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COMMERCIAL RELATIONS OF THE
UNITED STATES AND GREAT BRITAIN, 1783-1795.

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TABLE OF CONTENTS.

Introduction.

I. The United States as a Commercial Nation, 1783-1795.

II. Laws of Great Britain respecting the Commerce and
Neutrality of the United States, 1783-1795.

III. The Negotiation Leading to the Treaty of Paris as
Regards Commerce.

IV. John Adams in England.

V. Gouverneur Morris in England.

VI. George Hammond in the United States.

VII. Thomas Pinckney in England.

VIII. John Jay in England.

IX. The Jay Treaty and its Ratification.

Bibliography.

INTRODUCTION.

To the years from 1783 to 1789 many historians have applied the name "The Critical Period of American History." Taking into consideration the following six years during which the United States grew and developed from a collection of states to a nation, and viewing the period as a whole, it immediately becomes one of failure, necessity, probation, and success. The Confederation was a failure. The Constitution rose out of the desire for a nation with a workable government, and immediately was placed on trial not only by the citizens of the new republic but by all Europe. These years of probation had no definite end. The United States was in its infancy, and by gradually taking confidence, it drew to itself the confidence of older countries ultimately taking its place in the international family. But, however slowly this end was attained practical assurance was given of its success when the American crisis of 1794 and 1795 arising out of the European war met an honorable solution in the

Jay Treaty.

With this period in its entirety this thesis has to deal ~~deal~~, limited, however, to one particular matter. Throughout the twelve years trade between Great Britain and the United States rested on a very unstable basis. There was no commercial treaty between them, and merchants of the latter nation suffered considerable hardships through the action of the former's Navigation Laws. This was felt all the more as previous to the Revolution, the colonial tradesmen had been given the benefits of those same acts.

In dealing with these trade relations, two problems naturally arise for solution. Why were there no commercial clauses inserted in the Treaty of Paris? Why did Great Britain continue to refuse any settlement of American contentions? In conformity, the thesis divides into three parts. Chapters I and II comprise the first, giving a statement of the commerce of the United States with the laws and restrictions to which it was subject during the entire period. This is the basic part of the dissertation on which the remaining chapters

rest.

Chapter III is concerned with solving the first of the two problems and involves a discussion of the negotiations as far as they had to do with commercial matters. The remaining ~~six~~ chapters deal with the negotiations leading to the Jay Treaty with explanations of the aims of both nations in the several steps, bringing in a solution of the second and main problem. Practically nothing resulted from the Adams or Morris negotiation and consequently Chapters IV and V add little to any discussion except as steps to the end. Chapters VI and VII however are concerned directly with the events causing the Jay mission (Chapter VIII), and bear much more directly on the resultant treaty discussed in Chapter IX.

The purpose of this thesis is two-fold. Commercial matters occupied such a place of varying importance during different stages of the period that at certain periods they seemed entirely lost. Such was not the case, however, as a continued line of negotiations concerning them can be traced. Again the above problems have not received previously satisfactory solutions. Perhaps this short dissertation will bring some to light.

CHAPTER I.

The United States as a Commercial Nation, 1783 to 1795.

Considering that this is a thesis concerned primarily with the diplomatic relations of Great Britain and the United States from 1783 to 1795, so far as they dealt with commercial matters, it is not necessary or expedient to present a detailed study of the economic conditions of either country during that period. However in order to give the reader an understanding as to the reasons for the various steps in the ensuing negotiations a general view of trade conditions must be given.. To do this is the purpose of this first chapter. Herein will be found as concise a statement of the imports and exports of the United States - particularly those going to or coming from England - as can be deduced from a study of the meagre accounts and reports left us by contemporaries.

To get a broad view of these conditions it will be necessary to go back a few years before the

Revolution. The entire period then falls into four parts: (a) the Colonial Period just previous to the war, (b) the period of actual hostilities, (c) the years of the Confederation, and (d) the period from 1789 to the Jay Treaty. Under the latter will necessarily fall some statements as to the seizures of American vessels during the war between France and the first coalition. A general list of the agricultural products of the United States, their growth and importance, closes the chapter.

As early as 1660, England ordered that no "sugars, tobacco, cotton-wood, indigo, ginger, fustick, or other dying woods" could be carried from the colonies - America, Asia, or Africa, except to Great Britain or other British plantations. Three years later another act compelled the colonies to get their European goods through English ports.¹ In 1766, by 6, George III the above enumerated articles were continued under the same limitation, and the non-enumerated ones, which formerly could be shipped to any port of the world being limited to that part of Europe south of Cape Finisterre.

1. See Chapter II.

Later many commodities were added to the enumerated list such as molasses, tea, pitch, turpentine, hemp, masts, yards, copper ore, pig and bar iron, pot and peat¹ ashes, beaver skins, whale skins, and hides.¹ These laws permitted the Americans to ship any of their goods to Great Britain or other colonies and certain of them to the south of Europe.²

In 1769 then we find that the Americans exported about £1,500,000 's worth of these commodities to Great Britain proper, £500,000 to southern Europe, £750,000 to the West Indies, and about £20,000's worth to Africa. The following year there was a slight increase in about the same proportion.³ These therefore may be taken for about the average exportation of the American colonies just previous to the Revolution. Of the goods shipped to England proper, tobacco comprised nearly five eighths of the total value. Staves, and heading, rice, indigo, and dried fish made up the greater part of the remainder. Staves and heading, and provisions, comprised the greater part of the commodities exported

- 1. Pitkin - Com. of U. S. page 4.
- 2. These non-enumerated articles were practically limited to sperm oil candles, dried fish, Indian corn, wheat, onions, and lumber. Macpherson's Annuals of Congress III pg. 571.
- 3. Observations on American Commerce - Sheffield, App.V.

to southern Europe. To the West Indies the American colonists sent sperm^{oil}/candles, provisions, and staves and heading. New England rum made up nine tenths of the exports of Africa, being exchanged for shiploads of slaves.¹ Maryland and Virginia supplied the greater part of these exports, followed by the New England states, the Carolinas, Pennsylvania, New York, and Georgia, taken by groups in the order named.² The imports of the colonies, practically all from England and the West Indies, amounted during these years to about the same valuation as the exports, exceeding them however during the early seventies.³ All the foreign manufactures came from Great Britain proper while the colonists got sugar, coffee, coaco, molasses, salt, mahogany and logwood from their island neighbors.⁴ The tonnage required for this entire trade was probably about three hundred and fifty thousand tons per annum, owned mainly by British merchants.⁵

The system of the American colonist trade was conducted by three routes. (1) Ships laden with

1. Ibid.
 2. Macphersons' Annals of Congress, III, 571.
 3. Ibid 572.
 4. Lord Sheffield - Observations on U. S. Commerce, App. IV. The importations are hard to estimate as considerable smuggling went on, of which naturally, there is no record.
 5. Pitkin - Commerce of the United States, p 17.

American produce would start for the West Indies, sell and load with West Indian goods. Then they would either return to the American ports or go to England. If the latter, they would purchase manufactured goods in London and return home. (2) Ship laden with rum would go to Africa and return with cargoes of slaves. (3) Direct voyages to England or southern European countries returning directly or by way of the West Indies, bringing coffee, cocoa, sugar, molasses, etc., the last being made into rum in New England.¹ Their chief commodities carried from America on their voyages were tobacco, rum, dried fish, corn, wheat, onions, ship building lumber, rice, indigo, and breadstuffs. The bulk of the importations consisted of manufactured goods, negroes, and the West India products.²

The commerce of the Revolutionary period may be passed by with a word. When the war broke out of course trade ceased between the combatants and as a consequence commerce was destroyed and the shipping interests demoralized. Many merchants took to privateer-

1. The rum industry in the New England states was of considerable proportions but of a poor grade. This may be gathered from the fact that New England itself imported much West India rum, of a superior quality. The West Indian distilleries kept the better molasses and sent the poorer grades to northern colonies where it was made into a cheap grade of liquor for exportation to Africa.

Lord Sheffield - Observations on U. S. Commerce, pg. 111.

2. Ibid - App. IV and V.

ing and as a result weathered the crisis very successfully. Considerable smuggling went on. But all was an illegitimate trade and no accurate estimate can consequently be made of it.¹

At the close of the war, the United States was left with an enormous debt.² This together with the practically annihilated state of their trade and shipping interests made an extremely bad outlook for the the new nation, its merchants in particular.

Yet immediately upon the cessation of hostilities such American shipping as there was, began to pick up the old lines of trade, wherever possible. Their commerce^{was} practically excluded from Newfoundland and the West Indies by operation of the Navigation Acts, but direct trade with English ports was thrown open to them shortly after the preliminary articles of peace had been signed.³ As American ports were opened to European trade about the same time, an exaggerated and unnatural commerce began. Great Britain was the chief participator in this as her large manufacturing industries had been with few markets for seven years, and now that the war

1. McLoughlin's - Confederation and Constitution, 74.
 2. Pitkins - Commerce of the U. S., 25. The whale fisheries were practically destroyed and the cod fisheries placed nearly in the same condition. Letters of Higginson - Am. Hist. Assn. Report, 1896, I, 723-729.
 This portion of American industry rebuilt itself quickly however and in 1786, 1787, 1788, and 1789 it exceeded that of before the war.
 Jefferson's Report on the Fisheries, Feb. 2, 1791.
 A. S. P. Com. and Nav. I, 8.

was over were anxious to unload their stored-up goods. The Americans having had no luxuries since the outbreak of hostilities and being for the moment well supplied with specie, purchased such articles with an extravagance, that led to long extension of their credit on the part of the British tradesmen¹. Soon they were deeply in debt. The fear of harsh measures regarding these obligations undoubtedly had much to do with the continuance of trade in English channels in spite of the the English refusals to abrogate the Navigation Acts.²

The trade was greater in 1784 than in any of the six succeeding years. Nearly £4,000,000's worth of commodities were exported from England to the states, an increase of nearly £1,000,000 over 1770. It then gradually decreased until 1786 when it rose again, nearly reaching the maximum in 1790. But during this same time the exports from the United States steadily increased as recovery from the effects of the war became more and more rapid. However the balance of trade was overwhelmingly on the side of Great Britain.

1. Tench Coxe - View of The U. S. - 49-51.
 2. See Chapter III.

Shipbuilding decreased, however, for the first five years after the war. Letters of Phineas Bond in Am. Hist. Am. Report, 1896, I, 638.
 3. See Chapter II - Adams Works VIII, 323.

Part of this balance was paid in specie¹ - estimated at about £ 1,260,000 for 1783, 1784, 1785 - but the greater part comprised the enormous debt owed by American tradesmen to their British rivals. A table will perhaps show this to best advantage:

<u>Year.</u>	<u>Importation from U. S. to G. B.</u>	<u>Export from G.B. to U. S.</u>
1784	£ 749,345	£ 3,679,467
1785	893,594	2,308,023
1786	843,119	1,603,465
1787	893,637	2,009,111
1788	1,023,789	1,886,142
1789	1,050,198	2,525,298
1790	1,191,071	3,431,778

These figures then show the balance of trade to have been approximately £ 107,000,000 favorable to England. Using as a basis the specie estimation, - reported as phenomenal, - the actual money leaving the United States during the entire period could not have amounted to more than £ 3,000,000. This then left upwards

1. Pa. Gazette, July 9, 1786, - McLaughlin - Constitutions and Confederation, 77.

2. Compiled by Mr. Pitkin from English custom house books, - Com. of U. S., 30.

of ~~£~~7,000,000 to be accounted for by debts of American merchants. However, the trade with Great Britain was not the only commerce carried on by the United States. Nor was the balance always so unfavorable. In fact in 1785 their total exports were upwards of four million louis d' or (practically the same as an English pound)¹ and the imports nearly a million louis d' or less. This left a total balance of nearly a million louis d' or or pounds favorable to the United States.

Sentence left out?

These facts would lead us to the conclusion that by 1789, although public and private credit were stretched to the utmost,² the United States was really ready to enter upon a period of great activity and progress. Further than this it is impossible to go as no authentic accounts can be formed of the trade of the states during the entire period of the Confederation.

The various commodities exported during the Confederation were practically the same as those of the pre-Revolutionary period with the exception of salt-fish which in the total dropped in relation to the other exports. Tobacco and bread and flour headed the lists

1. Table of Exports and Imports prepared by Thomas Jefferson in July of 1786. Jefferson's Works IV, 258.
By comparison with the above table it will be seen that England supplied about three fourths of the American imports.
2. The interest on the public debt amounted by 1787 to over six million dollars of which five million was unpaid.
Report - Board of Treasury to Congress, Sept. 20, 1787,
Pitkin - Com. of U. S., 31.

followed by lumber, wheat, hops, Indian corn, and rice. The imports were far different, however, showing a preponderance of luxuries and a diminution of the West India products¹. This can be accounted for to a great extent by the exclusion of American bottoms from the islands but too those commodities were undoubtedly commencing to be grown in the southern states with some success. Yet the export trade from the British West Indies to the United States was valued at nearly £200,000 in 1787.²

It is much easier to get accurate information regarding the commerce of the United States after the new government under the Constitution got into working order^{than} for the previous years, as beginning in September of 1790, the Secretary of the Treasury made annual reports as to the state of foreign trade. The first of these gave the total exports of the United States as twenty million dollars, six million of which went to England. In 1790 and 91, the amount was practically the same, while the following twelve months showed an increase of a million dollars³. By September of 1793 the annual

1. Jefferson's Tables of Exports and Imports. Jeff. Works IV, 259. Woolens, silks, cottons, jewelery, iron and steel products, boots and shoes, wines, sugars, molasses, and hardwoods were the chief imports.
2. Macpherson - Annals of Commerce IV, 158.
3. It should be noticed that this approximates the report of the English custom house. See table on page 9. A. S. P. Com and Nav. I, 24 to 34.

exportation amounted to twenty six million dollars; by 1794 to thirty three million $\$$ and by 1795 to approximately forty seven million.¹ Throughout all this period Pennsylvania led the list of exporting states followed by New York, Massachusetts, Maryland, South Carolina and Virginia. Virginia and Maryland had lost their position to their northern rivals². Bread stuffs including grain, flour, and meal comprised the greater share of the exported products, followed by tobacco, rice and lumber. In 1789, 90 and 91, the United Kingdom took about one third of our products while France took about one fifth. In 1792 both nations took about one fourth each. The following year England still headed the list of nations receiving commodities of the United States with about one fourth of our total exports, followed closely by France, the Netherlands, and Spain. In the next year, however, ending with September 1795, the year of the final ratification of the Jay treaty- neither nation took as large a part of our produce as formerly but France this time exceeded her English rival in amount purchased.³

1. A. S. P. - Com. and Nav.

In fact right up until 1801 the whole of the exports increased by leaps and bounds. In that year it was over $\$94,000,000$.

2. Pitkin - Commerce of U. S. Chap. II, Table 2, A. S. P. C & M - I, 323.

3. Compiled from reports of Treasury for those years, A. S. P. - C & M I, 1 to 350.

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The imports of the United States during these six years however came mainly from England. No such close division between that country and France as with exports. Fully one half to three fourths of all commodities coming into the United States came from British ports.¹ In 1792 fifteen out of nineteen million dollars worth of importation came from that nation. Similarly in previous and following years the preponderance although not so large was all favoring the English. The balance of trade between the United States and Great Britain was then all in favor of the latter, as during the Confederation. The general balance was, however, favorable to the new nation.²

Summing up the commerce from the end of the Revolution to 1795 it may be said that from a state of practical ^vannihilation trade had grown and prospered until [↑]again [↑]in an active and healthy condition.³ The old commerce with England was in full blast and in place of the former markets now closed to American trade or shipping, European ports stood open.⁴ The export trade

1. Report of Secretary of State, Dec. 16, 1793, Pithin Com. of the U.S. - 152.

2. Taken from the above citation, annual reports of the Secretary of the Treasury and a comparison with valuation of the imports of the U. S. made for the years following 1795 by an official of the Treasury department. (Pithin - Commerce of U. S., 154) The reason that the annual reports of the Secretary of the Treasury can not be used as an absolute criterion is that no valuations were given for articles paying specific duties. - A.S.P. - C & N, I.

was well diversified although slightly in favor of Great Britain. Practically all the U. S. imports came from the later country.

But what were the largest American productions and how were they received in those ports opened to them? Falling naturally into five classes they will be treated.

1. Agricultural Products.

(a) Wheat, rice, corn and rye had long been the staple products of the new nation. Their exportation in the aggregate was in advance of any other. The New England and north middle states were the strongholds of wheat production. Rye and corn grew mainly in the north middle states, Maryland and Virginia leading in their production. Rice came from the Carolinas and Georgia.

Such commodities had a general market and were as a usual thing free from discriminating duties. England however had such a law that American foodstuffs were practically prohibited unless the local price rose to so great a height that they were of necessity admitted.

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- 3. The war between France and first coalition, while greatly interfering with neutral commerce did not seem to affect the gradual growth of the trade of the U. S.
 - 4. The United States was not satisfied to have these old markets closed, however, as shown by the subsequent negotiations.

14.

They could enter the West Indies freely - only to the British islands in British ships, however. Spain also charged a large duty for re-shipment to their colonies.

(b) Tobacco.

The principal growth of Maryland and Virginia and the largest single export from the United States . Mainly sent to England. It was under heavy duties in England, Sweden and France (but not discriminations) and prohibited by Spain and Portugal.

(c) Animal Products.

Raised principally in the north and central states. Exported mainly to the West Indies. Under no restrictions.

(d) Cotton.

Became an export of noticeable importance from the Carolinas and Georgia about 1790 or 1791. Even, in 1792, however, the importation from the West Indies exceeded the exportation. The increase in its production was phenomenal. In 1792 only an export of about

one hundred and forty thousand pounds, it jumped the following year to nearly five hundred thousand. In 1794 above a million and a half pounds were exported while by 1795 the shipment of this commodity reached the six million pound mark. It rested under practically no duties.

2. Practically no manufactured goods were exported by the United States at this time with the exception of cheap rum to Africa. (See Page 5 note 1.)

3. Forest Products.

This class comprised lumber of all kinds, naval stores - such as tar, pitch, turpentine, etc. - pot and pearl ashes, ginseng, dyes and furs. Timber and ships' stores had been a great article of trade during colonial days and still continued to be in the early 90's. New England masts were particularly in demand. The fur trade was carried on by the British until the Jay Treaty through their retention of the western forts.

These products were under no prohibitory

duties, except that American made vessels were refused naturalization in both England and France.

4. Fish and other Sea Products.

(a) Cod fisheries.

Practically destroyed during the Revolution, this foremost export of New England had not recovered by 1790. In consequence of a drawback on salt, however, the exportation in 1791 amounted to more than the total of the previous four years. It steadily increased until the close of our period.

The principal markets for this product were the West Indies and the Catholic countries of Europe. However, both England and France practically prohibited their importation into both the home markets and their island possessions in an attempt to foster their own fishing trade off the Grand Banks. When the war of 1793 began France took off these prohibitions.

(b) Whale Fisheries.

Oil and head matter - the base of candles - from the spermaceti whale had found a good market in

Europe, mainly in England, for a century previous to the Revolution. Following the war England prohibited its importation, again fostering her own industry. France however remained an open market for this commodity as did the rest of continental Europe.¹

1. The above classification of American products has been taken from the following sources:

1. A. S. P. and C & N. - I, 1 to 350.
 - (a) Report of the Secretary of State on Fisheries, 1791.
 - (b) Representation of Legislature of Mass. on Fisheries, 1790.
 - (c) Reports of Secretary of Treasury on Commerce (annual)
2. Annals of Congress, 1st Session. Debates on Impost Bill.
3. Pitkin - Statistical View of Commerce of the U. S.
4. Macpherson - Annals of Commerce, III and IV.
5. Jefferson's Report on Privileges and Restrictions on the Commerce of the United States in Foreign Countries, Dec. 1793, Jefferson Works VI, 470.
6. Jefferson's Report of Footing of the Commerce of the United States with France and England and English American colonies. Jefferson Works IV, 412.

However, trade in domestic goods was not the only commerce indulged in by the United States. During the war between France and the first coalition the produce of the former's West India island possessions had no other means of reaching Europe than by neutral carriers. The carrying trade of the United States, - small previous to that time - began to grow and assumed an important position by the side of the commerce in home products.¹ Sugar, coffee, pepper, cocoa were the chief commodities transported to Europe, either directly or through the United States while manufactured products from those countries found their way back by the same routes. This trade jumped from a little better than three million pounds in 1792 to more than twenty-two million pounds the following year. In 1794 it rose to nearly sixty million pounds and in 1795 rose above that mark.²

In this carrying trade, however, the shipping interests of the new nation had by no means a free hand. As England was persisting in a policy of starving out her continental enemy, it was natural for her to keep foodstuffs

1. Pitkin - Statistical View of the Commerce of the U. S., 137.

2. Ibid 137-140

Reports of Secretary of the Treasury for 1793, 1794, 1795,
and 1796.

