

DEPARTMENT OF STATE

Assistant Secretary

Commercial Office

June 6, 1935

STATUTES WITH RESPECT TO JURISDICTION OF
DEPARTMENT OF STATE IN COMMERCIAL MATTERS

The intention of the Continental Congress to vest in the Secretary of the United States for Foreign Affairs authority to acquire commercial information is shown by a resolution passed before the adoption of the Constitution of the United States, a portion of which reads as follows:

"He shall use means to obtain from the Ministers and agents of the said United States in foreign countries an abstract of their present state, and commerce, finances"

1 Stat. L. 28

The Department for Foreign Affairs was established by Act of July 27, 1789, c.4, 1 Stat. 28, and was denominated the "Department of State" by Act of September 15, 1789.

The first of these Acts stated:

"The Secretary ... shall perform such duties as shall from time to time be enjoined on or entrusted to him ... relative to correspondences, communications, or instructions to or with public ministers or consuls ... or to such other matters respecting foreign affaires as the President shall assign to the said Department."

The Act of September 15, 1789, made no mention of a change of duties.

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The Act of April 14, 1792, creating the Consular Service, specified rather limited duties but stated at the end:

"The specifications in this title of certain powers to be exercised and duties to be performed by consuls and vice consuls, shall not be construed as implying the exclusion of others resulting from the nature of their appointments, or prescribed by any treaty or convention under which they may act."

1 Stat. L. 254

This provision is repeated in Section 1714 of the Revised Statutes of 1878.

Section 1712 of the Revised Statutes provides:

"Consuls and commercial agents of the United States in foreign countries shall procure and transmit to the Department of State authentic commercial information respecting such countries, of such character, and in such manner and form, and at such times as the Department may from time to time prescribe."

Aug. 18, 1856. See 170 S.2, v.11,
p. 139

With respect to the duties of the Secretary of State with reference to commercial matters, the Act of August 16, 1842, stated:

"That it shall be the duty of the Secretary of State to lay before Congress annually at the commencement of its session, in a compendious form, all such changes and modifications in the commercial systems of other nations whether by treaties, duties on imports, and exports or other regulations, as shall have come to the knowledge of the Department."

The Revised Statutes, Section 208, repeated the above requirement.

The Act of August 18, 1856 added to these duties in the following terms:

"That in addition to the changes and modifications in the commercial systems of other nations, now required by such Act, it shall be the duty of the Secretary of State to lay before Congress annually within sixty days after the commencement of each ordinary session, as a part of said report, all other commercial information communicated to the State Department by consular and diplomatic agents of this Department abroad, or contained in the official publications of other Governments, which he shall deem sufficiently important."
11 Stat. 139.

Section 2 of the same chapter states:

"That to enable the Secretary of State to make said report it is hereby declared to be the duty of consuls and commercial agents of the United States in foreign countries to procure and transmit to the Department of State authentic commercial information respecting such countries, of such character, and in such manner and form, and at such times as the Department may from time to time prescribe."

This latter provision forms the basis of Section 1712 of the Revised Statutes quoted on page 2 of this memorandum.

The provisions of the Act of August 16, 1842, and August 18, 1856, with respect to the duties of the Secretary of State have never been repealed and are now found in condensed form in Title 5, Chapter 2, Section 163, of the UNITED STATES CODE. It would seem to follow that the duties enjoined upon consular officers to provide the information required by those Statutes still obtain.

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The Act of May 29, 1928, while repealing a portion of the aforementioned Act, left untouched the provision with respect to the reporting of changes and modifications in the commercial systems of other nations.

The Act of August 18, 1856, c. 127, stated:

"It shall be the duty of the Secretary of State to publish official notifications from time to time of such commercial information communicated to him by such diplomatic and consular officers as he may deem important to the public interest." ***

This requirement is also carried on in Revised Statutes, Section 208.

An Act of January 27, 1879, stated:

"It shall be the duty of consuls to make to the Secretary of State a quarterly statement of exports from, and imports to, the different places to which they are accredited, giving, as near as may be, the market price of the various articles of exports and imports, the duty and port charges, if any, on articles imported and exported, together with such general information as they may be able to obtain as to how, where, and through what channels a market may be opened for American products and manufactures. In addition to the duties now imposed by law, it shall be the duties of consuls of the United States, annually, to procure and transmit to the Department of State, as far as practicable, information respecting the rate of wages paid for skilled and unskilled labor within their respective jurisdictions."

