
「インチ」以下ノ端數ハ總テ之ヲ切捨テ半「インチ」ニ超  
エタル端數ハ總テ之ヲ一「インチ」トシテ算入スヘキモノ  
トス

附記 布帛類ノ織緣ハ其ノ尺度ニ算入セサルモノトス