A. S. P. - C. & N. - I, 200 to 350.

from reaching French shores as far as possible. To do this she issued her famous Orders in Council of June 8th and November 6th, 1793, and January 8, 1794¹. These had the effect of prohibiting the shipping interests of the United States from carrying the goods of the French West Indies, in addition to seizing for adjudication any provisions bound for France.² As France enacted retaliatory measures American commerce immediately became subject to many seizures.³ How many such captures took place is hard to determine but the awards made by the commission in accordance with Article VII of the Jay Treaty settling the American claims over such seizures will give some idea of their extent. In all the commission made 990 awards against the English which gave to American claimants approximately £1,350,000. In addition certain other adjudications over West Indian and other minor captures brought £269,000 more of English money to citizens of the United States, Counting in the amounts paid by the British for confiscated possessions, estimated at £720,000, the total money

1. Report of Thomas Jefferson - Jefferson's Wks. Vol. VII, 478.

2. See Chapter II.

3. Report of the Secretary of State (Randolph) on Foreign Aggressions on American Commerce. Mar. 1794. A. S. P. - F. R. I, 423.
Report of Secretary of State on Spoliations on American Commerce. May 20, 1794. - Ibid 461.

received by American tradesmen during this period for captures was \$2,330,000 or about eleven and a half million dollars.¹

However, in spite of the great number of these seizures, the stimulus of enormous profits at the end of a successful voyage overcame the grave dangers attending, and gave such a call for more vessels that the tonnage of the United States increased amazingly in a very few years. In 1789 the total tonnage of American vessels engaged in foreign, coasting, and fishing trade was not above two hundred thousand tons while in 1795 it was far above the half million mark. Foreign vessels entering American ports from 1789 to 1792 had about one half the tonnage of vessels of the United States but during the next two years they amounted in the aggregate to less than one tenth of the American vessels.² These factors led naturally to a great increase in the ship-building industry of the New England states.³

1. John Trumbull - Opinions of the Commissioners - 2, Statutes at Large, 307.

- J. B. Moore's, International Arbitration to which the United States has been a Party. I, 343.

2. (a) The difference in the years from 1789 to 1795 is far greater than that indicated by the figures. This arises from the fact that before 1793 any vessel was registered every time she touched port and all these registers were added to give the annual total. After 1793, however, a vessel was registered just once a year. This brought the total to much less in comparison to the previous reports while in reality it was far greater.

A. S. P. Com. and Nav. I, 250.

Foot-notes - pg. 20.

2. (b) Pithins - Statistical View of the Commerce of the
U.S. - 18 and 387.

3. Ibid (b)

CHAPTER II.

Laws of Great Britain respecting the Commerce and Neutrality
of the United States, 1783 to 1795.

Before going farther with this discussion it is necessary to give a brief review of the acts under which the commercial interests of the United States operated during this period. These embrace both the Navigation Laws, from which there was little change after 1788 and the Orders of the King in Council directed against the neutral carrying trade of the United States after the outbreak of the War of the First Coalition in the spring of 1793. These latter it will be seen led to such a call for retaliation - commercial or military - that President Washington sent John Jay on this special mission of 1794 in hopes of stemming the tide of those demands and preserving to the country her status as an impartial onlooker of European political strife. This mission resulted in the Jay Treaty of 1794 which marks the closing point of this treatise. However, in viewing the causes of that Treaty let not the Naviga-

tion Acts, although more remote be entirely lost in the mass of neutral trade restrictions. Both were present and played an important part in bringing forth the absolute demand for some sound commercial basis between the two nations.

The earliest act bearing upon the condition of the colonies in 1776 was that of 1646 in which it was provided "that none in any parts of the plantations of Virginia, Bermuda, Barbadoes and other places of America should suffer any ship or vessel to lade any goods of the growth of the plantations and carry them to foreign parts except in English bottoms."¹ This was reenacted in 1660 and other important clauses added. "That for the further improvement of the Navigation Acts no merchandise of the growth, production, or manufacture of Europe shall be imported into any of the English plantations or factories in Asia, Africa, or America, but what shall be laden in England in English built shipping, and navigated by at least three fourths English mariners, and shall be carried to those places directly from England and no where else, on forfeiture of ships and lading, and none of the products of the English plantations

1. McPearson II, 442.

McCulloch's Commercial Dictionary, p 348.

To this was added the law of the following year "that no goods or commodities whatever of the growth, production of Asia, Africa, or America, including our own plantations there, should be imported into England or Ireland or any of the plantations except in English built ships owned by English subjects, navigated by English commanders and three fourths of the sailors Englishment." Macpherson II, 443, 12 Cor. 2, 18, Sect. 3.

viz., sugar, tobacco, cotton, ginger, fustic and other drugs, shall be carried anyw here, (except to older plantations) till they be first landed in England under the like forgeiture of ships and cargoes."¹ As these acts were still in force at the beginning of the War for Independence it is easy to state what were the trade conditions of the colonies. (1) Everything they imported or exported must be carried in English bottoms and could come from no other port than one of Great Britain. (2) Exportation of their most important articles of production must first go directly to England there to be re-exported to places of consumption. Yet as colonists the trade between them and Great Britain in English bottoms was free and unrestricted and while the above regulations presumably worked considerable hardships, the bulk of commerce, naturally with the mother country, was under the best of conditions.²

During the Revolutionary War, Parliament enacted such laws as are common to restrict trade between belligerents.³ It is sufficient for our subject to note

1. 15th Car. II - 1663. A. O.
 The citations in this chapter to British Statutes can be found in J. B. Ricardo's "Anatomy of Navigation Laws" (1847) unless otherwise indicated. A most comprehensive discussion of the statute of 1660 is given in the appendix to this volume.
 2. Honorable W. Huskisson in a speech before the H. of C. in 1836 lays stress upon these acts as a remote cause for the Revolution.
 3. 14 Geo. III, 19; Geo. III, 11; 15 Geo. III, 18; 16 Geo. III, 5. The earlier of these merely restricted trade with the later acts were absolute prohibitions.

4.

that they demanded absolute ²⁰prohibition of such commerce. That they did not fully accomplish this end was not due to lack of any legal impediment.

Upon the cessation of hostilities Great Britain¹ having recognized the United States as an independent nation abolished these prohibitions and prepared to carry on commerce with her upon the new footing.² Power was given the King to regulate this new trade by Orders in Council. No longer were the Americans under the protection of the British flag.³ No longer were American merchants entitled to advantages over tradesmen owing their allegiance to a foreign sovereign. Immediately then the old acts of 1647, 1648, and 1665, became enforceable against the new nation. None of her products could be carried to England or her possessions except in British built ships, owned by British subjects, commanded by British captains and at least three fourths manned by British sailors.⁴ What were the new states to do? Their channels of trade all pointed Britainward. The commercial connections of their merchants were naturally with

1. Macpherson - Annals of Commerce, III, 591.

2, 23 Geo. III, 26 - Apr. 1783 - Macpherson - A. of C. IV, 17.

3. 23 G. III, 39. This power of the King to regulate trade between G.B. and the U. S. Was continued year by year until the Jay Treaty. The exception of the West India trade was made in 1788 (28 Geo. III, 6) when a permanent act for commerce with those islands was passed.

4. See Page 2, note 1.

While this was true in theory for about two months it was practically never enforced. During the winter of 1783-3 we hear of the arrival of many American ships in English ports carrying produce of the states. No attempts were made to confiscate them. See Chapter III.

5.

English houses. Moreover the habits of a century could not be changed in a day. Their only hope for immediate commercial salvation lay in obtaining from the British relaxation of these stringent laws.¹

It was not long before this came and American ships were permitted to carry produce of the states to England, thus being placed on a footing with vessels of European nations.² Within a month after the abolition of the war provisions and in fact just two days after the King was given power to regulate the commerce between the two countries a proclamation permitted "oil or any unmanufactured commodity the produce of the United States" to be imported in either British or American bottoms.³ Others of a similar nature followed but all were of a temporary nature, being limited to a few weeks or months. On their expiration the order of December 26th was issued comprehending but making several changes in the earlier proclamations.

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1. Thomas Jefferson in his Notes on Virginia of 1781 (Jefferson's Works III, 87) suggested giving up trying to carry even American commerce in American ships to British ports in case that country could not be moved from her conservative position behind the Navigation Acts. This he said would turn more of American industry and interest with the development of home products.
2. It must be remembered that by the law of 1660 European nations were the only ones allowed to carry their produce to Great Britain in any but British bottoms. The United States then on becoming a nation did not immediately fall into this category. Ricardo's "Anatomy of the Navigation Laws" App. 303.
3. Macpherson - Annals of Congress IV, 17.

It declared "that any unmanufactured goods of merchandizes, the importation of which into this kingdom is not prohibited by law (except oil) and any pitch, tar, turpentine, indigo, masts, yards and bowsprits, being the growth or products of any of the United States of America, may.... be imported directly from thence into any of the ports of this kingdom, either in British or American ships, by British subjects, or by any of the people inhabiting in or belonging to, the said United States or any of them, and may be entered and landed in any port of this kingdom" ¹

In addition no additional duties were demanded of Americans and tobacco was admitted under bonds in government warehouses.²

Thus in the matter of home trade the English government was exceedingly liberal. Considering the new status of the states, Britain's natural animosity, and her favored nation clauses in treaties with certain continental powers, her immediate action in this regard were certainly as favorable as justly could be hoped for by the Americans.

1. This exception of oil was the greatest change made from previous proclamations. Probably it was omitted in an attempt to foster the English and Canadian fishing industries. (See Chapter I) I have not been able to find where this commodity was ever removed from the above restriction until the treaty.
 2. Lord Sheffield - Observations on the Commerce of the U.S. 282. Just a little later, Mar. 5, 1784, the old Board of Trade and Plantations, abolished in 1782, was revived and put in charge of a committee of the Privy Council. Ibid.

7.

However no such lenient disposition was exhibited when it came to the matter of trade with English plantations. England gave no indications of offering up her colonial trade to American vessels as shown by a proclamation of June 3, 1783, providing that British subjects could carry in British ships, all kinds of naval stores, spars, and all kinds of lumber, horses, and all other kinds of live stock, and all kinds of corn, flour, and bread from the United States to the West Indies and carry back rum, sugar, molasses, coffee, chocolate, nuts, ginger and pimento, on paying the same duties as if they were going to a British colony¹. Nothing was left then for America but to obtain concessions by diplomacy or retaliatory legislation.²

1. McPearson IV, 26 - H. Parl. Hist. 602,640,824. Early in this same year, 1783 a bill had been placed before Parliament opening up the West Indies and other colonial possessions of Great Britain to trade of either American or English ships - "the ships and vessels of the subjects and citizens of the U. S. shall be admitted into the ports of His Majesty's islands, colonies, or plantations, in America, with any merchandize or goods of the growth, produce, or manufacture of the aforesaid United States, with liberty to export from His said Majesty's islands, colonies or plantations, in America, to the said territories of the said United States, any merchandize or goods whatsoever" - but this bill was soon dropped. Mr. Pitt, then Minister of the Exchequer, introduced the bill in March, but it was so strongly opposed by Mr. Eden, afterward Lord Auckland that it failed to pass. The latter's arguments against it ran (1) that it would be contrary to England's treaties with other countries and (2) that American commerce would seek English markets anyway, and as indeed was the fact.

John Lord Sheffield "Observations on the Commerce of the American States" - App.

2. The attempts at diplomacy will be related later. See Chap. III to VIII. McPearson says in the Annuals of Commerce IV, 26, that this act was passed as an indulgence on the part of the British administration but that it was not so considered by either the West Indies or the U.S.

Thus by the end of 1783 American merchants had been placed on the same basis as European tradesmen in respect to commerce with both England and her colonies. To the former they might carry goods produced in the states in vessels sailing under the United States flag. But the only trade allowed them with the latter was that carried on through the medium of British bottoms.

However favorable an impression the provision for direct trade between the two countries made upon the American people it is certain that the arrangements respecting the West Indies and North American colonies acted as more than a counterbalance.¹ Demands for retaliation were heard and indeed imposed by three of the states², but nothing of a general nature resulted other than a request by Congress³ that the states turn over to her all powers as regards commercial matters,

1. McPearson IV, 26, Marshall's Life of Washington V, 68. Mr. Huckisson in his speech before the House of Commons in 1826 says this retaliation took three forms: (1) prohibition of British merchants from trading in some markets. (2) heavier duties specifically imposed on British merchants (3) giving a decided preference to goods of other countries.

2The legislature of Massachusetts on June 23, 1785, prohibited the exportation of any American produce or manufacture from their ports in vessels owned by British subjects after August, 1, 1785. Also provided for extra duties to be paid by foreign vessels on entering their ports.

On April 28nd, of that same year, the Boston merchants had presented a petition to Congress for regulations to counteract the acts of Great Britain as regards the duties on rice and tobacco.

Marshall's Life of Washington. (1804) V, 77 et seq.

McPearson's Annals of Congress IV, 76 et seq.

3. Apr. 30, 1784 - The direct influence of this on the formation of the Constitution of the U. S. does not fall within this discussion but an early indication of it may

including that of "prohibiting the subjects of any foreign state, kingdom, or empire unless authorized by treaty from importing into the United States, any goods, wares or merchandise which are not the produce or manufacture of the dominions of the sovereign whose subject they are." England did not retaliate against these feeble attempts which accomplished nothing although the Board of Trade proposed several measures.¹

However she steadfastly refused to change her policy in regard to the West Indies or North American colonies. In 1785 not only were the inhabitants of Newfoundland forbidden to furnish anything to Americans except bread, flour, and live stock, and then only in cases of necessity but English fishing vessels were absolutely prohibited from taking on supplies in American ports.² Three years later Parliament took the regulation of the West Indian trade out of the hands of the Cabinet and placed it on a stable basis although continuing the previous restrictions. They ordered by 28 Geo. III Chap. 6 "that no Goods or Commodities whatever shall be imported or brought from any of the Territories belonging to the said United States of America into any

1. Journals of Congress, Apr. 30, 1784. In reality this request met with but little enthusiasm. It was two years and a half before all the states had granted the power and most of them had so burdened the grants as to make them practically unusable. McLaughlin "Confederation and Constitution" pg. 85.

2. 25 Geo. III, 1, Macpherson - Annals of Commerce, IV, 71. Some few acts were passed between 1785 and 1788 but they were of the general tone of former legislation. Adams Wks. VIII, 438

be seen in a letter of John Adams to Cong. July 18, 1783, Ad. Wks. VIII, 107

of his Majesty's West India Islands except tobacco, pitch, tar, turpentine, hemp, flax, masts, yards, bowsprits, ~~staves~~, heading, boards, timber, shingles, and lumber of any sort; horses, meat cattle, sheep, hogs, poultry, and live stock of any sort; bread, biscuit, flour, peas, beans, potatoes, wheat, rice, oats, barley, and grain of any sort; such commodities being the growth and production of any of the Territories of the said United States of America.¹ "Also, — "That none of the Goods or Commodities hereinbefore excepted, enumerated, and described, shall be imported or brought into any of the said Islands from the Territories of the said United States.... except by British subjects, and in British built ships, owned by His Majesty's subjects and navigated according to law."

Article III provided that any goods which might be imported from the West Indies to Europe and "sugar, molasses, coffee, cocoa, nuts, ginger and pimento" could thereafter be imported into the United States "by British subjects and in British built ships, owned by his Majesty's subjects and navigated according to law".

1. Rum was not among the enumerated articles of legal importation. Nor was this ban removed until the Jay Treaty.

but in them only. Salt from the Turk Islands was the only exception. Moreover "no goods or commodities whatever should be imported from any of the Territories belonging to the United States into the province of Nova Scotia or New Brunswick, or the Islands of Cape Breton, Saint John's or Newfoundland." Sea trade from the United States to ¹Quebec was also forbidden.

To summarize, this act prohibited American vessels trading with the West India Islands under any circumstances, absolutely denying what the tradesmen of the states called their rights. However about thirty enumerated articles might be imported from the new nation if carried in British vessels. Certain goods might be exported to the states in the same way.² But no intercourse between Canada and the United States was allowed except by a direct land trade into Quebec.³ This law remained in force until the Jay Treaty, controlling the trade of the islands until that time.

The question of duties was of such importance that the first bill introduced into Congress after that body came into existence was one for levying certain

1. Mar. 20, 1788 - British and Foreign State Papers, III, 552.
 2. Commerce between the islands in the enumerated articles was forbidden. This acted as a slight concession to the mercantile interests of the United States.
 3. Exceptions were to be made only in cases of absolute emergency.

imposts.¹ While this was still pending, April 21, 1789, Mr. James Madison of Virginia proposed to the House acting as a Committee of the Whole a further measure directly connected. This was a bill for the imposition of tonnage duties. It provided for three classes.

(1) A duty of "six cents a ton on all vessels built in the United States and owned by a citizen or citizens thereof, and all vessels foreign built, but now owned by such citizens" was agreed to.² (2) Thirty cents and sixty cents were suggested as the amounts to be paid per ton "on all vessels belonging wholly to subjects of Powers in alliance with the United States or partly to the subjects of those Powers, and partly to citizens of the United States." After considerable discussion, the former was carried.³ (3) Immediately the next question of what duty should be imposed a "all vessels belonging wholly or in part to subjects of other Powers" caused a great difference of opinion. It was thought by some that any greater duty than ^{that} imposed by the previous mention would act as too great a tax upon the agricultural

1. Apr. 8, 1789 - Annals of Cong., 1st C. 102.

2. Annals of Cong. 1st Cong. p 176.

3. Annals of Cong. 1st Cong., p. 188.

portions of the nation and give a premium to the shipping interests. This arose from the fact, believed at the time that America did not have ships enough of her own to accommodate her exports.¹ The arguments of refutation were that the burden on agriculture would be only for a short time when the increase in American tonnage would bring the necessary competition to eliminate all discriminatory burdens.² " I do not think there is much weight in what has been observed relative to the duty we are about to lay in favor of American vessels, being a burden on the community and particularly oppressive to some parts; but if these were, it may be a burden of that kind which will ultimately save us from one that is greater, " were Mr. Madison's sentiments.³ He added that as the agricultural parts of the country were those which must be the particular objects of defense on the part of the union if ~~ix~~ ever a war should break out, it was only fair that they should bear a slightly increased burden in building up its "maritime strength."

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1. Speech of Mr. Fitzsimons. Annals of Congress, 1st Cong., 178. He "estimated" the tonnage employed in the transportation of the products of America at about 8,000,000 tons; of this two thirds were owned by citizens, the other third by foreigners." Annals of Cong. 1st Cong. page 189. Speech by Mr. Madison.
 2. It seems from the debates upon this entire subject (Annals of Congress - 1st Session pages 176-188) that there were few opponents of the thirty cent measure. All the arguments were on the subject of the proposals of more than that figure.
 3. Annals of Congress, 1st. Cong. 190.

The second argument in opposition to the increase in duties against those nations not having commercial treaties with the United States was connected with the relation already existing between that country and France. In 1778, treaties of alliance and of commerce between the colonies fighting for their independence and France had been made the latter of which had regulated the trade between them ever since that time.¹ Now were the United States bound to favor their Revolutionary allies? If not, was it to their interest commercially to do so anyway? What would Great Britain do if she were discriminated against?

In regard to the first of these it is noticeable that even the strongest contenders for the measure, Mr. Madison, Mr. Fitzsimmons, and Mr. Jackson² - did not positively advance the theory that the treaties of 1778 made such concessions to France³ obligatory. Rather emphasis was placed on the expediency side of the matter. Congress should act for several reasons. (1) Many of the states had passed such acts previously indicating a strong public sentiment toward retaliation⁴ (2) "One

1. Treaties and Conventions of the U.S., 298.
 2. The members of the House speaking on this proposal were Messrs. Madison and Page of Virginia, Fitzsimmons and Clymer of Pennsylvania, and Baldwin and Jackson of Georgia, for; and Messrs Benson and Lawrence of New York, and Wadsworth and Sherman of Connecticut against the discriminations. The line between the shipping and agricultural halves of the country can be easily seen.
 3. Annals of Congress, 1st Congress, 176-192.
 4. Mr. Madison said (Annals of Congress page 181) "the public sentiments of America will be favorable to such a discrimination. I am sure, with respect to that part from which I come, it will not be a pleasing ingredient

15.

of the few nations - (France)- with which America had formed commercial connections had ~~relaxed~~ considerably in that rigid policy it before pressed - not so far to be sure as America wished with respect to opening her ports to our trade, but she had afforded our ready-built ships a sale and entitled them to the same advantage, when owned by our own citizens, as if they had been built in France, subjecting the sale to a duty of 5% - and it would therefore be profitable for the United States to favor her.¹ A refutation of this came from Mr. Lawrence in the shape of a denial that America had or would not receive any partial benefits from such a proposed law.² (3) It was shown that the proportion of commerce which found its way to Great Britain was far in excess of what should naturally flow to any one country and that the proposed duty would only tend to spread it more proportionately thereby widening American markets.³ In reply Mr. Lawrence maintained "that the merchants of America are well able to understand the pursue their own interests and the advantages they maintain tend to the wealth and prosperity of the Union."⁴ It was there-

1. Annals of Congress, 1st Cong. page 181.

2. Ibid 183.

3. Ibid 187.

4. Ibid 188.

 in your laws, if they find foreigners of every nation put on a footing with those in alliance with us.

fore a matter to be worked out by the ordinary laws of trade and not by artificial legislation. Finally a majority of the Committee being found to favor a policy of discriminations, fifty cents a ton was decided upon as the amount to be levied on vessels of nations not having commercial treaties with us.¹

These three rates - six cents on American vessels, thirty cents on vessels of nations connected with the United States by commercial treaties, and fifty cents on vessels of all other Powers \ominus were then proposed to the House in the Report of the Committee of the Whole on April 24th.² Debate continued and on May 7th the fifty cent clause applying to foreign owned vessels of nations not in treaty with the United States was dropped and a motion of forty cents until the end of 1790 and then an increase to seventy-five cents was proposed as a substitute.³ However on the same day the original proposition was reverted to and passed with but one minor change, that favoring the purchase of foreign built ships by American tradesmen.⁴

1. Annals of Congress. 1st Session pg. 191, Apr. 21, 1789.

2. Ibid, 282.

3. Ibid, 290.

4. The resolutions as originally passing the House embodied: (1) nine cents a ton duty on all vessels built within the United States and belonging wholly to citizens thereof.