20 Stat. 267.

An Act of June 18, 1888, contains the following provision:

"Consuls of the United States in foreign countries shall procure and transmit to the Department of State authentic commercial information respecting such countries of such character and in such manner and form and at such time as the department may from time to time prescribe. And they shall also procure and transmit to the Department of State, for the use of the Agricultural Department, monthly

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reports relative to the character, condition, and prospective yields of the agricultural and horticultural industries and other fruiteries of the country in which they are respectively stationed; and the Secretary of Agriculture is hereby required and directed to embody the information thus obtained, or so much thereof as he may deem material and important, in his monthly bulletin of crop reports."

25 Stat. 186.

An Act of February 20, 1897, 29 Stat. L. 590, stated, in making appropriations for the ensuing year:

"Preparation, printing, publication, distribution by the Department of State of diplomatic, consular and other commercial reports \$25,000; and of this sum the Secretary of State is authorized to use not exceeding \$3,125.00 for the services of the Bureau of Statistics, Department of State, in the work of compiling and distributing such reports; not exceeding \$250.00 in the purchase of such books, maps, and periodicals as may be necessary to the editing of diplomatic, consular and other commercial reports ... and provided further that the Secretary of State be, and is hereby authorized to change the name of the Bureau of Statistics to the Bureau of Foreign Commerce, and that the foregoing provision is applied with the same force and effect to the Bureau of Foreign Commerce as to the Bureau of Statistics.

Section 5 of the Act of February 14, 1903, providing for the establishment of the Department of Commerce and Labor, stated:

"That there shall be in the Department of Commerce and Labor a Bureau to be called a Bureau of Manufactures and a chief of said Bureau who shall be appointed by the President ... It shall be the duty and province of said Bureau under the direction of the Secretary, to foster, promote, and develop the various manufacturing industries of the United States and marts for the same at

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home and abroad, domestic and foreign, by gathering, compiling, publishing, and supplying all available and useful information concerning such industries and such markets, and by such other methods and means as may be prescribed by the Secretary or provided by law. And all consular officers of the United States, including Consuls General, Consuls, and Commercial Agents, are hereby required and it is made a part of their duty under the direction of the Secretary of State to gather and compile, from time to time, useful and material information and statistics in respect to the subjects enumerated in Section 3 of this Act in the countries and places to which consular officers are accredited, and to send, under the direction of the Secretary of State, reports as often as required by the Secretary of Commerce and Labor of the information and statistics thus gathered and compiled, such reports to be transmitted through the Secretary of State to the Secretary of Commerce and Labor.

An Act of August 5, 1909, 36 Stat. 119, provided, as follows, with respect to foreign trade relations:

"Estimates for appropriations for defraying the necessary expenses incurred in connection with foreign trade relations shall come within the jurisdiction of the Department of State, under tariff legislation and otherwise, and in the negotiation and preparation of treaties, arrangements, and agreements for the advancement of commercial and other interests of the United States and ... to be expended under the direction of the Secretary of State."

With reference to the power of the President to prescribe general regulations outlining the duties of diplomatic and consular officers, Revised Statutes, Section 1752, stated:

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"The President is authorized to prescribe such regulations, and make and issue such orders and instructions, not inconsistent with the Constitution or any law of the United States, in relation to the duties of all diplomatic and consular officers, the transaction of their business, the rendering of accounts and returns, the payment of compensation, the safe-keeping of the archives and public property in the hands of all such officers, the communication of information, and the procurement and transmission of the products of the arts, sciences, manufactures, agriculture, and commerce, from time to time, as he may think conducive to the public interest. It shall be the duty of all such officers to conform to such regulations, orders, and instructions."

18 August, 1856, c.127,
s.22, v.11, p.60.

It is submitted that this provision gives to Executive regulations, with respect to the duties of consular officers, the force of law. There is attached hereto a copy of the Executive Order issued March 27, 1922, which outlines in detail the duties of consular officers at that time. That Executive order contains the following paragraph with reference to the submission of commercial reports:

596, Reports to be submitted only to the Department of State.- The statutes on the subject - R.S. Sec.1712; 32 Stat.L.827.- contemplate that the Department of State shall be the sole medium through which consular reports shall reach other governmental departments or the public. Consular officers are accordingly prohibited from furnishing copies of their reports, or articles upon the trade or commerce of their districts to any publication, to private persons, or directly to other departments. Such reports

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will be transmitted only to the Department of State, and the fact that they have been prepared should not be disclosed without special permission until after they have been published."

In this connection it may be pertinent to note that a great deal of material is now reported by consular officers to Commercial Attaches who request such data from consular officers for inclusion in their own reports to the Bureau. Within recent months the Bureau of Foreign and Domestic Commerce itself has initiated the system of requesting its officers to procure from consular officers information which the Bureau desires instead of, as in previous years, asking the Department of State to obtain such information.