(2) six cents on all vessels not built within the United States but now belonging wholly to citizens thereof.

(3) thirty cents a ton on vessels belonging wholly to citizens of states in treaty relations with the United States.

(4) Fifty cents on vessels belonging wholly or in part

In accordance with these resolutions a bill was brought into the House on May 25th.¹ It was amended slightly and passed May 29th.² The Senate refused to allow the discriminating clause and passed the bill without it on June 17th.³ The House took up the amended bill on the 28th but refused to give up the retaliatory measure against Great Britain.⁴ A conference between the two houses resulted in the elimination of the discriminatory article. Still the House would not give way and returned the original bill to the Senate.⁵ But the upper house adhered closely to their determination for equal duties on all foreign vessels, whether belonging to nations having a commercial treaty with the United States or not and finally the House gave in and passed the bill as amended by the Senate on July 1st.⁶ As it was finally approved on July 20th, 1789, the bill read: "Be it enacted, etc., That the following duties shall beimposed on all ships entered into the United States...: (1) On all vessels built within the said states and belonging wholly to a citizen or citizens

1. Annals of Congress, 1st Congress 409.

2. Ibid, 416.

3. Ibid 46.

4. Ibid 608.

5. Ibid 618.

6. The new argument against this action - seeming inauguration of the practice of Senate domination over the House - was passed by when both the advocates and opponents of the discrimination saw that the entire measure might be lost. Ibid 619.

to subjects of other powers. Annals of Cong. 1st Cong., 290.

thereof; or not built within the said states but on May 29th, 1789, belonging and during the time such ships.... shall continue to belong wholly to a citizen or citizens thereof, six cents per ton. (2) On all ships..... hereafter built in the United States, belonging wholly or in part to subjects of foreign Powers at thirty cents a ton. (3) On all other ships or vessels at the rate of fifty cents a ton. " Further a prohibitory duty was placed on foreign ships engaging in the coasting trade while inducements were given to American built and American owned vessels." ¹

This made French and English vessels liable to exactly the same duties on entering American ports. Undoubtedly ~~the~~ France felt rebuffed at this for immediately after she revoked her orders admitting certain **American** productions at ^o lower rates of duty than those of other countries². If this negative favoring of Great Britain by **Congress** ~~was~~ expected to bring results in inducing her to ameliorate her colonial policy it had not the desired effect.

Returning now to the impost bill which had been practically lost sight of during the discussion over

1. Annals of Congress, 1st Cong. page 2132.

2. A. S. P. - F.R. I, 113.

the tonnage measure, it will be noticed that ⁱⁿ Mr. Madison's first proposal provision was made for a preferential duty on goods imported in ships of allied countries from those of other Powers. This followed practically the same course, as the tonnage resolution and suffered the same end.¹ In the act of July 4th, 1789, the fifth clause reads : And be it further enacted that a discount of ten per cent ~~on all~~ the duties imposed by the act , shall be allowed on such goods, wares, and merchandise, as shall be imported in vessels built by the United States, and which shall be wholly the property of a citizen or citizens thereof, or in vessels built in foreign countries, and on the sixteenth day of May last, wholly the property of a citizen or citizens of the United States and so continuing until the time of importation." ²

From these two bills it will be seen that Congress had determined to attempt no retaliations against either British ships or goods. France had been the ally of the new nation yet she should be shown no favoritism. The United States had entered ^{on} a policy,

1. Annals of Congress, 1st Cong., 102-336 and 38-46.
A. S. P. - F. R. I, 113.
2. Annals of Congress, 1st Session Page 2131.

retained ever since, of equality of privilege to all and preference to none.

Just a year later this act was repealed but another passed that embodied practically all the former features. The only difference being a clause that "on ships or vessels built within the United States after the twentieth day of July last, but belonging wholly or in part to subjects of foreign Powers at the rate of thirty cents per ton;", the American ship-building interests were the favored parties.¹

It is interesting to note the fate of the various proposals in the House for two months previous to the passage of the above act. On May 10th, 1789, the Representatives took up the report of a committee to whom had been referred the "petition of merchants and inhabitants of Portsmouth in New Hampshire which relates to an increase of tonnage on foreign shipping."² This report asked for a doubling of the duty on foreign built ships but amendments were added until the resultant resolution as finally passed read: " That the tonnage on

1. Annals of Congress - 1st Cong., page 2240.
2. Ibid , 1557.

all foreign built bottoms belonging to nations not in commercial treaty with the United States, be raised to the sum of one dollar per ton, from and after the first day of January next." ¹ To this was added on the following day that after a certain period "no such vessel be permitted to export from the United States any unmanufactured product being the growth or produce thereof." ² The matter however was dropped without being brought to a vote and not taken up again until June 25th. ³ Five days later two new articles were proposed to the bill. The first prohibited any nation from bringing into the United States in their vessels anything that latter could not carry to said foreign Power in theirs and the second to keep such nations from importing any but their own produce, who only permitted the United States to do the same. ⁴ The effect of either of these would have been to place England in exactly the same position in trading with the United States as the latter was in trading with Great Britain, that is, of carriers of their own produce only.

1. May 13, 1789, Annals of Cong. 1st Cong. 1569.
 2. A. of C. 1st C. pg. 1573 and 1581.
 3. Thos. Jefferson to Edward Rutledge, July 4, 1790. Jefferson's Works V, 195.
 A. of C. 1st C. page 1655.
 4. A. of C. 1st C. page 1656.
 Evidently as the time was growing limited, the proposals were laid over until the beginning of the next Congress, at which time it was expected they would be brought up again. At any rate the Secretary of State (Thomas Jefferson) sent copies of it to American consuls in Portugal, Russia, and Germany, desiring them to try and get such an act

However these proposals were again dropped and the acts of July 20th (described above) put through without modification.

Practically the same proposals as Mr. Madison's of June 30th , were presented in a "report of a committee on the subject of our Commercial Relations with Great Britain" made to the House of Representatives, February 21, 1791.¹ The received no consideration, however, the existing acts being left unchanged until the spring of Jay's departure for England.

The American position then seems to have been one of allowing perfect freedom of trade in ports of the United States by all nations. Instead of retaliating against England in order to get a further relaxation of her Navigation Acts such attempts were confined solely to diplomatic negotiations with what result the later chapters will show.

During the struggle over discriminations in the first Congress, Great Britain did little to disturb commercial conditions. One order, however, showed what her future attitude in regard to American trade was

- 1. A. S. P. - F. R. I, 128.
- 2. See above pg. 7.

passed in each, thereby making a united commercial war on Great Britain.

Jeff. to David Humphreys (Minister to Portugal)
March 15, 1791 - Jeffersons' Wks.V, 301.

to be. Vessels of the United States could carry on direct trade with England in American produce. But what were to be considered American vessels? The United States stood for either home built ships or those naturalized under American law, but the English idea in this particular instance was altogether different. Only the former were to be so considered.¹ If this was enforced it would mean that a considerable portion of the American mercantile fleet would be discriminated against. Its importance, however, sank beneath the more harsh provisions of the following two years.

From the opening of the Second Congress in the fall of 1791 no attempts were made to pass acts regulating the external trade until the spring of 1793. Then an extension of one year was made to the already existing "Act providing the Means of Intercourse Between the United States and Foreign Nations."² In England, too, no steps were taken against American commerce except a nominal exclusion of ships of the states which really meant merely their non-admittance into the islands of Jersey and Guernsey.³

- Counsel?*
1. Jefferson's Cor. is, with answers of British Counsel, the only authority I have for the above order. For further discussion see Chapters I and VII, ~~in America~~. Jeff. Wks. V, 322.
 2. Annals of Congress, 2nd Cong. pg. 1411.
 3. A. S. P. - F. R. - Vol. I, 136. - A more full discussion of this will be taken up under the negotiations between Jefferson and Hammond. See Chapt. VI.

New grievances of a commercial nature followed hard on the declaration of war between France and the first coalition early in 1793. The allies' attempts to cut off the food supply of the young Republic led to measures bearing so harshly on the trade of the United States that a settlement - amicable or otherwise was demanded. It came in the form of the Jay Treaty.

When Great Britain, Russia, Spain, Prussia, and the Emperor of Germany signed their treaties of the alliance of 1793, they engaged to "prohibit the exportation of all military and naval stores, corn, grain, and provisions from their ports for the ports of France" and to "prevent other Powers not implicated in this war from giving on this occasion of common concern to every civilized state, any protection whatever, directly or indirectly, in consequence of their neutrality, to the commerce or prosperity of the French on the sea or in the ports of France..." "All other measures in their power for injuring the commerce of France," were to be taken by said allies.¹ England was the great maritime power of the age. It lay with her then to see that provisions

1. A. S. P. F.R. I, 243. Quotations are taken from the treaty between England and Russia as they give better than any other the policy of the Allies.

should not be imported into the ocean ports of Europe's common enemy. To do this the ~~administration~~ ^{Republic} issued the famous Orders in Council of June 8th,¹ laying down practically the same rule as the act of the French National Convention of a month earlier.² It was ordered "that it shall be lawful to stop and detain all vessels loaded wholly or partly with corn, flour, or meal, bound to any port in France, or any port occupied by the armies of France and to send them to such ports as shall be most convenient, in order that such corn, meal, or flour may be purchased on behalf of his Majesty's government, and the ships be relieved after such purchase, and after a due allowance for freight, or that the masters of such ships on giving due security to be approved of by the Courts of Admiralty, be permitted to proceed to dispose of their cargoes, of corn, meal, or flour, in the ports of any country in amity with his Majesty." Further any vessel attempting to enter a blockaded port ~~should~~ be seized and confiscated together with the cargo, "except the ships of Denmark

1. Text for this can be found in A. S. P. F. R., I., 243.
 2. This act of May 9th, 1793, authorized "ships of war and privateers ... to seize and carry into ports of the republic, merchant vessels which are wholly in part loaded with provisions, being neutral property, bound to an enemy's port or having on board merchandise belonging to an enemy." A. S. P. - F. R. I, 244.
- An exception to this act was made to vessels of the United States May 23, 1793. (A. S. P. - F. R. I, 244) but was enforced again July 27, 1793.

and Sweden". This last clause practically limited its force to vessels of the United States as the only neutral member of any size not excluded. This order then meant that whenever a British man-of-war or a privateer ran across an American vessel loaded with corn, flour, or meal, and corn - included all the cereals such as wheat, barley, rye, and oats, and maize, -¹ and bound to any port in France, she was to seize such neutral vessel, bring her into an English port where her provision cargo might be sold. The ship could then proceed on its way, taking with her compensation for the cargo thus seized with due allowance for freight and profit. This was merely the principle of pre-emption applied to an entire nation. That is, instead of taking the grain bound for some one port in France and selling it in English markets, - which would have been avowedly legal and in accordance with the recognized principles of international law of the day - the British were confiscating commodities bound for any port in an entire nation. The Americans protested against this as contrary to the

1. Fiske's - Discovery of America, I, 182.

accepted law of nations, but the English Cabinet refused to recognize their contentions as correct ones, enforcing the order strictly. Thus Great Britain opened up the entire subject of contraband and the position of neutrals.¹

Further stand in the matter of neutral rights was made by Great Britain during the four months from November 1793, to March, 1794. The Order in Council of November 6th reinstated the old rule of 1756 forbidding neutrals the right of carrying in time of war any produce of any nation's colonies that was not extended to them in time of peace.² The purpose of this was to keep the United States from engaging in the trade of the French West India colonies; a trade not ordinarily open to her but which had been so since the previous March by a French decree.³ The position of the English on this matter caused such an outburst of dissension^d in the United States that the Cabinet was obliged to recede somewhat, issuing for that purpose the Order of January 8th.⁴ This permitted neutral vessels to trade in the French island possessions

1. The diplomacy over the subject of neutrals embodying the principles for which each nation stood will be taken up later. See Chapter VI and VII.
 2. A.S. P. F.R. I, 430.
 3. March 26th - A. S. P. - F.R. I, 245.
 4. For effect of this in the United States see Chpt. VII and VIII.

(1)
 without hinderance unless they attempted to come directly
 therefrom to some European port or (2) the goods they
 carried to any port were or would become the property of
 a subject of France.¹ However they by no means gave up
 the principle as one of right and international law.
 Further the order of January 25th, "that all vessels
 having on board the property of the subjects of the
 enemy's countries aforesaid (France, Spain or United Provinces)
 to whatever port they might be bound were directed to be
 brought in "to English ports was an indication of Great
 Britain's stand against America's assertion of "free
 ships make free goods". Also the right to declare
 paper blockades was set forth March 18, 1794, by the
 declaration that "the French West India Islands
 were.... in a state of blockade," a feat impossible as an
 actuality.²

While many diplomatic steps were taken by
 Jefferson and Pinckney to secure some mitigation of
 these orders agitation for legislative action was prevalent.
 The Secretary of State made a long and full report on the
 "Commercial Privileges and Restrictions" of the United

1. A. S. P. F. R. I, 430.

2. A fuller discussion of the claims of the two countries
 over these questions of international law will be found
 in chapters VII and VIII.

States which was laid before the House of Representatives December 19, 1793.¹ This gave a complete account of all the main exports and imports of the states, their point of shipment or destination, and the prohibitions or restrictions placed on either goods or the vehicles of their carriage by all European countries. England was by far our greatest exporting and importing nation, in spite of the fact that more restrictions were placed on our produce in her ports than in any other.² All bread stuffs were under prohibiting duties, tobacco, was heavily dutied as was rice, and fish, salted provisions, and whale oils ~~by~~ under prohibitions. In addition American vessels - and Great Britain considered only those bottoms American which were built here - were prohibited from engaging in colonial trade and only were allowed direct trade in commodities of American origin.³ Jefferson advised two methods of redress (1) "friendly arrangements with the several nations" and (2) "separate act of our own Legislatures for countervailing their effects."

1. Annals of Congress, 2nd Session page 144.
 The Report in full is to found in A. S. P. - F.R. I, 300.
 2. See Chapter I.
 3. 12 Cor. 3 Chap. 18 Sec. 3 - Modified by Orders in Council of Dec. 26, 1783. See above page 6.

The matter was taken up by Congress the following month when James Madison proposed resolutions regarding America's action to the House of Representatives sitting as a Committee of the Whole for consideration of the Secretary of State's Report. Mr. Madison's proposals included all nations not having commercial treaties with the United States that is all but France, Sweden, Netherlands (now under French control) and Prussia, but were directly mainly against Great Britain as she was the only large Power refusing to grant the new nation at least reasonable terms by treaty.

- (1) Additional duties were to be levied on many manufactured articles which were imported primarily from England, such as leather, iron, steel, tin, pewter, copper, or brass, were the chief materials and cotton, wool, and silk cloths.
 - (2) An additional duty on vessels of countries not having commercial treaties with us and a decrease in the duty on the ships of those that had.
 - (3) Vessels of any country holding that the only American bottoms were those built here were to be laid open to a like discrimination.
 - (4) No produce of any country was to be admitted
1. Annals of Congress 3rd Session, Page 155, Jan. 3, 1794.

unless in vessels of that country if said nation imposed such restrictions on American carrying trade. (5) Additional tonnage was to be paid by foreign vessels carrying American produce if that country refused her manufactures to the carrying trade of the states. (6) Losses of citizens of the United States by "the operation of particular regulations" of any country contravening the Law of Nations "should be liquidated and reimbursed in the first instance out of the additional duties on the manufactures, productions and vessels of the nation establishing such unlawful negotiations."

Debate began almost immediately and lasted with one postponement until March 14th.¹ Every possible phase of the matter was taken up and discussed thoroughly. Fisher Ames and William Smith of South Carolina were its chief opponents while Mr. Madison did nearly all the advocating of his resolutions. Mr. Smith held Jefferson's report slighted the fact that Great Britain was our chief customer and tried to create the impression that the English restrictions were more harsh on American commerce²

1. Annals of Congress - 3rd Congress 155 to 514.

2. Ibid, 184.

than those of France, which was not the case. Mr. Madison, on the other hand, showed that the attitude of France while not favoring the United States in the face of other nations at least placed her on a commercial par with them and opened her ports to United States trade which was what the latter desired, and not preference.¹ The postponement came February 5th and the matter was not again taken up until March 14th when it was finally² dropped on a speech by Fisher Ames, which brought forward the argument that any action would be useless at the time until the negotiations which were pending should be consummated one way or another. In other words any commercial retaliation would not be adequate. It was successful negotiation or war.²

To summarize the commercial conditions just before the Jay Treaty is a difficult task. However, one thing is to be kept in mind, - no matter in what relation the French and English restrictions stood, the latter were what the United States desired to see removed and which down to 1794 Great Britain had refused. Moreover France appeared ready at any time to enter into a none

1. Annals of Congress 3rd Congress 210.
 2. Ibid, 521. The growth of the agitation for war during the early months of this year (1794) can be seen from all the speeches of the day (Mar. 14th). The advocates of commercial restrictions looked toward war and their opponents were not backward in preparations for defense. As typical of the latter Mr. Ames Speech is a good example. " In a moment of danger, when our commerce is nearly annihilated, it is trifling to talk of regulating it --- we should attend to our defence only... We should always say peace to the last extremity; and if war threatens, strain every sinew to prepare for it.....If we feel that the English

33.

advantageous ~~commercial treaty~~.¹ The attitude of Great Britain was mild in some respects and harsh in others towards her offspring. (1) American direct trade was open to American vessels on a par with British ships and no more tonnage duty was required of the former than the latter. Yet no foreign produce could be carried in American ships. (2) Some few articles were admitted into British ports at even less duties than was charged on similar articles from other countries while on other prohibitory duties were laid. (3) English violations of neutral trading rights had and ~~were~~ still affecting/greatly the commerce of the United States and (4) West India trade was forbidden in any but British ships.² Changes in the last three were what many of the citizens of the United States demanded and for which they were even prepared to go to war. Against these the American charged ~~of~~ 44 cents ~~duty of tonnage~~ more on ships of Great Britain and France than on her own. This was the situation at the time John Jay was sent as Special envoy to London.³

1. President Washington's Message of Dec. 5, 1793.

Annals of Congress, 3rd Congress, 15.

2. Duties and ~~specifications~~ ~~have been taken up under the~~ proper headings in the preceding chapter.

3. One British Order in Council has not been dealt with here. This is the famous provision order of Aug. 18th, 1794 which will be dealt with in direct connection with the ratification of the Jay Treaty.

have injured us, let us put the country in a state of defence; the resolutions can do nothing toward this. It is folly to think of regulating a commerce that calls first for protection, and to encourage the increase of navigation when what shipping we have is in jeopardy."

But the dropping of Mr. Madison's proposals on March 16th and the mission of the special envoy by no means meant that the agitation had ceased. Moreover its continuation was accompanied by preparation for actual warfare. The President ^{had been} authorized to borrow a million dollars, if, in his opinion, the public service required it.¹ He could also at any time authorize the fortification of certain forts and harbors² and was required to order the various states to "organize, arm and equip" a militia of eighty thousand men subject to immediate call.³ Authorization had previously been made for a navy of six frigates ostensibly for another purpose.⁴ The United States prepared for war practically until the close of the session, a full month after Mr. Jay's departure for England.

As to the commercial weapons themselves, the next was the resolution "that an embargo be laid on all ships and vessels in the ports of the United States, whether already cleared out or not, bound to any foreign port or place for the term of twenty days." This passed with little opposition on March 26th⁵ and was carried

1. Annals of Congress 3rd Cong. page 1423, Mar. 20, 1794.
 2. Ibid pg. 1444 - May 9th.
 3. Ibid pp. 1444, - May 9th.
 4. Ibid pp. 1446, March 27th.
 5. Ibid , pp530.

into effect by the President ten days later, the Governoss of the several states being ordered to prohibit - by force of the state militia, if necessary, the departure of any ships.¹ On March 27th, the sequestration of all debts due Great Britain and their payment into the treasury of the United States was proposed by Mr. Dayton of New Jersey.² Debate was harsh and vindictive. The more conservative element pointed out that any such legislation would mean an immediate war. Against this it was urged that Great Britain had practically made war on the United States while in a state of neutrality and that any acts of reprisal, justifiable in a state of war were therefore not merely rights but duties. Before a vote could be taken on the proposal, ~~and~~ Mr. Clarke of New Jersey introduced another radical measure "that until ... Great Britain shall cause restitution to be made for all losses and danges sustained by the citizens of the United States from armed vessels, or from any person acting under commission or authority of the British King,.....; and also until all the ports now held

1.A. of C. 3rd C. page 541 and 1480.
 2. Ibid 535 at seq. to 557.

and detained by the King of Great Britain, within the territories of the United States shall be surrendered and given up, all commercial intercourse between the citizens of the United States and subjects of the King of Great Britain so far as the same respects articles of the growth and manufacture of Great Britain or Ireland shall be prohibited¹. This became practically the sole topic of debate in the House from April 7th to 21st when it passed by a 58 to 38 vote. The antagonism of the House toward England can more easily be realized when it is seen that the Clarke measure was passed in the face of the correspondence of Thomas Pinckney in regard to the British order of January 8th, 1794, which had been laid before Congress on April 4th,² and in spite of the fact that John Jay's commission as special minister had been approved by the Senate April 19th.³ The Upper House, however, killed the bill, putting an end to the system of harsh commercial retaliation,⁴ begun by the House of Representatives. Congress shortly adjourned. The next time it took up this matter was over the appropriations necessary for the execution of the Jay Treaty.⁵

1. A. of C. 3rd C. pages 561 to 602.
 2. A. of C. 3rd C. page 560. A. S. P. F. R. 430. Pinckney reported a conversation with Lord Grenville in which the latter gave explanation for the Orders in Council and intimated more lenient action in the future. See Chap. I.
 3. Ibid 602.
 4. Ibid 89.
 5. See Chapter IX.
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CHAPTER III.

The Negotiation Leading to the Treaty of Paris,
as Regards Commerce.

The period of the negotiations to close the Revolutionary War naturally divides into four parts:

(a) From 1779 to 1781, during which time John Adams was sole commissioner; (b) from 1781 to June 23, 1782 during which time Franklin was carrying on informal negotiations in Paris, Adams being in the Netherlands, and John Jay in Spain; (c) from the latter date when Jay arrived at Paris, to the signing of the preliminary articles November 30th, 1782; and (d) to the actual signing of the definitive treaty on September 3rd, 1783.

The first division includes very little relating to this discussion and the second less. The third is of more importance as three distinct proposals for a treaty were made, all including in their inception some article or articles relating to trade. It was during the last period, however, that most earnest endeavours toward

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a separate commercial treaty or articles relating to trade in the definitive one, were made. Practically all the time was spent on this point. The result we shall see.

When on August 14th, 1779, the Continental Congress issued instructions to govern the actions of a peace commissioner, he was also empowered to enter into a commercial treaty under certain conditions. (1-) The treaty of commerce (1778) with France was to govern the action of the commissioner in this regard. No privilege should be given to Great Britain, not granted to France and no restrictions or limitations on trade of the United States should be made favoring England.

(2) The absolute right of fishing off the banks of Newfoundland with Great Britain's promise of non-interference was to be demanded and would have to be granted by that nation before other phases could be settled.

(3) "In all other matters" the negotiator was "to govern" himself by his own discretion "taking care that the said treaty be founded on principles of equality and reciprocity so as to conduce to the mutual advantage of both nations but not to ~~be~~ the exclusion of¹

1.S. J. of C. II, 229.

others. Under these instructions John Adams - elected September 27th - proceeded to France, bound to do nothing that in the slightest way would detract from the force of the treaties of 1778, bound to take the wishes of the French King into consideration before making any overtures, and compelled to get an acknowledgement of the fishing right previous to all else.¹ Adhering closely to these commands, he was to negotiate for further commercial privileges but to give nothing (as far as possible) that Great Britain did not return.²

When Adams reached France in February of 1780, he immediately got into communication with Vergennes, Louis XVI's foreign minister. The latter approved of the publication of the American envoy's instructions for pacification but refused to listen to any such plan regarding those relating to commerce. He wrote Adams on February 24th, 1780, "with regard to the full powers, which authorize you in negotiating a treaty of commerce with the Court of London, I think it will be prudent not to communicate them to any body whatever, and to take every necessary precaution that the British ministry shall not have a premature

1. S. J. of C. - II, 257.

2. Franklin had already been appointed Minister to France (Ibid, 102) and John Jay was at this time sent to Spain to try and obtain a treaty of alliance and commerce.

4.

knowledge of them. You will, not doubt, easily feel the motives which induce me to advise you to take this precaution, and it will be needless to explain them."¹ Vergennes seems to have thought that the knowledge of the possession of such authority by Mr. Adams would lead to negotiations between the late colonies and England more direct than he desired and more to the alienation of French interest than he hoped.²

Whatever Vergennes' purpose, he continued to refuse his sanction to the publication of Adams' full powers. Adams abided by his decision for a time, meanwhile informing Congress of the situation. On July 17th, However, he made an effort to obtain the sanction of the Court to a publication of his full instructions. He went into the matter at length, explaining that such action might have the effect of obtaining an earlier recognition of the independence of the United States than could otherwise be hoped. In addition he tried to show Vergennes that the people of the United States had no such preference for England, that they would, after the treaties of 1778, buy their

1. Sparks IV, 386 - Vergennes to Adams.

2. Letters of Vergennes to Luzerne - Fellew's Life of Jay, 150-160.

5.

peace by alienation of France. But such an open avowal of the powers possessed by the American envoy would relieve England of any suspicion that the United States was bound by secret treaty to give France commercial privileges.¹ Vergennes took offence at this and following letters of the next two weeks, finally severing all lines of communication between them on July 29th.² Subsequently this correspondence was put before Congress by Franklin and undoubtedly had something to do with the appointment of additional negotiators as Congress expressed its approval³ of Vergennes' actions in the matter.³

In the meantime Adams had been appointed to take Henry Lauren's place in Holland.⁴ Although this commission did not reach him until September 19th,⁵ he, having realized that his stay in France was accomplishing nothing, had left for Amsterdam on the same day of the severing of official connections with Vergennes.⁶

On October 18, 1780, additional instructions were issued to Adams, no parts of which, however relate

1. Sparks, V, 206.

2. It must not be supposed that this difference over the publication of instructions was the sole cause of Vergennes' action. Adams general attitude of independence and some other matters with which we have no dealing herein were also factors. Sparks V, 206 to 304.

3. Congress to Adams - Jan. 10, 1781, S.J. of C. III, 393.

4. June 20th, 1780 - S. J. of C. III, 316.

5. John Adams Works VII, 217.

6. Ibid, 258.

to the matter in hand¹ Jay Franklin, Laurens, and Jefferson were joined with Adams as negotiators on June 15, 1781, with orders "to undertake nothing in the negotiations for peace or truce without their (French Minister) knowledge and concurrence; and ultimately to govern yourselves by their advice and opinion."² The credit for the insertion of the latter may be laid with considerable exactness to Vergennes, though the French Minister to America, Mr. Luzerne.³ Later in the year Adams received a revocation of his previous instructions to negotiate a treaty of commerce.⁴

It is noticeable that nowhere in the instructions under which the American envoys acted in negotiating the treaty of 1783, is there a specific mention of their attitude toward future trade relations between the two countries. This seems to have been left entirely in the hands of the ministers.

When Franklin received a copy of his commission, August, 1781,⁵ He immediately made preparations for negotiation although not expecting such in the near future. His expectation proved true for it was not until

1. S. J. of C. - III, 339.

2. Ibid 445.

3. Ibid 423 - Also letters from Luzerne to Vergennes given in extract in George Pellew's "John Jay". 150-165.

4. Adams to Dana - Adams Works VII, 493.

5. Franklin in France I, 435.

the passing of the Lord North ministry in March of the following year that even informal negotiation was taken up. Lord Shelburne, Secretary of State for Home, Irish, and Colonial Affairs, under the following Lord Rockingham ministry, sent Richard Oswald to Franklin on April 6th for that purpose.¹ After several informal talks the British envoy returned to London taking with him a proposal of Franklin of what ought to be the basis of future negotiations. On reconciliation of the two countries wrote Franklin depends "much of the future commerce and returning intercourse of the two nations."²

On April 23rd the Cabinet returned Mr. Oswald, commissioned to complete a treaty with the late colonies. At the same time Mr. Fox, Secretary of State for Foreign Affairs, sent Lord Grenville with similar powers to deal with France.³ The former's commission read in part that it was only reasonable that England should expect a free trade unencumbered in duties to every part of America. No mention was made of any equivalent for the concession.⁴

The preparation for actual negotiations over the terms to be placed in the treaty continued for the

- 1. Franklin - Journal of Peace Negotiations - Biglow's Life of Franklin III, 68.
- 2. Ibid. 79.
- 3. The King to Lord Shelburne, Apr. 27th, 1782. Fitzmaurice - Life of Shelburne, III, 184.
- 4. Franklin in France, II, 52.

next two months but practically nothing of a definite nature was accomplished. Naturally a settlement of commercial matters came in for little consideration.

On the 23rd of June, John Jay arrived from Spain and immediately threw himself into the treaty making.¹ With the subsequent three months of bickering of the manner of recognition of the independence of the states we have little to do here.² Enough to state that the receipt by Oswald of his new commission on September 27th authorizing him to treat with the Commissioners of the United States of America was a complete victory for the latter.³

Only one incident in this period bears on our subject. Franklin submitted to Oswald on July 9th, an outline of the matters to be desired in a treaty. These were divided into "necessary" and "advisable" articles. Among the latter was one for ships and trade of the United States to be received and have the same privileges in Britain and Ireland as British ships and trade. In other words freedom of trade was desired.⁴

1. Jr. of Negotiations - Biglow's Franklin III, 164.

2. On July 1st, Lord Rockingham died and Lord Shelburne succeeded him as Prime Minister. Mr. Fox immediately resigned leaving Shelburne in complete charge of the negotiations.

3. Shelburne to Arnold - Sept. 11th. Franklin in France II, 145.

4. Arnold to Shelburne - July 10, 1782.

Fitzmaurice's Shelburne III, 245.

Oswald immediately forwarded this outline to Shelburne but the latter dismissed the above clause by requesting that negotiations be confined entirely to the "necessary" peace articles of which he approved.¹ In fact neither at this time nor as we shall see at any later period did the British ministry seem willing to open up the carrying trade to the new nation.

After September 27th, the treaty provisions began to take definite shape. On October 5th a plan of treaty was presented to Mr. Oswald by the American Negotiators. In it was an article "that in all the rivers, harbours, lakes, ports, and places belonging to His Britannic Majesty or to the United States, in any part of the world, the merchants and merchant ships of the one or the other shall be received, treated and protected like the merchants and merchant ships of the Sovereign of the country." In explanation the clause continued "that the British merchants and merchant ships.... shall enjoy in the United States and all places belonging to them, the same protection and commercial privileges, and be liable only to the same charges and duties as

1. Shelburne to Oswald, July 27th, 1782.

Fitzmaurice's Shelburne III, 249.

The Cabinet expressed a willingness on September 1st to enter into further negotiations on the basis of these "necessary articles". Townshend to Oswald - Fitzmaurice's Life of Shelburne, III, 256.

their own merchants and merchant ships" and similar provisions for American ships and trade.¹ Thus Jay, for it was ^{at} his instigation that this clause was inserted, demanded absolute reciprocity in all matters of commercial regulations.²

As the Cabinet had the proposals for a general peace before them an answer to the above was not returned immediately. Two weeks passed during which news of the raising of the seige of Gibraltar reached London.³ Immediately the administration determined not only to refuse the demands of the allies but to insist upon more favorable terms from the American ministers. Consequently in the instructions given Mr. Henry Strackey - appointed at this time to aid Oswald - the proposal in regard to reciprocal trade arrangements was to be eliminated (among other things), because the Administration had no power as to the Navigation Act.⁴

Mr. Strackey arrived in Paris October 28th, two days after Adams had joined Franklin and Jay.⁵ Negotiations proceeded swiftly and on November 5th Strackey took to London a draft of a treaty.

1. Oswald to Shelburne, October 8, 1782. Fitzmaurice - Life of Shelburne III, 272.
 2. Franklin to Livingston, Oct. 14, 1782. Biglow's Life of Franklin III, 187.
 3. Shelburne to Fitzherbert Oct. 21, 1782, Fitzmaurice Life of S. III, 280.
 4. Ibid 283. Instructions to Strackey, Oct. 20, 1782.
 5. Oswald to Shelburne. Oct. 29, 1792. Franklin in France II, 172. Adams Diary - Oct. 26, 1782. Adams Works III, 298.

Shelburne objected to various articles, particularly to the lack of a clause giving restitution to the Loyalists.¹ However these matters were successfully adjusted and the preliminary treaty signed November 30th, 1792.

During none of the latter days of the negotiations, however, did the subject of future trade relations come up for any considerable discussion, the American commissioners seeming to accept with little criticism Shelburne's elimination of the articles tending toward freedom of trade between the two countries in the proposals of October 5th. No mention of commercial matters was made in either the plan of November 5th or the preliminary articles.

This acquiescence can not be said to have been ~~xx~~ accidental. Livingston, the Secretary of Foreign Affairs, at this time under the Confederation, had specifically ordered the envoys to insist on mutual trade regulations and the opening of the British West Indies to American commerce.² Why then did not the commissioners make more decided attempts to obtain such privileges? Several reasons may be given. (1) It was but natural

1. Oswald to Townshend, Nov. 5th, 1782.
 Franklin in France II, 176.
 Instructions to Strackey, Nov. 21, 1782.
 Fitzmaurice to Shelburne, III, 299.
 2. Sparks IV, 376. Ibid 10.

that matters relating directly to the **pacification** should precede demands **as** to future relations. (2) The American ministers had an exaggerated idea of the importance of American trade to Europe, - England in particular. They seemed to have an idea that the old trade between the colonies and the mother country had and would continue to be indispensable to Great Britain. Franklin wrote to Livingston on December 5th, 1782 that the commercial articles had been struck out by the English Cabinet on account of the Navigation Act over which they had no control but later the United States might obtain some compensation for damage done her during the war "as a condition of our opening again the trade".¹ Also Oswald wrote Townshend on November 30th, that the American commissioners had threatened in case of a refusal of their fisheries demands that the United States would not give English ships permission to carry American **produce**² In other words the negotiators seemed to think that England would be willing to buy the right to carry American exports. That this was an erroneous idea one has but

1. Wharton IV, 110.
 2. Franklin in France, II, 193.

to consider the course of events for the eleven years following.

The reasons for the elimination of the commercial proposals by the British can be set down as two:

(1) That expressed by the Cabinet, as their having no authority to override the Navigation Act. (2) The knowledge of the opinion held by the business interests of England - of which Lord Sheffield was the best exponent - that the benefits of the Navigation Laws were not to be given up under any considerations.¹

Soon however Shelburne got into trouble at home and by a coalition of Lord North and Mr. Fox was forced to resign. The Duke of Portland came in as Prime Minister on April 2nd, 1783.² In the meantime the preliminary articles for a general European peace were signed.³

The first definite attempt to place the British-American trade on a new footing was the bill introduced by Mr. Pitt on March 3rd. This proposed to relieve the commerce of the two nations of all the restrictions of the Navigation Acts.⁴ We have seen how this was dropped

1. Shelburne to Morellet, Mar. 13, 1783. Fitzmaurice - Life of Shelburne, III, 323.
Observations on the Commerce of the United States. - Sheffield. Lord Shelburne however was inclined to favor the abrogation of the Navigation Act and the installation of many of the principles of free trade but insisted that such an ~~attempt~~ act must pass Parliament before its incorporation into treaties.
Speech before Commons, Feb. 17, 1783.
Fitzmaurice - Life of Shelburne, III, 348.
The full debates on the preliminary treaties of peace may be found in H. P. H. XXIII, 373 to 498.

because of the strenuous opposition of the defenders of the old laws, backed by the commercial interests of England.¹ With the failure of this act passed practically all hopes of an immediate reciprocal arrangement in regard to commerce with the new nation.

With the coming of the new Ministry, Mr. Oswald, who had been in London since the previous December, was withdrawn and Mr. David Hartley given a commission to sign the definitive treaty and a commercial convention. His commission of April 10th, presented April 19th, and changed to suit the American commissioners May 11th,² was in the customary form. Just how much the ministry authorized him to allow the new state is hard to determine as no copy of the instructions can be found. But certainly all the proposals he did make were in excess of the authority given him.³ Franklin, Jay, and Adams were given their commission to treat on commercial matters May 1st by act of Congress.⁴

1. See Chapter II, page 5 note.
 Lord Sheffield's - Observations on American Commerce. -App.1.
 A copy of the conciliatory propositions may be found in Sparks' Diplomatic Correspondence IV, 76 to 83. By them (had they passed) the ministry would have been empowered to annul any portion of the navigation acts. That Hartley planned such a course of action can be seen from the temporary commercial treaty, accompanying the above measures. In them Great Britain promised to annul those acts to the extent of putting into operation practically a system of free trade.

The American commissioners had no decisive steps to take on the above matter as the conciliatory propositions did not pass, and consequently the proposed treaty was of no effect.

2. (a) Fox to Hamilton - Sparks' Dip. of Rev. IV, 104.

Footnotes.

- 2. ~~Hartley~~ to Am. Commission - Sparks Dip. of Rev. X, 742.
- 3. A. Commissions to Congress - Sept. 10, 1783, Sparks' Dip of Rev. X, 214.
- 4. S. J. of C. IV, 340.

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- 2. H. P. H. XIII, 690. (for page 13)
 - 3. January 20, 1793.
 - 4. H. P. H. XXIII, 640 and 724. See Chapter II.

15.

Informal negotiations over the matters of trade began as early as the last days of April and continued practically all summer.¹ Nothing came of any of the overtures on either side and it was finally decided in August to sign the definitive treaty on the basis of the preliminary articles, leaving the matter to be settled by future negotiations. This was finally done September 4th, 1783, in Paris.²

The American negotiators steadily held out for certain privileges during these five months. At first they seemed willing to concede to a temporary arrangement on the same basis as the trade before the war - even with the West Indian trade eliminated - ³ because they were under the impression that Great Britain would soon feel the necessity of inducing American trade to English ports by encouragements of every kind.⁴ However as the weeks went by and the Ministry steadfastly refused to change its policy of close adherence to the Navigation Acts, less ductility was displayed by the American commissioners. In brief they wished (1) perfect reciprocity of trade and (2) non-exclusion from the West

1. Adams - Diary, April 28th, 1783. Adams Works III, 363.

2. Sparks Dip. Cor. of Rep. X, 217.

3. Adams to Livingston - May 24, 1783, Sparks VIII, 32.

4. Adams Diary & Adams Works III, 363.

Adams to Livingston, June 23rd, 1783, Sparks VII, 44.

Indian trade .¹ Any permanent arrangements if made on the basis of the old colonial trade would exclude from English ports all American vessels laden with goods of any other country. This seemed most inequitable to both Mr. Hartley and the American envoys but the administration behind the former refused to recede from their position as defender of the Navigation Act.² In fact even temporary proposals to open up the trade on the old basis were not sanctioned by them as American vessels would then have been allowed the West Indian trade.³

As early as the 19th of May the British ministry answered the American proposals for perfect reciprocity of trade. Such a proposition could not receive its sanction.⁴ Next Hartley proposed temporary arrangements for opening up the trade as before the war, that is, with American carrying trade limited to her own products and those of British dominions.⁵ These the American commissioners seemed willing to accept for the moment and drew up an instrument containing them on May 22nd. However the British Ministry declined to accept such a proposal.⁶ In June following Hartley

1. The difference in Mr. Hartley's and Mr. Adams proposals for temporary arrangements lay in the exclusion of American vessels from trade between the West Indies and Great Britain - Sparks Dip. of Rev. X, 152 and 154.
 Adams Diary May 19th, Adams Works III, 369.
 2. Ibid - The United States considered the British West Indies as important (1) as a rightful part of American commerce which neither U. S. nor the W. I. could do without. (2) as a means of forcing France to open her West India trade. Adams to Livingston June 23, 1783, Sparks VII, 42 to 45.
 3. Adams to Livingston July 3, 1783, Sparks VII, 51.
 4. Adams' Diary - May 11th - Adms Wks. III, 369.

again submitted a proposition, indentical with his previous one except that American vessels had no right to carry goods directly from the West Indies to England. Before replying to his however the American Commissioners desired the sanction of the Ministry to it and as they refused that sanction the matter was dropped.¹ This was the last definite arrangement proposed by either side and by July 27th, it was decided to sign the definitive treaty with no mention — of future commercial relations.²

What the English were willing to give is not difficult to show. By an act of May 14, 1783³, the direct trade from America to England was thrown open to ships of either country. Nothing more. They refused to grant reciprocity and even temporary arrangements whereby American shipping might participate in the carrying trade of the British colonies in America. Further than their navigation acts they would not go.

The reasons for their attitude are harder to state. (1) From the first this coalition ministry had been antagonistic to America. They had come into power with the controversy over the preliminary articles

1. The Cabinet put an end of the immediate negotiation of the American envoys over the West India trade on July 2nd, 1783, by issuing a proclamation declaring that trade between the islands and the United States could be carried on only in British bottoms manned by British seamen. - A copy of the proclamation may be found in Adams Works VIII, 97 or in Sparks - Dip of the Rev. VII, 81.
 2. Adams to Livingston - Spk. Dip. Cor. X, 193.
 3. See Chapt. II, Sparks Dip. of Rev. X, 144.

4. Adams Diary May 21, Ad. Wks. III, 372 and 3.
 5. Commissions to Cong. Sept. 10, 1783, Spks. Dip. Cor. X, 215.

of peace. Not one act of theirs had given the American commissioners a confidence like that they had felt toward the Shelburne Cabinet. (2) A considerable feeling was prevalent in England against any digression from a strict interpretation of the Navigation Acts.¹ Merchants of both England and the West Indies feared the effects of the American carrying trade from the latter's ports.² Consequently the ministry favorable to their pleas in the first instance readily acquiesced to their demands. (3) The American idea that England would miss the trade of the late colonies to the extent of offering inducements for it, received a hard blow when in the summer of '83, trade was opened up between the two countries. British vessels carrying all kinds of goods were received in American ports under no restrictions and the great bulk of American product began to go to England.³ The news of this added strength to the stand of the Ministry.⁴

1. Mr. Edmund Burke's Speech on Am. Commerce. Hansard's Parl. History XXIII 611.

2. Adams to Livingston, June 23rd, 1783. Sparks Dip. Rev. VII 41 and 42.

Adams lays the origin of this party to numbers of the hostile refugees.

Rumors ~~xxxxxx~~ coming to the American commissioners reported that the British were even trying to exclude Am. ships of one state from carrying goods of another to England. There was little foundation for this report, however. Lord Sheffield's Pamphlet against American trade undoubtedly had much to do with this stand of the British merchants. A. to L. - July 14 - Spks. VII, 81.

3. Adams to Livingston - June 27, 1783. Spks. Dip. of Rev. VII, 48. Jefferson to B. Harrison, Dec. 17, 1783. Jeff. Wks. III, 350.

4. Commissioners to Pres. of Cong. Sept. 10, 1783. Spks. Dip. Rev. X, 2B. Adams to Livingston - June 27, 1783, Spks. VII, 48.

To sum up the entire negotiations. The Shelburne administration seemed favorable to American commerce but the American commissioners, as we have seen, failed to push such matters as far as they might. Still things would probably have taken a different turn had not the coalition come into power. With the accession of the latter to control the immediate hopes of American commerce went glimmering.

After the final decision to drop the commercial matters so far as the definitive treaty was concerned the American commissioners proposed five plans to Congress:

(1) Await the fall of the coalition, expected at any moment, and hope for the Shelburne administration again.¹

(2) In the meantime - (but not until the definitive treaty had been signed) - refuse to allow British ships any more privileges in American ports than vessels of the States enjoyed in England.²

(3) Draw more closely to European countries that would open their ports to American trade and force England to relent.³

(4) Cultivate the growth of West India products in America.⁴

(5) Develop a trade with the Orient.⁵

Whether all these had any effect is not within the scope of this treatise but the outcome of at least two will be shown in subsequent chapters.

1. Adams to Livingston - June 23, 1783, Spk. VII, 42-45.

Ibid June 27, 1783, Sparks VII, 47.

2. Adams to Livingston July 16, 1783. Spks. Dip. Rev. VII, 91.

Franklin to Livingston July 22, Sparks IV, 136.

3. Ibid 1st note under (1)

4. Ibid (2)

5. Ibid (2)

CHAPTER IV.

John Adams in England.

The commission to Adams, Franklin, and Jay authorizing them to enter into a treaty of commerce with Great Britain was received about the time David Hartly left for London with the signed definitive treaty.¹ Consequently both sides expected a speedy return of the British negotiations to finish those matters, dropped two months previous. Hartly himself expected to open negotiations within three weeks and thereupon instructions much like his Memorial of May 19th, placing the United States' trade upon the same basis as before the war except that her ships would neither carry goods of foreign nations into English ports nor participate in trade between the British West Indies and the home country.² However, as both Mr. Adams, and Mr. Jay were taken sick and had to leave Paris for a time³, few immediate steps were taken to further the negotiations and such as did take place accomplished

1. Adams to Boudinot, Sept. 8, 1783. Sparks VII, 156.

2. Hartly to Franklin, Sept. 24, 1783, Sparks IV, 170.
Franklin to Pres. of Congress, Sept. 27, 1783, Sparks IV, 171.

3. Adams to Pres. of Congress, Nov. 9, 1783, Adams Works VIII, 156.
Jay's - Life Of Jay, I, 181.

nothing.¹

While thus separated - Mr. Adams being in London, Mr. Jay, ^{at} Bath, and Mr. Franklin, and Mr. Laurens at Paris - the envoys received the commissions issued on October 29th authorizing them to make commercial treaties with any European states. ² However, owing to certain business, taking Adams to Amsterdam nothing was done in furtherance of those commissions as regards Great Britain until after May 7th of the following year. On that date Mr. Jay was elected Secretary of Foreign Affairs and ordered home, Mr. Jefferson commissioned in his place, and additional instructions passed that compelled the ministers to get, in any treaty they might negotiate, (1) direct trade on a reciprocal basis and (2) direct intercourse with all the American colonies of any country with whom they made such a treaty. ³ Mr. Jefferson arrived in Paris in August and was shortly joined by Mr. Adams.⁴ They immediately got into communication with Mr. Hartly asking for a continuation of the commercial negotiations in Paris. The English ministry

1. Franklin to Hartly, Oct. 22, 1783, Sparks IV, 173.
 Adams to Pres. of Congress Nov. 13, 1783, Adams Wks. VIII, 160.
 2. Adams to Franklin, Dec. 5, 1783, Adams Works VIII, 164.
 Adams to Jay, Dec. 7, 1783, Adams Works VIII, 165.
 S. J. of C. IV, 412.
 3. S. J. of C. IV, 484.
 4. Jefferson to Benjamin Harrison, Aug. 20, 1784, Jefferson's Wks. IV, 1.
 Adams to James Warner - Aug. 27, 1784. Adams Wks. IX, 524.
 Adams Diary, Aug. 13, 1784. Adams Works III, 389.

3.

replied through the Duke of Dorset, British ambassador to France, - "that the United States should send a person properly authorized to London, as more suited to the dignity of both powers than would be the carrying on in any third place, of negotiations of so great importance."¹ While not agreeing with the British argument, the American negotiators consented to go to London.² Adams and Jefferson made the trip in the spring of 1785 - after Adams had been appointed Minister to England, but before receiving knowledge of that event - but the negotiations amounted to little and resulted in nothing.³

On January 31, 1785, Congress resolved that an Ambassador be sent to England. On February 18th, his term of office was limited to three years and six days later John Adams was chosen for the place.⁴ Jay immediately prepared his commission which the new Minister received May 2nd at Auteuil.⁵ He was instructed in addition to getting immediate evacuation of the western forts, and for compensation for the negroes carried off at close of war, to represent to the British Ministry

1. Franklin in France, II, 324.

2. Ibid.

3. Ibid, 325.

4. Dip. Cor. 1783-9, IV, 157 and 8.

5. Adams to Jay - May 4, 1785. Adams Works VIII, 239.

the "strong and necessary tendency of their ~~re~~^{re}strictions" on American trade to incapacitate merchants of that country to make remittances on debts ~~and~~ in England.¹ This was the only direction given Adams in regard to the future commercial negotiations, Congress having specifically cut out additional limitations proposed by Mr. Jay.²

On May 35th, Adams reached London and on June 2nd was officially received by the King³. Just a week later he was given audience by the Queen.⁴ Negotiations began almost at once between the American Minister and Lord Carmarthen - the representative of Mr. Pitt, head of the Cabinet, succeeding the coalition on December 17th of the preceding year. These negotiations continued with many delays until Adams' recall in February of 1788. It would be useless to go into details as to the course of this negotiation. Sufficient will it be to outline Adam's proposals, their rejection, and the reasons for the absolute failure of the mission as it concerned trade relations.

It took Mr. Adams less than two months

1. Dip. Cor. 1783 - 1798. IV, 163.

2. Ibid, 158.

3. Adams to Jay - June 2, 1785, Adams Wks., VIII, 255.

4. Adams to Jay, May 29th, 1785, Dip. Cor., 1783-9, IV, 166.

to size up the situation in England and come to a conclusion which the subsequent three years proved to be substantially correct. He wrote Jay on July 19th that the policy of the Pitt administration was to do nothing in regard to America until some concerted action to force an equal treaty from them, and "they rely upon it, that our States can never accomplish such a concert, either by giving Congress the power, or by complying with their recommendations." He showed that the British held American commerce in contempt and regarded negotiations needless as they were getting the greater *part* of it, without. In summing up the situation, Adams wrote "their attachment to their navigation art,....is grown so strong... that I despair of any equal treaty and therefore of any treaty until they shall be made to feel the necessity of it" by united retaliation on the part of the new states.²

However in spite of these convictions Adams pressed negotiation. On July 29, 1785, he presented a sketch of a treaty whereby commerce was to be thrown open to merchants of both nations on payment of only

1. Ibid, 202.

2. Adams to Jay. - Dip. Cor. 1783-9, IV, 241.
 On June 26th Adams had written Jay affirming practically all the same points. Adams Wks. VIII, 273

the same duties as paid by citizens of the home country.¹ This plan was approved by Congress in February of the following year but the Cabinet had long before rejected it.² On August 24th, a conference with Mr. Pitt gave the American envoy practical assurance of the non-acceptance of his proposals, but official rejection was not given until later in the fall.³

Perhaps the best indication of the attitude of the ministry during this negotiation can be obtained from certain reported remarks of Mr. Pitt and Lord Carmarthen in the above conferences with Mr. Adams, and another on October 20th. In the first of these Mr. Pitt "smiled assent" to all the American envoy's arguments and then pointed out that the English people were of the opinion that the navigation act was so beneficial to them that it would be hard to abrogate it. In short he refused to give a definite answer as to what England would allow but made one insinuation that if England could be given a preference over France something favorable to the American proposals might be enacted.⁴ Such a plan however Adams refused to

1. Adams to Carmarthen - Dip. Cor. 1783-9, IV, 256.
 2. Jay to Adams, Ibid, 271.
 3. Adams to Jay - Dip. Cor. IV, 457.
 4. Adams to Jay. Dip. Cor. 1783-9, IV, 333.

harbor for a moment. In the October conference, too, no direct answer could be obtained from the Cabinet but Lord Carmarthen assured the American envoy that nothing could be done with his Memorials until the debts were paid.¹

Try/as he might Adams could get no further answer to any of his proposals. In December he wrote that he found himself at a complete stop, that neither the administration or opposition showed signs tending toward freedom of trade, and desired instructions from Congress to demand an answer, which, if unfavorable, would permit him to leave the country.² The United States, he wrote, must either support their own commerce by united action, or have none.³

Hints reached the ears of the American minister that he might expect definite action in the spring of 1786 but nothing came of it.⁴ In fact so little resulted from his mission that in May of 1786, Congress ordered him to cease attempting to get categorical answers from the Cabinet.⁵ Adams made no farther

1. Adams to Jay - Oct. 21, 1785, Dip. Cor. 1785-9 - IV, 367.
Adams wrote on May 26th that the laws enacted by various states against the collection of debts were the greatest obstacles to his negotiations. Massachusetts was one of these. Immediate repeal was urged. Adams to Tufts - Adams Wrks. IX, 548.

2. Ibid 451.
3. January 26th, 1786. Ibid 482.
4. Adams Works VIII, 360.
5. S. J. of C. IV, 612.

demands and returned home in February of 1788 acknowledging his mission as a failure,¹ but commended by Congress for the manner in which the negotiations were conducted.²

From the various steps in the negotiations it is not difficult to outline the scheme by which England planned to keep the commerce of the United States and yet give nothing in return. They knew the limited powers of Congress and not being disposed to open up their trade until compelled to do so, felt reasonably sure that for some time at least no united action could be enforced against them. In the meantime they hoped through dilatory actions to get proposals of either a preferential trade policy over France or payment of the pre-Revolutionary debts. Neither of these were offered and as American had no trade privileges with which to buy concessions, their ports being already open to trade of all countries no matter how transported, the administration clung to the Navigation Acts.³ The American intercourse and Newfoundland bills, merely indicated this conservative policy.⁴

1. Adams to Jay Feb. 16, 1788.
" " " Feb. 21, 1788.
Adams Works VIII, 480-2.
2. Act of Congress, Oct. 5, 1787, Adams Works, 477.
3. Adams to Jay, May 25th, 1783, Adams Works VIII, 394.
4. See Chapter II.

During this time both Adams and Jefferson - American Minister to France, whom Adams kept notified as to the negotiations - advocated a strenuous retaliatory policy. In this way only could England be brought to give the United States a fair treaty. Also they advocated pushing of the East India trade to its fullest extent.¹

1. Adams to Robinson, Mar. 2, 1786. Adams Wks. VIII, 383.
 2x Jefferson to Monroe, Mar. 18, 1785, Jefferson Wks. IV, 35.
 Jefferson to Monroe Apr. 15, 1783, Jefferson's Works IV, 43.

CHAPTER V.

Gouverneur Morris in England.

After the ratification of the new constitution in 1788, Mr. John Adams - still in England as United States Commissioner to the Court of Saint James- was elected Vice-President¹. He immediately set out for America. Thomas Jefferson at practically the same time was appointed Secretary of State, three months after his return from France.² He did not immediately accept and President Washington desiring to find out the attitude of England toward the new government issued instructions to Mr. Gouverneur Morris - then on business in London - to act for the United States in the character of a private agent.³ His instructions were very general and yet positive. He was not empowered to negotiate any treaty but was to ascertain the position of the British administration on four points. (1) Whether they intended to vacate the frontier posts. (2) Would they allow compensation for negroes carried away after the Revolution.

1. Adams to Jay - Feb. 14, 1788. Adams Works VIII, 474.

2. Jefferson returned to the United States in September of 1789; was appointed Secretary of State, December 15, 1789; and accepted the post February 14th, 1790.

3. Washington's message to the Senate, February 14th, 1791. A. S. P - F. R. I, 121.

(3) Reasons for Great Britain's oversight on not sending a Minister to the United States. And (4) whether a treaty of commerce might not be arranged, and, if so, upon what terms.¹ But one specific point was to be impressed on the administration - the non-countenancing of any idea that the "privilege" of carrying our productions of those islands to our ports and markets "would be dispensed with in any treaty!"² In other words he was to insist on the West India trade.

Washington wished at least an assurance of a satisfactory termination to any commercial negotiations before their beginning. What did he get? Mr. Morris kept a full and complete record of all his conversations and correspondence with the king's ministers, communicating the same from time to time to President Washington. ~~With~~^{This} his diary, which incorporates nothing more,³ is the only record of the progress

1. A. S. P. - F. R. - I, 122 - Washington to Morris, Oct. 13, 1789.

On the matter of commerce Washington wrote: "The commerce of the United States you well understand. You are apprised of the sentiments and feelings of the United States on the present state of it; and you doubtless have heard that in the last session of Congress a very respectable number of both Houses were inclined to a discrimination of duties unfavorable to Great Britain; and that it would have taken place but for conciliatory considerations and the probability that the late change in our government and circumstances would lead to more satisfactory arrangements. Request to be informed therefore, whether they contemplate a treaty of commerce with the United States and on what principles or terms in general."

2. Ibid.

3. Ibid 121 to 127. Here the correspondence is collected and published together. Morris - "Life and Letters of Gouverneur Morris", I, 315-348.

of this negotiation, but from it the main steps may be easily worked out.

On March 30th, 1790, the Duke of Leeds, Secretary of Foreign Affairs, received the American Commissioner, and in the warmest manner gave indications of the success of the mission. "I assure you it is very much my wish to cultivate a friendly and commercial intercourse between the two countries, and more, I can answer for the rest of his Majesty's servants, that they are of the same opinion"; is the report of the Duke's words. The latter also expressed his desire that the posts be evacuated and compensation given for the negroes.¹ However he made no definite specific statement until April 28th when in a letter to Morris he gave the assurance "that it had ever been the sincere and earnest wish of this country, to fulfil her engagements --- with the United States in a manner consistent with the most scrupulous fidelity. We cannot but lament every circumstance which can have delayed the accomplishment of those engagements...to which those states were in a most solemn manner bound; and should the delay in

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fulfilling they have rendered their final completion impracticable we have no scruples in declaring, our object is to retard the fulfilling of such subsequent parts of the treaty as depend entirely upon Great Britain until redress is granted to our subjects upon the specific points of the treaty itself, or a fair and just compensation obtained for the non-performance of those engagements on the part of the United States."¹ Nothing more definite in regard to the negroes or west posts could be desired. England refused to take any action regarding them until all impediments in the way of the collection of debts had been removed by the states, which, according to Great Britain's interpretation, meant until the debts were paid.

In a general way just as definite a statement was made in regard to a commercial treaty. The Duke of Leeds expressed the wish of Great Britain "to cultivate a real and bona-fide system of friendly intercourse with the United States" and assured the American negotiator "that every measure which can, ^{tend} really and reciprocally, to produce that object will be adopted with the utmost satisfaction by Great Britain."² This was a mere

1.A.S.P. - F. R. - I, 123.

2.Leeds to G. Morris - Apr. 28, 1790 -
A. SpP. - F.R. - I, 123.

general statement ^{and} the Secretary defined it in just as general a manner on May 20th when he said - according to Morris' report - that "he certainly meant to express a willingness to enter into a treaty of commerce".¹

Mr. William Pitt expressed the same vague willingness on the following day but the American agent refused to carry this matter further until the posts and negroes had been settled. "It appeared ^{idle} to form a new treaty until the parties should be thoroughly satisfied about that already existing" were his words according to his own statement.² Also when the Duke expressed on September 15th the intention of sending a Minister to the United States ^{with powers} to negotiate a treaty of commerce for mutual benefit Mr. Morris warned him that the retention of western posts would probably be an insurmountable barrier against such a treaty.³

In a word the British position seems to have been one of retention of western posts and non-compensation for negroes - unless the British debts were paid -, the negotiation of some sort of a commercial treaty, if

1. Morris to Washington - May 29th, 1790.
 G. S. P. - F. R. - I, 124.

2. Ibid.

3. Ibid - "Mr. Pitt proposed "to consider the subject generally and see if some compensation could not be made mutually." I immediately replied, "if I understand you, Mr. Pitt, you wish to make a new treaty instead of complying with the old one." He admitted this to be in some sort his idea. I said that even on that ground, I did not see what better could be done, than to perform the old one."

other matters were satisfactorily settled, and the recognition of America's position by an Ambassador. Their idea of a new treaty, however, seemed to contemplate a plan whereby mutual compensation for the claims of the two countries could be made by clauses overriding those of the former treaty.¹ The fear of insistence by the Cabinet on just such a settlement of difficulties undoubtedly kept Mr. Morris from pressing their acknowledged willingness to place the commercial relations of the two countries on a more stable basis. In addition nothing of a definite nature as to just what the administration would be willing to grant along this line had been vouchsafed by either Lord Grenville or Mr. Pitt. The American Negotiator wished the difficulties arising out of the violations of the Treaty of Paris settled first as did the Cabinet, but he desired such an order of settlement for an opposite reason, evidently. The latter wished to hold the commercial treaty back as an inducement for the payment of British debts while Morris feared that if such a convention were entered into before the other points were settled, the United States

1. Morris to Washington, May 29th, 1790.
A. S. P. - F. R. - I, 124.

might be coerced into inserting articles that would release the British of some of their obligations entered into at the close of the Revolution. This similarity in purpose but opposition as to result brought negotiations to a close.

Such a state of affairs resulted in a diminution of the attention paid to commercial matters. Not one mention of the West India trade was made by Morris to the British ministers except to assert that in case of war with France England could not hope to continue to hold the American trade.¹ No specific questions as to what the Cabinet was prepared to give to the States were asked for. No statement of American demands was presented. Yet the British ministers gave the American envoy such an impression that his reports to Washington showed the Chief Executive that there was little use of longer continuing the negotiation. The President could see that England was willing to grant nothing and consequently Morris was relieved of his commission.²

In the President's report to the Senate over the results of this negotiation the British attitude is summed up in a manner that shows what was the American

1. Morris to Washington - Sept. 18, 1790.
 A. S. P. - F. R. - I, 126.
 2. Washington's Message to Congress - Feb. 14, 1791.
 A. S. P. - F. R. - I, 121.

position. "They (English Cabinet) declare without scruple they do not mean to fulfil what remains of the treaty of peace to be fulfilled on their part....till performance on our part, and compensation where the delay has rendered the performance now impracticable; that on the subject of a treaty of commerce, they avoided direct answers, so as to satisfy Mr. Morris, they did not mean to enter into one, unless it could be extended to a treaty of alliance offensive and defensive, or unless in the event of a rupture with Spain."¹ Nothing could be clearer. England merely rested on the debts being paid before further steps were taken. However she seemed to be willing to forego the debts if the United States would break off her alliance with France and connect herself more closely to the old mother country.² Washington withdrew Morris' commission thereby indicating that neither plan could be countenanced for a moment by the young nation.³

One other matter must be brought up in this connection - impressment. The first negotiations over this were taken up by Mr. Morris on his own initiative immediately after the Nootka Sound affair when several

1. A. S. P. - F. R. - I, 121.

Thomas Jefferson - Secretary of State - reaches practically the same conclusions as President Washington in a report on British Negotiations December 15th, 1790. Jefferson's Works, V, 261. However from the language used it seems that one used the writings of the other in drawing up their official documents.

2. This seems to anticipate the coming war with France.

3. While in London Morris received a hint from Jefferson that England was informally proposing an exchange of Ministers and a treaty of commerce and alliance through Major Beckwith and the Quebec government. Nothing came of it however. Aug. 12, 1790. Jeff. Wks. V, 224.

American sailors were impressed by the British.¹ On May 20th, this new topic was brought to the attention of the Duke of Leeds. The latter acknowledged that impressment as carried out by the press-gangs was wrong, but called attention to the difficulty in distinguishing between American and British seamen. It was suggested by the American commissioner that certificates of citizenship be given by the Admiralty Courts of America to seamen of the United States. The Duke received this plan favorably as did Mr. Pitt on the following day.

Its practicability was the only subject of discussion and this was overcome to the extent that Mr. Pitt was led to believe that Great Britain would be willing to accept such a measure. No further steps however were taken along this line during Mr. Morris' stay in London.²

In summing up this negotiation it may be said that it accomplished only one thing; the appointment of a British minister to America in 1791. Beyond this nothing resulted. The English administration refused the American requests on frontier posts and negroes while

¹ Morris to Washington - May 29th, 1790. A. S.P. - F.R. - I, 124.

² The subject of who was the initial offender in the impressment controversy became the subject of considerable discussion later. The Americans objected to having any American citizens seized and the British contended that American ship owners were bringing the results on themselves by inducing British seamen to desert, and ship on vessels of the United States after swearing before a magistrate that they were American citizens....

Consul Hamilton to Lord Grenville, Oct. 1793.
Smith's "England and American after Independence", page 39, note 1.

10.

Morris refused to let the Cabinet have the idea for a moment that the United States would guarantee the payment of the debts. Commercial matters did not advance one step.

CHAPTER VI.

George Hammond in the United States.

Following the declaration of their intention to send a minister to the United States - made by Mr. Pitt to Gouverneur Morris - Lord Grenville, successor to the Duke of Leeds as Secretary of the Foreign Office, sent George Hammond to America as Ambassador in the summer of 1791. Upon his arrival in the fall, Mr. Jefferson began negotiations. While these continued up until the time of the Jay Treaty they need occupy but little of our time here as developments showed Mr. Hammond's commission on the subject of commerce to be such that Mr. Jefferson felt it best to drop the matter leaving that part of the negotiations to Mr. Pinckney, who was appointed Minister to England shortly after Hammond's arrival. The Secretary of State therefore practically confined himself to violations of the Treaty of Paris in dealing with the British Minister.

On November 30th, 1791, the Secretary wrote Hammond stating that several British trade

regulations were, he believed, detrimental to the interests of both countries and desired to know whether the British Minister was authorized to conclude or negotiate a treaty on the basis of reciprocal advantage.¹ Hammond answered that he was ready to enter upon negotiations on principles of mutual benefit but that he was not as yet empowered to conclude any definite arrangement with respect to the commercial intercourse between the two countries. He declared his willingness to discuss principles and receive proposals but gave no indication that his government would make any advances in the matter.² Jefferson, however, was not content with this and asked for a specific statement of the Englishman's powers, evidently desiring if possible to find out the *full powers* given Hammond as to commercial matters by the British government.³ However if Hammond had

1. Jefferson to Hammond - Jefferson's Works V, 410.
 Undoubtedly he referred not only to the orders against trade with the West Indies but prohibitory duties and regulations refusing to recognize any ships as American except those built in the states. This would place a limitation on the direct trade to England and in case of war in which the United States was neutral would prohibit her purchasing vessels as additions to her merchant marine.
 Jefferson to Pres. of the U.S. - Apr. 1791.
 Jefferson's Works V, 322.

2. Hammond to Jefferson, Nov. 30, 1791.
 " " " Dec. 6, 1791.
 A. S. P. - F. R. I, 189.

3. J. to H. - Dec. 5th, 1791, - Jefferson's Works V, 402.
 J. to H. - Dec. 13, 1791 - A. S. P. - F. R., I, 189.

any such ~~instructions~~ he refused to divulge them further than he was ready to negotiate but not empowered to conclude any such treaty¹. Immediately then Jefferson turned ~~to~~ the negotiation into other channels, in the meantime declaring himself willing to receive any trade proposals of the British envoy.²

No further communications took place between Hammond and Jefferson over commercial matters until April, 1792, when Jefferson having received notice that the statute forbidding importation of goods or commodities of the growth, production, or manufacture, of America in foreign vessels would be thereafter strictly enforced, requested of Hammond information as to whether this was to operate as a revocation of the proclamation of 1783 admitting American vessels into British ports with home produce.³ The British Minister answered that from all communications he had received from the home government, there was no revocation of the above proclamation implied in the strict enforcement of that order but it was merely given to prohibit direct trade

1. Hammond to Jefferson - Dec. 14, 1791, Jefferson's Wks., I, 189.
 2. Jefferson to Hammond, Dec. 15, 1791. A.S.P. - F.R. I, 190.
 3. J. to H. Apr. 12, 1792. Jefferson's Works V, 504.

with the islands of Jersey and Guernsey, a trade that had illegally sprung up a few years previous but which up until that time had been passed over by the administration.¹ This indeed was the attitude of the British Ministry as no seizures of vessels laden with American goods were made on their attempts to trade in English ports.

Nothing further in the Hammond-Jefferson negotiations is of interest here until after the issuance of the famous provision Order of June 8th, 1793.² Then two letters did pass between them but a discussion of these will be taken up in regard to the position of the two countries on the international law of neutral trading rights.

1. Jefferson to Pres. of U. S. - April 13, 1792.
 Jefferson's Works V, 506.
 Hammond to Jefferson Apr. 11, 1792, transmitting a copy of the old Navigation Act - 12 Car. 2 -
 Hammond to Jefferson - Apr. 12th, 1792.
 A. S. P. - F. R. - I, 135 to 137.

2. See Chapter II. mention in his analysis of the Jefferson did make incidental/violations of the Treaty of 1783, presented to Hammond on May 29th, 1792 - of the fact that one of the main reasons for the non-ability of the American merchants to pay their debts was the prohibition of American bottoms from the West India trade but Hammond in his reply eighteen months later made no reference to that statement.
 A. S. P. - F. R., I, 201.

Similarly Edmund Randolph who succeeded Jefferson as Secretary of State in the beginning of 1794 had some correspondence over the position of neutrals but none as to the general restrictions on American commerce. Beyond these the Hammond negotiation added nothing to the stand taken previously by either country.

CHAPTER VII.

Thomas Pinckney in England.

After the arrival of Mr. Hammond in the United States as Ambassador, President Washington appointed Mr. Thomas Pinckney to England with the title of Minister Plenipotentiary. He received his commission and instructions from the Secretary of State on June 11th, 1792, and arrived in London two months later. By his instructions Pinckney was ordered to *do* two things in addition to his regular ministerial duties. They were: (1) ^{Obtain a} liberation of American commerce from embarrassments in all the British dominions if possible, but particularly in the West Indies. (2) ~~Form~~ some arrangement for the protection of American sailors from British impressment. Jefferson absolutely rejected the plan of Gouverneur Morris to issue certificates of citizenship to all sailors legally entitled to sail under the United States flag as this would give ^{the} English a right to seize all not having such papers in their possession. The plan most simple and effective in the

1. Jefferson to Short O Jan. 3rd, 1792. Jeff. Wks. V, 417.

Secretary's opinion would be that the vessel bearing Americans should be evidence that the seamen on board her were such. The right of search should be limited to one or two officers and in no cases should a press-gang be allowed to board an American vessel.¹

Negotiations began immediately upon Pinckney's arrival in August but so far as the American Envoy's correspondence has been published there is no indication that any proposals were made by him for the settlement of the impressment matter during the remainder of the year. He seems to have not been able to think of a working plan that would have afforded ample protection to American seamen and still have been acceptable to the English ministry. In addition practically all his time during the first five months of his stay at London was taken up in seeing that sailors, who were bona-fide citizens of the United States and yet had been impressed, received justice at the hands both of the administration and the courts.² Just how many cases came up during these months is not determinable but they were many and all received consideration by Mr. Pinckney.³

1. Jeff. to Pinckney, June 11th, 1793. Jeff. Works. VI, 74.
 2. Extracts of Pinckney's Correspondence - Pinckney's "Life of Thomas Pinckney" - 108 - 115.
 3. Ibid 107.

3.

By the first of the year (1793) other matters of so much greater immediate importance came up that the impressment difficulties rather fell into the background.

On January 30th, 1793, Pinckney wrote Jefferson to the effect that in the anticipated war between France and Great Britain he feared for Neutral trade. The tone of his letter fore-shadowed neutrality on the part of the United States and his prophecy struck hardest on his own nation. Two months after England joined the first coalition the provision order of June 8th was issued to her ships of war and privateers.¹ This was communicated officially to the United States government in September by Hammond who accompanied it with a letter defending the regulation as the accepted rule of international law.² Hammond contended that by general custom of nations provisions were absolute contraband in cases where the depriving an enemy of those supplies was one of the means intended to bring such country to reasonable terms. However the British government had not gone to the full extent of their powers, wrote the Minister, but only so far as

1. See Chapter II.

2. A. S. P. F. R. I, 240.

to prevent corn, flour, and meal from reaching France and in doing this, if neutral property had to be seized, then full indemnification would be given. Jefferson replied immediately taking a stand absolutely opposite to the British as to the accepted rule of international law but intimating that further negotiations over this had best take place at London.¹

Earlier in the month the Secretary had written Pinckney to protest against the action of Great Britain on the following grounds:

- (1) It was manifestly contrary to the law of nations as determined by the accepted interpretation of practically all nations. Provisions were not munitions of war or contraband as such. Moreover the right of seizure of goods and indemnification was unheard of as applied to commodities destined for any port of an entire nation.²
- (2) Tended to draw the United States into the war.
- (3) A strict enforcement of this rule would be destructive to American agriculture.
- (4) The clause exempting the ships of Denmark and Sweden

1. Sept. 27, 1795. - A. S. P. - F. R. - I, 241. See Chap .II.
 2. See Chapter II for a further discussion of this point.

from confiscation ~~on~~ attempts to enter a blockaded port was openly a blow against the United States as those three nations were the only maritime powers not engaged in the war.¹

However before this letter reached London, Mr. Pinckney had presented the case of the Americans in the strongest terms claiming the principle free ships make free goods; a principle which if not acknowledged by the British government as a right had at least been approved by them as a working plan in their commercial treaty of 1786 with France.² But the administration refused for the moment at least, to relax the rigidity of this order in the slightest degree.³

Moreover new ~~embarrassments~~ were added to American commerce. November 6th the rule of 1756 was revived whereby the United States were forbidden to carry in time of war a trade forbidden them in time of peace.⁴ This was manifestly to counteract the opening of the French West Indies to American vessels by a decree of ^{the} previous March.⁵ Mr. Pickney received no knowledge of this order, however, until January 2nd, 1794, and

1. Sept. 7, 1793. A. S. P. - F. R. I, 239.
2. Hansard's Parliamentary History XXII, 233 et. seq.
Letters of Pinckney to Jefferson July 3, 31 and August 15th.
A. S. P. F. R. I, 342.
3. Sept. 25, 1793 - Ibid 343.
4. See Chapter II A. S.P. - F. R. - I, 430.
5. See Chapter II.

within a week thereafter it was recalled so no specific protest was made against it by the American envoy but the order substituted for it on January 8th was followed by a protest and conference with Lord Grenville, the results of which we shall notice later.¹

During the interim, however, Mr. Pinckney presented a written representation on the provision order, which Mr. Hammond answered in a letter to Mr. Edmund Randolph, April 11th, according to instructions from his home government.² Randolph who had succeeded Jefferson as Secretary of State at the end of 1792 answered with a long defense of the American contentions on May 1st, 1794 just previous to Mr. Jay's departure for England.³ From these documents it will be seen what were the positions taken by the two countries on neutral trading rights:

1. Contraband of War.

United States, - Only munitions of war were contraband and liable to seizure. All other products of agriculture or manufacture might be carried to

1. See Chapters II and VIII, A. S. P. - F. R. I, 430 and 431.
 2. A. S. P. - F. R. - I, 448.
 3. A. S. P. - F. R. I, 444 to 454.

belligerent or neutral and be subject to the same privileges as if the war did not exist, except that they should not be carried to a port actually blockaded by the enemy. In cases of doubt goods were not to be considered munitions of war.

Great Britain, - Right to declare contraband and confiscate as such all that contributed either directly or indirectly to the support of a belligerent, especially if such seizures could more quickly reduce the enemy to peaceful terms. However they had not exercised this right to its fullest extent but only in a limited form out of respect to the neutrality of the United States.

2. Rule of 1756.

United States - held that trade might be opened to a country at any time.

Great Britain refused to allow a neutral to carry on trade in time of war, forbidden it in time of peace.

3. Status of goods on neutral ship.

United States - Free ships make free goods.

Great Britain - Enemy goods continue to be

enemy goods wherever found.

4. Blockade.

United States - A blockade could only be binding if supported by an armed force in the immediate vicinity capable of guarding the blockaded port.

Great Britain - After a port was declared blockaded any vessel bound thereto was liable to seizure.

5. Impressment.

United States - Denied right of search of American vessels for foreign seamen.

Great Britain - Claimed right of taking British seamen wherever found.

6. International Law.

United States - "Law which had for its basis reason and the usage of civilized nations." Supported their interpretations by reference to more recent treaties, to some of which even-Great Britain was a party.

Great Britain - "Law which had for its basis reason and the usage of civilized nations." Contended however that they had never departed from the older inter-

pretation as a matter of principle, but only as mere working plans in individual cases.¹

Both nations persisted in claiming their position as the correct one according to the law of nations right up to the time of Jay's arrival in London as a Special Envoy. We shall next see what effect his mission had on the stand of either, both as to working arrangements to be incorporated in a treaty and the accepted rules of international law to be in the future effective between them.

1. Hammond to Secretary of State Apr. 11, 1794.
A. S. P. - F. R. - I, 449.

Chapter VIII.John Jay in England.

It will be remembered that the day following the British Order in Council of January 8th, 1794, Thomas Pickney wrote President Washington concerning a conversation with Lord Grenville over the entire matter of American trade.¹ The British commissioner gave reasons for the Order of November 6th - "to prevent the abuses that might take place in consequence of the whole of the St. Domingo fleet having gone to the United States and because of the attack designated on the French West India Islands" - but added that they had always been considered as only temporary and as no longer necessary for their intended purposes had been withdrawn. The new order came as the result of the sincere desire of the administration to maintain the best understanding and harmony with the United States "and to take away every pretext from persons in America who were endeavouring to embroil the country with Great Britain. Evidently the agitation for retaliation and preparation for actual

1. See Chapter II. This order was laid before Congress on April 4th.

war had reached the ears of the ministry.¹

As to the order itself it was less harsh than its predecessor. Instead of all vessels laden with goods the produce of any colony belonging to France or destined for any such colony being subject to seizure, only those whose arrival at their ports of destination would directly aid France, were placed under such ban. That is, any vessels going directly from the French West Indies to any port in Europe, or those laden with goods belonging to a French citizen were liable to capture, but no others except in attempting to run a blockade.²

The effect of this order and its accompanying notification of a conciliatory change in the attitude of Great Britain probably had its immediate effect on the President of the United States. As early as March 16th, the matter of sending an Envoy Extraordinary had been talked of by the administration before proceeding to actual warfare. Alexander Hamilton was the one who seemed most likely to be that minister.³ However there is nothing in Washington's correspondence or in those

1. Pinckney's letter may be found in A. S. P. - F. R. I, 430.
2. A. S. P. - F. R. I, 431. See Chap. II.
3. Washington's Works X, 404.
Monroe to Jefferson Mar. 16, 1794, Monroe, I, 240.
Jefferson to Monroe @ Apr. 24, 1794. Jeff. VI, 503.
Edmund Randolph, Secretary of State, urged such an appointment two days after the reception of Pinckney's letter on April 4th, 1794.
Covay's "Edmund Randolph", - 214.

gathered about him to indicate that such a mission had actually been decided upon until just previous to the appointment April 14th, when the Secretary of the Treasury urged the President "to come to some conclusion whether the plan ought to be preparation for war and negotiation unencumbered by measures which forbid the expectation of success, or immediate measures of a coercive tendency" showing that he did not know whether the mission was a certainty or not, or if he did have such knowledge that secrecy was being maintained concerning it.¹

That the conclusion was reached by the 16th is absolutely sure for it was on that date that Washington sent in Jay's appointment to the Senate for confirmation.²

But the actual time when the discussion to send such a Minister was ultimately decided is probably not determinable. It is not likely that the President was still in doubt ~~when~~ Hamilton's letter was written, for the actual appointment followed within so short a time that is hard to think that so cautious a man as Washington would come to a decision both as to the plan and the Minister in forty-eight hours. What seems

1. Hamilton to Washington - Apr. 14, 1794. Hamilton V, 112.
 2. Annals of C. 3rd C. page 86.

4.

more probable is that Washington determined upon further negotiations shortly after learning that the British administration seemed more favorably inclined toward the United States - that is, on the reception of Pinckney's letter of January 8th - but kept that ^{discussion} secret until his choice of the Envoy could be made.¹

And that choice was not an easy one. Hamilton was first suggested. Jay and King were also thought of for the place.² The appointment of any of these would not be heartily acceptable to the Republicans, particularly the choice of the first.³ James Monroe even went so far as to formally protest against the Secretary of the Treasury.⁴ Washington finally decided on Jay and made his first overtures to the Supreme Justice on April 14th,⁵ the same day that Hamilton informed Washington that he wished his name withdrawn from consideration.⁶

The mission was one of short notice to Jay. On April 9th and 10th he wrote to his wife of conversations with the President and in the same letter spoke of his plans at home in the future weeks showing clearly that at the time he did not anticipate his

1. Washington's message to the Senate, Nominating Mr. Jay. Washington's Writings XII, 419.
 2. Monroe to Jefferson March 31st, 1794. Monroe I, 290.
 3. Ibid. Monroe says that "either will answer to bind the aristocracy of this country stronger and closer to that of the other" (England). Jeff. to Mon. Apr. 24, 1794, Jeff. VI.
 4. Monroe's Works - I, 290.
 5. Jay to Mrs. Jay - Apr. 15th - Jay's Life of Jay 310.
 6. Ibid - (Apr. 10th) page 309.

appointment. Moreover the honor was neither coveted or solicited by him. He spoke of it on April 15th as " a measure.. ..to be submitted to"; or one which if he accepted would be only a duty. He was finally selected by the President for three reasons: (a) his close friendship with Washington and the latter's complete confidence in him; (b) his knowledge of the negotiations of the treaty of 1783; and (c) his political views.¹ As a Federalist he would offset the appointment of a Republican as the new Minister to France.² His nomination was sent to the Senate on April 16th. It was confirmed three days later by a vote of 38 to 8, and official notification was sent to the appointee on the same day.³ The opposition in the upper House was vehement. Raising their objections on a report made by Jay on the violations of the Treaty of 1783, while acting as Secretary of State under the last days of the Confederation, the opposition^{just} up a strong fight aided by the fact that as Supreme Justice the envoy might in the future be called upon to give decisions on his own treaty.⁴ In fact the necessary votes appear to have been obtained on the supposition that Jay would

1. Washington to Jay - Apr. 19, 1794. A.S.P. F.R. I, 470.
 2. Monroe to Jeff. - May 27, 1794. Monroe I, 299.
 3. Madison to Jeff. - Apr. 28, 1794. Madison VI, 211. Ibid (1)
 4. Secret Journals of Congress IV, 279.
 Here Jay vindicated England's retention of the frontier posts, basing his argument on the alleged American violations in not enabling English debts to be more readily collected. Jay's "Life of Jay." I, 314.

resign his judicial post.¹ As he gave no sign of his doing so after appointment, the Republican Newspapers stirred up considerable agitation against him even before his departure.²

However this agitation had no immediate effect, and Jay left New York for England May 12th, accompanied by John Trumbull as Secretary. He landed in Falmouth on June 8th.³ He then proceeded to London after notifying Lord Grenville and Mr. Pinckney of his arrival, reaching there June 15th.⁴ On the 18th and 20th, the American Minister was received at Court and just one week later actual negotiations commenced.⁵ As Mr. Jay had proposed that at the outset informal conversations should cover all points until there appeared to be some ground of mutual understanding, followed by informal proposals on paper from which either could retract at any time and as this proposal had been accepted by Lord Grenville, the entire matter was conducted in such conferences. In these various plans for settlements the several disputes were discussed,

1. Madison to Jefferson - Apr. 28, 1794. Madison VI, 299.
 Jay to Mrs. Jay - May 13, 1793. Jay's "Life of Jay" 315.
 Adams to Mrs. Adams, Apr. 19, 1794, Adam's Works II, 156.
 2. McMaster's History of the U.S. -Chp. IX.
 Jay's "Life of Jay" I, 315.
 Fellew's "John Jay", 300.
 3. Monroe to Jeff. May 4, 1794. Monroe I, 292.
 4. Jay to Randolph June 9, 1794, A.S.P.-F.R.-I, 475.
 Here the entire correspondence of Jay with Randolph may be found. Unless otherwise indicated the remaining references to A. S. P. - F. R. will be understood to be to one of such letters.
 5. Ibid 476 Jay to Alexander Hamilton, July 11, 1794, Fellew's "John Jay" , II, 228.

modified and some basis of complete understanding reached.¹

Jay's instructions in regard to the treaty were very complete and yet considerable discretionary power was left him. ² (1) Compensation for all injuries sustained under the Secret Orders in Council and subsequent captures must be demanded. (2) A conclusion must be reached in regard to all points of difference between the United States and Great Britain arising from the Treaty of 1783. (3) At his own discretion after the first two points had been accommodated a commercial treaty might be taken up. If this did not occur, then Jay should press the following:

"(a) Reciprocity in navigation, particularly to the West and even to the East Indies.

(b) The admission of wheat, fish, salt meat, and other great staples, upon the same footing with the admission of the British staples in our ports.

(c) Acknowledgment of the principle that free ships make free goods.

(d) Proper security for the safety of neutral commerce in other respects and particularly:

1. Autobiography, Reminiscences, and Letters of John Trumbull (1841) page 176.

Practically the only evidences we have of these conferences are what meagre reports Jay sent to his home government. Neither of the secretaries - Trumbull and J. Bland Burges - were present at the meetings of the negotiators.

2. The instructions in full may be found in A. S. P., T. R. I, 472.

by declaring provisions never to be contraband except in the strongest possible cases, as the blockade of a port; or, if attainable, by abolishing contraband altogether;

by defining a blockade, as is defined in the armed neutrality if contraband must continue in some degree.

by restricting the opportunities of vexation in searching vessels;

by bringing under stricter management privateers, and expediting recoveries against them for misconduct;" and fourteen other minor articles, the most important being that no stipulation should interfere with the obligations of the United States to France.

However as Jay could not be expected to obtain all the above stipulations he was empowered to conclude a treaty that added "to the actual footing of ...commerce and navigation in the British European dominions ... the privilege of carrying directly from the United States to the British West Indies in American bottoms generally, or of certain defined burdens, the articles which

by the act of Parliament, 28 Geo. III, 6 might be carried thither in British bottoms and of bringing from thence, directly to the United States in American bottoms of like description the articles which by the same act, might be brought from thence to the United States in British bottoms..." This was practically an ultimatum as he was forbidden to make any such treaty if that much could not be obtained. Some additional points were to be placed upon the British ministry as of utmost importance but none were included in the above prohibition. If the British were not willing to negotiate on such a basis then access should be obtained to the Russian, Danish and Swedish ministers to England and their views obtained as to the probability of an alliance between their governments and the United States in support of the principle of the armed neutrality, which were felt to be sufficient to protect American interests.

In a word then while Washington desired (1) admission of American vessels in West Indian ports, (2) abolition of discriminating duties, and (3) safeguards for neutral trade, Jay was left to determine or modify

any and all of them, and negotiate a treaty or treaties at his own discretion subject to only two absolute conditions: (1) that nothing should be done to abrogate or derogate the alliance and treaty of commerce with France, and (2) the ultimatum in regard to the West India trade should be carried out with no digressions. Beyond this the matter was left in the Envoy's hands.¹

The first six weeks of the American minister's stay in London involved informal conference, according to the plan of the negotiations. On July 31st, however, Mr. Jay presented his first written plan of settlement regarding the spoliation claims, which was answered by Lord Grenville on August 1st.² The former asked that Great Britain cease her illegal captures, make indemnity to injured Americans by governmental action, and stop all future impressments. The British on the other hand refused to make any restitution outside the courts but promised to order that a further time than the law allowed in ordinary cases be given Americans for entering appeals in such spoliation cases.³ On the matter of impressment Grenville promised that orders would be

1. It is interesting to note that the instructions to Jay were practically those prepared by Hamilton to Washington. Hamilton's Works V, 115, 117, and 120.

2. A. S. P. - F. R. - I, 481.

3. Such an order was made on August 12th, A. S. P. - F. R. - I, 482.

issued to prevent as far as possible all seizure of Americans but refused to disavow England's right to take her own subjects from any vessels. Nothing definite resulted then from this ~~ex~~change of views.

In fact no conclusions seem to have been reached as regards any of the disputed points until after September 13th, the time having been spent in discussing every phase of the subject.¹ On August 6th, Jay proposed a plan for the solution of the commercial difficulties which was answered on the last day of the month with two proposed treaties, one general and the other in regard to future trade relations. Criticisms were passed on each of these, and modifications and compromises resulted after days of unceasing labor on the part of the negotiators.

Tracing the various disputed points it is noticeable how equally the solutions issued from the two diplomats. Jay in his proposal of August 6th asked "full and complete satisfactionfor all vessels and property...illegally captured and condemned .. and that in cases where it shall be apparent full

1.A. S. P. - F. R. - I, 487.

justice and compensation cannot be obtained and actually had, in the ordinary course of judicial procedure... certain commissioners shall be appointed and empowered "to adjudicate on such claims!"¹ The article proposed by Jay for regulating future trade between the West Indies and the United States was identical with the article finally embodied in the treaty in the matter of form but the stipulations asked for were far more lenient to American interests than those actually incorporated in that document. Commerce could be carried on in ships of one hundred tons and the prohibition on exportation from the United States was limited to goods actually of West India production with the exception of rum. Commerce with the other ports of the British dominions was to be open to British and American vessels alike, and no discriminating duties were to be enacted against the latter. The same was true as regards trade with the States. The sale of prizes in each other's ports in time of war was prohibited.²

Grenville's return treaties were based on Jay's proposals but made important changes.³ American claims were to be adjudicated by five commissioners - chosen

1. Embodied in a letter - Jay to Randolph - Sept. 13, 1794.
A. S. P. - F. R. - I, 486.

The credit for proposing the plan of the commissioners to settle disputes both of claims and boundaries must be given to Jay.

2. One proposal of Mr. Jay's in regard to privateers should be noticed as it appears in not even a modified form in any of the subsequent draughts. The objections of Lord Grenville to it caused its immediate withdrawal. "It is agreed that if it should unfortunately happen that Great Britain and the United States should be at war, there shall be no privateers commissioned by them against each other."

in same manner as in final treaty - and Great Britain bound herself to pay such claims according to the findings of the arbitration. America was bound to do likewise by claims of British merchants for capture of vessels or merchandise made within the limits of the jurisdiction of the said States, or by vessels armed in the ports of the said states or by vessels commanded or owned by the citizens of the said States." ¹ Jay's article in regard to ~~sale~~ of prizes was accepted by Grenville. The British, however, refused to give up their right of search for contraband (for which no definition was given). Between the British dominions in Europe and the United States there should be a "reciprocal and perfect liberty of commerce. Privileges that were given to the most favored nation could be enjoyed by either. Regarding the West India trade, Grenville cut down the burden of the ships to seventy tons but otherwise left Jay's proposal intact, even to excepting from the prohibitions of export from the United States, rum made in the United States from West India molasses. Grenville also proposed that the treaty instead of being perpetual

1. Referring of course to captures made by privateers fitted out in the United States by the French Minister, Genet.

3. A. S. P. F. R. I, 487.

The commercial clauses of all the projects have been carefully picked out. Practically every phase of the controversy was included in the proposals, however, except that in regard to compensation for negroes carried off at the close of war, I find no mention of this in any of the informal treaties.

as Jay had suggested, was to last but two years after the close of the war, when further negotiations should take place with a view to mutual advantage and extension of commerce.

Jay returned a written statement of criticism on the above treaties September 4th.¹ However, no mention was made of the commercial articles. Jay picked out certain other flaws and ambiguities, some of which related to the trade proposals.² No opposing views as to any of these points were strongly set forth however, except a demand for some definition of contraband and articles regarding impressment. A conference followed on the 7th and as a result Grenville made some minor changes in his draughts and inserted an article defining contraband.³ That denomination comprised "all arms and implements of war, by land or sea, such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket rests, bandeliers, gunpowder, match, salt petre, ball pikes, swords, head pieces, cuirasses, halberts, lances, javelins, horses, horse furniture, holsters, belts, and generally all other implements of

1. A. S. P. - F. R. - I, 490.
2. A. S. P. - F. R. - I, 492.
3. A. S. P. F. R. - I, 493.

war; also timber for ship building, tar or resin; sheet copper, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels; unwrought iron and fir planks only excepted." These were to be considered absolute contraband; seizable in time of reducing an enemy to want, but for which the captors must make adequate compensation together with a reasonable profit and freight.

This was, then, the *situation*, on September 13th. No points had been definitely settled but as Jay put it "in the course of a few weeks, I think, the questions... will be decided."¹ That prophecy came true for just nine weeks later the treaty was signed. Negotiations proceeded, the East India question occupying a prominent place. The form which the treaty should take, too, was considered, the incorporation of all projects into one document, to be called a "Treaty of Amity and Commerce", being decided upon.²

During October Jay composed such a treaty, in which Lord Grenville made several changes finally preparing a new draught. Informal conferences continued,

1. September 18th, A. S. P. - F. R. I, 497.

2. October 2nd, A. S. P. - F. R. - I, 498.

Even at this date Jay did not feel sure that the differences between the two countries would be amicably settled.

the points in dispute growing fewer and fewer until by November 5th, it was practically certain that a treaty would be perfected and signed.¹ Between that date and the 17th a treaty was prepared,² acceptable to both negotiators, the signatures being attached two days later.³

Mr. Jay accompanied a copy of the treaty to the United States with a letter of comment, which gives us our only insight into the last four weeks of the conferences in which the final draught was prepared.⁴ Sections to which the American commissioners thought there might be some objection in the United States were explained, with the reasons why more could not have been secured. (1) The third article which opened up the trade between the United States and the British continental possessions to citizens of either country subject only to the same duties as those paid by citizens of the home nation, Jay considered a compromise. Absolute freedom of trade with abolition of all imposts was desired by Grenville while the American position was merely for non-discrimination as to foreign nations with no mention of the tariff clause. Jay wished in other words to leave

1. A. S. P. - F. R. - I, 501.
 2. A. S. P. - F. R. - I, 502.
 3. A. S. P. - F. R. - I, 503.
 4. A. S. P. F. R. , I, 503.

Congress free to favor citizens of the United States if she desired although willing to bind her not to give a preference to any European Power. A compromise was struck at native duties. Unwillingness to make such concession would have put the entire article out of consideration.

(2) The way in which the claims of American citizens for alleged illegal captures and condemnations was settled - adjudication by commissioners (Art. III) - was not exactly what Mr. Jay deemed best but in his own words "every other plan was perplexed with difficulties which frustrated it". Nothing better could be obtained and the American commissioner ~~felt~~ bound to accept this rather than have no settlement at all.

(3) In regard to the twelfth article a sort of defense was prepared by Mr. Jay. He showed how it had first been proposed to abolish all "alien" duties of every kind between the two countries but that he had refused to agree to this, in return permitting Grenville to embody stricter regulations in regard to West India trade than would have been agreed to otherwise . In other words, Grenville desired that the tradesmen of either country should pay

on shipment of goods into the other, only such duties as did citizens of the country into which such goods were imported. Jay refused this proposal for "native" duties but, because of that refusal, was compelled to give the English minister greater leeway with regard to the West Indies. Too, as the article was expected to be in force such a short time - an opportunity would soon arise for further negotiation.

(4) Mr. Jay was unable to get all the American claims in regard to contraband but he explained that as Great Britain was at war and naturally would refuse to admit principles that "would impeach the propriety of her conduct in seizing provisions bound to France and enemy's property, ^{on board} neutral vessels", the articles as they stood, securing compensation for seizures and reserving the American claims as ~~xxx~~ to the correct international law, were the best he could possibly have secured.

(5) The British treaties with France and the United States' convention with Holland were taken as the basis of the article about privateers (XXIV and XXV). Particularly

was that clause prohibiting prizes from being sold in the ports of either, useful to Jay as he infers that it enabled him to get certain concessions from Grenville .

Before closing this discussion of Jay's negotiations and taking up the treaty itself three incidental points must be disposed of. First in regard to the attitude taken by Mr. Pinckney toward the Special Envoy. When Jay received his commission he was primarily instructed "to convince Mr. Pinckney,....of the necessity of his measure, and ...prevent any wound to his sensibility". He was to be assured that this mission expressed "not the slightest abatement of confidence in him "but that the impression such a mission would make was the cause which "recommended a special appointment." Further Jay was asked to communicate with the Minister in Ordinary without reserve.¹ In addition many of the subsequent communications to Jay from Randolph were accompanied with requests to show the same to Mr. Pinckney. That the latter received the Extraordinary Envoy in the best possible attitude is evidenced by Jay's acknowledge-

1. Instructions to Jay - A. S. P. - F. R. - I, 472.

ments to him in a letter to the Secretary of State, November 19th.¹ "...Mr. Pinckney, with whom I have every reason to be satisfied, and from whose advice and opinions, I have derived light and advantage in the course of the negotiations." Mr. Pinckney himself wrote his approval of this mission.²

Next in regard to the attitude of the British court during the months in which the treaty was taking shape. There is not one evidence in Jay's correspondence indicating that either Lord Grenville or the King had the slightest desire to prolong the negotiation or demand the unreasonable. On the other hand plenty of material shows that the reception given Jay and his subsequent treatment not only indicated their cordial liking for the Minister but a friendly and conciliatory feeling for his country. On November 19th, he wrote a private letter to Washington in which he said, "if there is not a good disposition in the greater part of the cabinet and nation toward us, I am exceedingly mistaken. I do not mean an ostensible and temporary but a a real good disposition."³

1. S. P. - F. R. - I, 514.

2. In a letter to his brother soon after Jay's arrival in England Pinckney wrote "if I had no unpleasant feelings on the occasion I should not be sincere... but I am convinced of the expediency of adopting any honorable measure which may tend to avert the calamities of war...". Pinckney - "Life of Thomas Pinckney", 123.

3. "England and America after Independence" by Edw. Smith, pg. 55.

Other remarks of a like nature show the confidence placed in the liberality and cordiality of the Ministry.¹

Finally the attitude of England toward that portion of Jay's instructions forbidding him to enter into an agreement contrary to the existing treaties with France. Jay wrote November 19th in summing up the matter; "great reserve and delicacy has been observed respecting our concerns with France. The stipulation in favor of existing treaties was agreed to without hesitation; not an expectation, nor even a wish has been expressed that our conduct toward France should be otherwise than fair and friendly."²

In summing up it is but necessary to say that although Jay anticipated there would be many objections to the treaty, he thought it the best that could be obtained and wished that it be ratified, holding that it was much better than its only alternate - war.³ "I wish it may have a fair trial" were his sentiments.

1. Nov. 19th. A. S. P. - F. R. I, 504. "I do not know how the negotiation could have been conducted on their part with more delicacy, friendliness, and propriety, than it has been from first to last."

2. A. S. P. - F. R. I, 504.

3. Jay to Washington - Sept. 13.

Jay to Washington - Nov. 19.

Id.

Chapter IX.Jay Treaty and Its Ratification.

Before entering into this short analysis of the treaty which closes our thesis, the plan of the chapter must be explained. Any stipulations outside of our subject have been entirely ignored. The separate articles are first treated individually, followed by a short statement of the effect of them as a whole. A short account of its ratification as influenced by commercial interests closes the thesis.¹

Commerce of the United States with Great Britain naturally divided itself into four categories, (a) with Great Britain proper, (b) with the West India Islands (c) with the East India Islands, and (d) with English possessions on the North American continent. Since 1785, the first of these had been open to both

English and American vessels but prohibitory duties had kept out many American goods. Little trade with the British West India Islands had been allowed since 1788, except in vessels of that nation. The East Indian

1. Treaties and Conventions of the United States.

trade had been practically free from all restrictions either as to ships or vessels throughout the entire period. The North American colonies of England had been placed in the same category with the West Indies with the exception that island trade with Quebec had rested under no restrictions.

The articles relating to trade between the United States and Great Britain possessions in Europe may be considered to have been a complete victory for the American contention. Articles XIV and XV allowed a reciprocal and perfect liberty of commerce and navigation subject only to such duties as were paid by any other nation. This most favored nation clause eliminated all discriminatory duties on ships or goods. In addition no discriminatory prohibitions were to be allowed. Thus a general trading right was opened to merchants of either country.¹ In just the same way Article XII relating

to the trade between the United States and the British West Indies may be considered a victory for the shipping interests of England. It provided that citizens of the United States might carry on a direct trade

1. Camillus Hamilton's Works V, page 178.

with the West Indies under two conditions (1) that such trade should not be carried on in vessels of over seventy tons burden and (2) that the United States should export no molasses, sugar, coffee, cocoa, or cotton to any port of the world.¹ This article was on its face so unfavorable to the United States that the Senate only ratified the Treaty with its elimination. Had it been incorporated in the final measure the exports of the southern states would have practically ceased. Cotton, coming to be the greatest export of South Carolina and Georgia would have been limited to a market far from the necessary size to accommodate the coming phenomenal increase in its production.²

However even in this restricted trade the British refused to recognize the claim of the states of a right to trade with the islands. They merely expressed a willingness to modify the Navigation Acts to the extent of permitting a limited trade until two years after the close of the war then going on between France and England. After that time future negotiations would settle the problem.

1. Jay evidently knew nothing of the growth in cotton production of the southern states when he allowed the incorporation of this article. The limitation on the other products would have amounted to much less in the aggregate than would that on cotton. Jay's "Life of Jay I, 322. Camillus - Hamiltons Works VI, 24.

2. This would have eliminated all probability of American ships legally taking on goods in the West Indies and then skipping across to England with them. Such small vessels had little chance of weathering the voyage in safety. The British realized this previously in allowing certain relaxations of their colonial policy in the West Indies

The East India trade had been free to vessels of the United States throughout this period but it had been under no law that gave this status any permanency. Subject to the will of the administration any privileges might be revoked by a mere Order in Council. Now by Article XIII direct voyages between the United States and the East Indies was put on a treaty basis. However American vessels could engage in no coasting trade nor carry any of the island products to European ports. Direct voyages must be made from the Islands. That is any American vessel could not sail to the East Indies, exchange their produce for spices, etc. and after selling them in European markets get a load of manufactured goods to return home with or carry back to the islands.¹ Such vessels must come directly to some port in the United States. This article then gave the Americans less than they had previously been permitted but placed it on a much more stable footing than during former years.

In regard to trade with Canada and Newfoundland, Article III provided for free and unrestricted inland

1. Two different interpretations were placed on this article later. The English contended that only direct voyages were allowed while the Americans pointed out that the article really only prohibited stops on return voyages.

and permitting American vessels of that burden or less to trade to a limited extent in the islands.
Camillus - Hamilton's Works VI, 30.

connections. No goods thus imported by merchants of the foreign country were to be subject to a greater duties than ~~those~~ paid by citizens of the home nation. Similar duties then were to prevail whether the goods were owned by Canadian or American tradesmen. This was a great concession to the Americans as trade with these colonies had been forbidden. Freedom of commerce by sea, however, was not allowed.

Taking the four divisions as a whole they were decidedly favorable to the Americans.. With the exception of the West India trade and the right of indirect voyages from the East Indies nothing was withheld from the United States that had been demanded by their merchants. Their only loss was in the matter of the indirect voyages to the British colonies in the Indian Archipelago as the West India clause being rejected that trade returned to the old footing while ~~this~~ great gain lay in the stable basis on which the future commerce was to rest. From the British standpoint the whole matter was a great concession as it was a practical abrogation of their policy as expressed by the Navigation

Acts.

It will be remembered that from the violations of neutral trade five questions had arisen, (1) impressment (2) contraband, (3) blockade, (4) status of the Rule of 1756, (5) position of goods on board a neutral vessel. The Jay Treaty made absolutely no mention either directly or indirectly in respect to either impressment or the Rule of 1756. At the outset it will be noticed that while the treaty dealt with all of the other three points that it settled nothing as to whether the American or British claims were the correct interpretations of the existing international laws. The language of each article indicated that mere plans had been agreed to between the two countries and that each was free to contend for its own position as to what the principles back of them should be.

Article XVIII covered the matter of contraband fully. It was practically the British contention as expressed through Lord Grenville in the previous negotiations. All munitions of war including all ship building materials, unwrought iron and fir planks excepted, were

1. See Chapter VII.

to be considered as absolute contraband and subject to complete confiscation. Provisions which the Americans contended were never contraband were placed in a conditional class. If they were seized and confiscated by either party complete indemnification should promptly be given the owners.

The entire matter of blockade was not dealt with by the treaty. The most important phases, what constituted a blockade and how soon notification of such should be made to neutrals received no settlement. Only two of the minor points were provided for. By Article XVIII no neutral vessel sailing for a port unknown to be under a state of blockade was subject to seizure, except after receiving a warning from the blockading nation. Such ships could only be turned away and allowed to proceed on their journey. Also, if a vessel had entered a port blockaded later by either nation, such ship was not subject to confiscation in case the port surrendered, but must be returned to her owners.

The question of whether free ships made free

goods or enemy goods remained enemy goods under all circumstances, was settled practically according to the British contention. By Article XVII, it was agreed that if a neutral vessel was detained on just suspicion of having on board enemy goods then it should be taken to nearest or most convenient port and there such goods should be passed on by the admiralty courts. If they were found to be enemy goods then they could be confiscated but the vessel with the remainder of her cargo should be allowed to proceed on her voyage unmolested. The ship did not become liable to seizure by merely carrying enemy property.

Taking these working plans as a whole it must be acknowledged that few of the American contentions received any recognition. Those matters unmentioned in the treaty naturally remained as before which meant that England would enforce her assertions as far as she chose. None of the greater problems in regard to blockade received attention and the settlement of what constituted contraband had ear-marks of British origin. The

arrangement in regard to enemy's goods was the best given the Americans as her ships were still free even if carrying property liable to confiscation. Taken all in all, and even including the promise of England to pay the judgments of ^{the} arbitration commission from their adjudication of the spoliation claims, Jay got little with which to satisfy the demands of American merchants as to neutral trading rights.¹

The treaty signed on November 19th was immediately sent to the United States via the packet "Tancarville". A copy was also consigned to a slower vessel. However owing to the capture of the former by a French privateer nearly five months passed before its arrival. It finally reached America and was delivered to the Secretary of State on May 7th of 1795.² Congress, having adjourned four days previous, nothing was done until June 8th when the Senate, having met in accordance with a proclamation for a special session, had laid before it for approval or rejection a copy of the treaty with all the relative correspondence.³

1. Neutral duties come in for some consideration but no phases of our subject were touched by the Articles dealing with the same. XXIV and XXV.
 2. A.S.P. - F.R. - I, 470.
 3. Ibid.

In the meantime absolute secrecy had been maintained regarding the terms agreed to by Jay. This caused the public antagonism to Jay's mission throughout the negotiations, to harshly criticize the administration. Demands were heard upon all sides for publication of the treaty. The people were the government and should have been kept cognizant of what their representatives were doing. Outcries from radical Republican newspapers had put the nation generally on an uneasy foundation of apprehension of what ~~fix~~ its ultimate disclosure might bring forth ~~the~~, weeks before a copy of it reached the press.¹

Such was the state of the public mind when news reached it of ratification by the Senate on June 24th.² Still the treaty was secret, as were the heated deliberations of the upper house, during the two weeks before passing its approval. That body after enjoining its members to refrain from disclosing any part of the document upon which they had so recently passed, adjourned June 26th.³ However, such secrecy could not long be maintained and three days

1. Extracts from newspapers, of the time. McMaster - History of People of the United States, II, 212 - 215.
Madison to Monroe, Mar. 11, 1795. Madison's Works (1884) II, 37.
2. Annals of Congress - 3rd Cong. - Executive Sessions, 863.
3. Ibid 868.

later the substance of the treaty was printed. Senator S. L. Mason of Virginia who had voted against the ratification, seeing that publication, sent his copy to a Philadelphia editor and on July 1st the American people had their first authentic copy of what had received the signatures of Jay and Grenville eight months previous.¹

The effect was nothing short of fearful. People soon were worked into a frenzy by tirades against the treaty printed in Republican newspapers throughout the country. Nor were Federalist sheets entirely free from abusive articles. The administration, the Senate, and even Washington, were assailed with a vindictiveness born of a seemingly fast growing hatred of the "monarchists" and their apparent leanings toward Great Britain. Petitions poured in on the President from all sides. Apparently the only supporters of the treaty were the administration, the Senate, and the larger mercantile interests, of the northern states.² However such demonstrations had no effect on the Chief Executive and his signature was attached to the treaty on August 15th.³

1. McMaster - History of the People of the United States, II, 214&216. Madison to Monroe, Dec. 20, 1795. Madison's Works VI, 257, (1906)
 2. McMaster - History of the People of the U. S. 218-245. Madison to Monroe, Dec. 20, 1795, VI, 157 (1906)
 3. The accusation of Randolph, which led to his resignation, for disclosing administration secrets to the French minister to America undoubtedly had much to do with Washington's decision - Ibid. Edmund Randolph's "Vindication of Edmund Randolph's Resignation."

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1. McMaster - History of the People of the United States, II, 214&216. Madison to Monroe, Dec. 20, 1795. Madison's Works VI, 257, (1906)
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 3. The accusation of Randolph, which led to his resignation, for disclosing administration secrets to the French minister to America undoubtedly had much to do with Washington's decision - Ibid. Edmund Randolph's "Vindication of Edmund Randolph's Resignation."

When the Senate advised the President to ratify it did so with the express stipulation that Great Britain should agree to omit the article relating to West India trade. Even then the measure passed by the bare two thirds majority. Washington's decision was subject to the same condition. England subsequently agreed to this and the final ratification took place between William Allen Deas, the Secretary of the United States Legation, and Lord Grenville (Mr. Pinckney being absent in Spain), on October 28th.¹

Throughout the summer criticism failed to abate in the slightest. Boston, Philadelphia, Charlestown, and New York, town meetings all drew up Memorials against the acceptance of such a convention. Jay, who had returned to the United States in May, was burned in effigy. Hamilton was stoned in defending the Senate's action. Public men arranged themselves on either side and kept up a heated discussion through the press.² The reenactment of the provision order by the English Cabinet in April, news of which was received about this time, only added fuel to the Republican sentiment.³

1. Pinckney's Letter Book for October 23, 30 and Nov. 15, 1795, pages, 262, 265, and 275. - Treascott - Dip. History of Washington and Adams, pg. 112.

2. McMaster Hist. of the P. of the U. S. II, 220-250.
Hamilton's Works - "Camillus" V and VI.
Madison's Works (1834) II. 46 to 60.

Jefferson to Madison. Sept. 6. 1795. Jeff. Works VII, 25.
3. Moore - Arbitrations to which the United States has been a Party, I, 310.

What then were the objections raised to the treaty? Madison on August 23rd ridiculed any advantage that the commercial interests of the Union had received of it. The West India trade was what they had desired since the Treaty of Paris and now they were to continue without it, even after a commercial treaty had been negotiated. There was no privilege in permission to send raw materials to a manufacturing nation and purchasing their goods in return. Impressment had not been provided for while all matters respecting neutral trading rights had been left just as Great Britain desired. Other objections not relating to our subject made the treaty "unworthy of the voluntary acceptance of an Independent people".¹ A petition to the "Assembly of the Commonwealth of Virginia" in October of this same year shrewdly criticized the document.

(1) Under a semblance of reciprocity the British through Canadian posts would be able to control the fur trade of the west. (2) American seamen still remained exposed to the outrages of impressment. (3) The English position on contraband had been adopted even in the face of opposite principles embodied in other of her own treaties.

1. Madison's Works II, 46-60 (1884)

- (4) The unfairness of any principle respecting neutral carrying trade but that of "free ships make free goods".
- (5) The alienation of France in placing England on the same footing with her by action of the "most favored nation" clause.
- (6) The continued prohibition of the West India trade. Moreover the argument that ^{the} only alternative was war was absolutely unfounded and even if it were the United States should under no conditions allow herself to be subjected to the humiliations of such a debased instrument.¹

From these it will be seen that the Republicans raised two big objections to the commercial articles in the treaty. (1) The British West India trade still remained under the restrictions of 1788. (2) Neutral trade was not sufficiently safeguarded. How did the administration then happen to act in such way, apparently absolutely hostile to public sentiment? Two reasons can be given for this: (1) the President and a majority of the Senate were Federalists with the usual Federal tendencies toward a policy favoring Great Britain; (2) they really thought that the only alternative was war and that a long conflict

¹. American Remembrancer III, 4 to 12.
 Many other arguments against and for the treaty may be found in this three volume collection.

meant the death of the new nation.¹ Consequently they were willing to accept any treaty that preserved the honor of the country if it would keep the United States from being embroiled in the European struggle. In support of the position taken by the administration Mr. Pickering, the Secretary of War, acting as Secretary of State, after Randolph's resignation wrote James Monroe, Minister to Paris, on September 12th, an official communication to apprehend the fears of the French nation.² This gives clearly the reasons for its ratification. (1) Trade articles were on the whole favorable to the United States.

(2) The United States gave up no principle of international law. (3) War would undoubtedly have been the result had the treaty been rejected. Such an outbreak would only have injured the United States and not helped France for, if hostilities had broken out, the merchant marine of the only neutral country in a position to supply the French with provisions would have been with little doubt bottled up within American harbors. The treaty did not give them all they desired but it was better than war.

1. See following two citations.
 S. A. S. P. - F. R. - I, 590.

Alexander Hamilton under the title of Caymillus wrote long defenses of the treaty throughout the last six months of 1795.¹ They were printed broadcast and had the effect of ameliorating to a great extent public opinion.² His chief arguments might be summed up in the following. (1) The treaty adjusted as well as could be hoped the disputes of the two nations....arising out of the present European war." (2) The United States received an equivalent for everything they granted. (3) Compared with other commercial treaties of the United States the Jay Treaty was entitled to a preference (4) "That the two probable results of a refusal to ratify is war, or what would still be worse, a disgraceful passiveness under violations of our rights unredressed and unadjusted, and consequently that it is the true interest of the United States that the treat should go into effect."³ Its aversion of the possibility of war then seemed to be the chief reason for its acceptance by the government. President Washington's own sentiments were written to Randolph as "my opinion of the treaty is the same now that it was, namely, not favorable to it, but that is better to ratify it in the manner

1. Hamiltons Works V and VI.

2. Washington to G. Morris - Mar. 4, 1796,
Washingtons Works, XIII, 172.

3. Caymillus- Hamilton's Works V, 198.

the Senate have advised....~~then~~ to suffer matters to remain as they are unsettled." ¹

But the ratification of October 28th did not for a moment mean that the struggle for the adoption of the treaty was over. When Congress convened on December 7th news of the ratification had not yet reached the United States. Nevertheless in his address to the two Houses on the following day President Washington spoke of the treaty as though it was completed as far as the American government was concerned. He knew different at the time and acknowledged that there was considerable adverse criticism to his action in regard to the ratification. But ^{he} also saw that a change in public opinion was coming. ³ This was certainly the case. Camillus was attaining his end. The general press took on a more temperate tone and petitions of the mercantile interests of the country favoring the treaty found their way in greater and greater numbers to the House of Representatives. ⁴

1. Washington's Works XIII, 68, July 22, 1795.

2. Washington to G. Morris - Dec. 22, 1795.

Washington's Works XIII, 147

3. A. S. P. - F. R. - I, 28.

4. McMaster - History of the People of the U. S. II, 280-281.

Jay to Washington, Dec. 14, 1795. Washington's Works XIII, 153.

Washington to G. Morris - March 4, 1796.

Washington's Works XIII, 172.

Notwithstanding that the formal ratification of the treaty had not yet been received, Washington proclaimed it the law of the land on February 29th, 1796.¹ On the 1st of March a copy was laid before the House "for the information of Congress".² On March 2nd a bill to request the President's correspondence in regard to the treaty was introduced and tabled.³ Taken up again

five days later it brought on measure after measure until the entire matter of the treaty making power was involved. Nearly eight weeks of endless debate, consummated ~~ix~~ on April 29th by Fisher Ames in his superb defense of the resolution to make appropriations for carrying the treaty into effect, brought the matter to a close on May 3rd.⁴

Stress was laid on commercial matters only in an incidental way during these debates. Practically all the time was spent in arguments as to whether the President was compelled to give the House any documents they might desire if called upon to do so. This naturally involved the question of the right of the House to override any decisions on treaties made by the Senate and President

1. Washington to G. Morris, Mar. 4, 1796. Wash. Wks. XIII, 172.
 2. Annals of Congress. Fourth Congress 1st Session, 394.
 3. Ibid, 400.
 4. Annals of Congress - 4th Cong. 1st Session, 426, 1298.

by withholding appropriations for carrying them into effect. When the actual resolution to pass such appropriations came to a vote, however, the usual commercial arguments were used, for and against the treaty. Nevertheless the force that swung the decision of the Representatives to a position of upholding the treaty as ratified did not spring from any such. Fisher Ames' great plea was for the treaty as the only means of keeping the United States out of European war and the passage of the appropriations as the only alternative to absolute destruction of the international prestige of the new nation and consequent disruption of the Union.¹ The appropriations were passed and the Jay Treaty became an actual working arrangement on May 3rd.²

XX

In 1783 the Shelburne ministry seemed to be willing to give the United States a commercial treaty embodying at least some few of the demands of the latter's envoys if Parliament would consent to a practical abrogation of the Navigation Acts. However the American negotiators seemed satisfied to let matters rest thinking England

1. Annals of Congress, Fourth Congress 1st Session, 1229.
 2. Ibid, 1228.

would soon hold out liberal inducements for their commerce. However after the coalition Cabinet came into power backed by an absolute refusal on the part of Commons to retract in the slightest from the policy of commercial restrictions, maintained for over a century, the United States decided to make strenuous efforts to obtain what they had earlier thought would be gratuitously given. But the mercantile interests of England refused to harbor an inclination of the government toward freedom of trade. They were receiving a greater percentage of American commerce under the existing conditions than they had hoped and thought it useless to part with advantages in return for which they would receive nothing. America having nothing to give with which to buy advantages from the British - for her ports were open to the world's commerce - tried one of the two courses left her. She had to choose between retaliation and negotiation and her decision fell on the latter.

, Such negotiations went on for twelve years without result. Had not the war between France and the first coalition intervened there is no telling how much

longer they might have continued. However circumstances arising from the treatment of neutral carrying trade during the first years of the conflict forced American public feeling to a point where some settlement of the difficulties between Great Britain and the new nation must have been made or the former would have continued her European struggle with a new enemy. It was a commercial treaty or war. England was more than willing it should be the former and the Jay Treaty was the result.

What may be said ^{for or} against the arrangement made by Lord Grenville and John Jay in 1794, it can be seen to have had ~~the~~ beneficial results when viewed after more than a century. First the unstable basis upon which the commerce of the two nations had rested since the Treaty of Paris was placed on a firm foundation. Henceforth any changes must come through diplomatic channels and the former state of uncertainty would not be reverted to without a struggle on the part of one or the other. Secondly, it placed the United States in a position where there was little probability of their becoming a party to the European conflict.

The new nation was given an opportunity to internally develop such as would have been practically destroyed had it taken sides actively with either France or England in these years of its infancy. A crisis was averted and a nation saved.

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E. B. Williston - Eloquence of the United States, -
Middletown, 1827, 5 Vols.

The same. In addition speeches
In the House over the bill to make
appropriations for carrying out the Jay
Treaty are reproduced.

George Thomas, Earl of Albermarle, - Memoirs of the Marquis
of Rockingham. London, 1852, 2 Vols.

The Rockingham ministry was in
power for such a short time that little was
done by them in regard to American affairs.
So naturally the Prime Ministers' correspon-
dence contains little as to our subject.

Lord John Russell - Life and Times of Charles James Fox.
London, 1852, 2 Vols.

Concerned somewhat with the peace
negotiations. However while his office was
conducting such, commercial matters came

in for no consideration.

General.

Lord Edmund Fitzmaurice - Life of William, Earl of Shelburne.

London, 1876.

Vol. III is practically our only work which reproduces sufficient letters of the Prime Minister in 1782 to enable the student to get at the reasons for the actions of the English administration in regard to the negotiations for the Treaty of Paris.

John Quincy Adams and Charles Francis Adams - The Life of

John Adams. 2 Vols., Philadelphia, 1871.

Gives no material that cannot be found in Adams' Works but connects such as it does give with an

account of his movements. Much better for the later than the earlier parts of his life.

John Biglow (ed) The Life of Benjamin Franklin: 3 Vols., Philadelphia 1881.

Short general account of Franklin's life. Many of his private letters not to be found elsewhere are here reproduced. Vols. II and III deal with our period much space being devoted to the negotiations previous to the Treaty of Paris.

Edward E. Hale and E. E. Hale Jr. - Franklin and France: Boston, 1888.

Most extended account in print of Franklin's part in the peace negotiations. Reproduces also much of the materials on the trend of negotiations directly after the definitive treaty had been signed.

William Jay - Life of John Jay, 2 Vols., New York, 1883.

Vol. I deals extensively with the

part Jay played both in the making of the Treaty of Paris and in the settlement made of the disputes in 1794. Contains many letters to be found nowhere else. Is of utmost importance in study of this period.

Moncure D. Conway - Omitted Chapters of History disclosed in the Life and Papers of Edmund Randolph. N. Y. and London, 1888.

Of little importance except for the year 1794 after Randolph became Secretary of State. Criticizes the administration somewhat unfairly in an attempt to vindicate Randolph's action.

C. C. Pinckney - Life of General Thomas Pinckney, Boston, 1895.

Of little use except for the acts of Pinckney, immediately on reaching England as Minister. Even here the author seems to have ignored "Pinckney's Letter Book", a source used by other historians.

American Statesmen, ed. John T. Morse.

George Pellet - John Jay.

Good short account of Jay's life.

Few materials are quoted but copious citations mark every page. Particularly of service in pointing out Luzerne's part in influencing Congress in 1780.

John T. Morse, Jr. - Thomas Jefferson.

Not of particular value as much fuller accounts of Jefferson's diplomatic career have been written.

Earl Stanhope - Life of William Pitt. London 1861. 4 Vols.

Only volumes I and II interest us and then only in a general way. Little attention is paid to American affairs.

John Gifford - History of the Political Life of William Pitt. London, 1809, 6 Vols.

Practically contemporary and yet of little value as American affairs are ignored.

Good for general background, however.

Anna Carrie Morse - The Diary and Letters of Gouverneur Morris. 2 Vols. New York, 1888.

Vol. I contains practically the same correspondence concerning Morris' negotiations in England as does the American State Papers.

John Marshall, - The Life of George Washington: 5 Vols. Philadelphia 1807.

Practically contemporary and contains source materials in abundance. This work has been cited, however, only when such cannot be found elsewhere. Volume V has to do with our period.

Albert Bushnell Hart (ed) - The American Nation, 27 Vols.

Volume X The Confederation and Constitution:

A. C. McLaughlin.

Best general account of the states ^{during this period,} 1783-9, that I have been able to find. Few

citations are given by the background is admirable to work from. The citations made from it have been in cases where the materials used cannot be found in other places.

Vol. XI, The Federalist System. by J. S. Bassett.

The same may be said of this volume as ~~may be said~~ of the previous one. The treatment of the general causes leading to the Jay mission is good as is the discussion of the treaty itself, with the circumstances surrounding its ratification.

John Bach McMaster - A History of the People of the United States. 5 Vols. New York, 1892.

Vol. II gives a very detailed account of the ebb and flow of public sentiment throughout the last years of the period. Passage after passage has been quoted from the leading Republican and

Federalists newspapers of the day.
 Particularly of use in analyzing the attempts
 made to keep the President from ratifying
 the Jay Treaty and the House of Representatives
 from making appropriations for carrying it
 into effect. Not well organized.

William Hunt and R. S. Poole (ed) - Political History of
 England. 12 Vols. London.

Vol. X - History of England, 1760 to 1801,
 by William Hunt, (1905)

Pays no attention to American affairs,
 but gives a clear narration of the affairs
 of the United Kingdom during the entire
 period.

Edward Smith - England and America after Independence:
 Westminster, 1900.

The author attempts in one short
 volume an analysis of practically one
 hundred years of the diplomacy between
 the United States and Great Britain

and his tria is not altogether success-
ful. Hⁱs interpretation is very partizan
and leaves the reader with the impression
that all the mistakes were made by the American
people or diplomatists.

William Trascott - The Diplomacy History of the Administra-
tions of Washington and Adams, 1857.

Good, detailed, and impartial
account of the diplomatic relations of the
United States during the first twelve years
of its existence under the Constitution. Of
particular use in its quotations from Thomas
Pinckney's Letter Book. Well written with
a considerable number of footnotes.

Theodore Lyman - Diplomacy of the United States, 1826.

Written too early to obtain a~~cess~~
to all the materials the chapters on the
relations with Great Britain, ^{but} shows a good
interpretation of those used. Well written
but with no citations to sources.

Contains the only collected list, I have been able to find, of the Orders in Council of 1793 and 1794.

Justin Winsor - Narrative and Critical History of the United States. 8 Vols., 1888.

Volume VII contains three chapters that deal with this period in extensive fashion. The authors of these really separate articles are Justin Winsor, George T. Curtis, and John Jay, a descendant of the Envoy. The latter is most important and with William Jay's Life of Jay gives us a good insight into the movements of this remarkable figure in American diplomacy, -1780-1795.

Right Honorable W. Huskisson - Speech on the Shipping Interests of England made before the House of Commons, 1823, (1826).

Gives a history of the Navigation Laws from their earliest enactment. A

biased opinion of their uselessness to the British nation throughout the entire period of their existence, is natural to one speaking against them at this time.

J. L. Ricardo - Anatomy of the Navigation Laws, 1847.

A full and complete narration of the course of the Navigation Acts. Large excerpts are quoted from the statutes and a comparison is made of them at different times. Clear and easy to follow.

John Adolphus - History of England from Accession to the Decease of George III. London 1840-1845.

This is a very partial account of the affairs of England and America during the treaty years following the Revolution. Adds nothing by way of materials to our side of the negotiations.

John W. Foster - A Century of American Diplomacy.

Philadelphia, 1900.

The latest work having to do with our subject. However the author has attempted too much in a ~~so~~ short a compass in order to include much source material. An impartial work, however, with full interpretations. o