COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DE L'INTERHANDEL

(SUISSE c. ÉTATS-UNIS D'AMÉRIQUE)

ARRÊT DU 21 MARS 1959

SECTION A. — REQUÊTE INTRODUCTIVE D'INSTANCE

REQUÊTE INTRODUCTIVE D'INSTANCE ADRESSÉE PAR LA CONFÉDÉRATION SUISSE CONTRE LES ÉTATS-UNIS D'AMÉRIQUE A L'INTENTION DU GREFFIER DE LA COUR INTERNATIONALE DE JUSTICE, PALAIS DE LA PAIX, LA HAYE, PAYS-BAS

(REMISE AU GREFFIER DE LA COUR LE 2 OCTOBRE 1957 PAR L'AMBASSADEUR DE LA CONFÉDÉRATION SUISSE AUX PAYS-BAS ET PAR LE CO-AGENT DE LA CONFÉDÉRATION SUISSE EN CETTE AFFAIRE)

Le soussigné, agissant en qualité d'agent du Conseil fédéral suisse, a l'honneur d'introduire devant la Cour internationale de Justice une instance dans le différend qui a surgi entre les États-Unis d'Amérique et la Suisse et qui se rapporte à la restitution par les États-Unis des avoirs de la Société internationale pour participations industrielles et commerciales S. A., inscrite le 26 juin 1928 au Registre du commerce de Bâle-Ville. Cette requête est portée à votre connaissance conformément à l'article 40, paragraphe 1, du Statut et de l'article 32 du Règlement de la Cour internationale de Justice.

I

Les faits qui sont à la base de la présente requête sont les suivants:

1. Par décisions portant les dates des 16 février et 24 avril 1942 et autres, prises en application des lois américaines sur les biens ennemis — « Trading with the Enemy Act » du 6 octobre 1917 avec les amendements apportés au cours de la deuxième guerre mondiale —, le Gouvernement des États-Unis a ordonné le séquestre (« vesting ») d'environ 90 % des actions de la « General Aniline and Film Corporation », entreprise sise aux États-Unis d'Amérique (appelée ci-après « G. A. F. »), appartenant à la Société internationale pour participations industrielles et commerciales S. A. (INTERHANDEL). Les autorités américaines justifièrent ces mesures en alléguant que lesdites actions étaient en fait la propriété de la « I. G. Farben Industrie » à Francfort, ou qu'elles étaient détenues pour le compte de cette société (« owned by or held for I. G. Farben Industrie »).

2. Interhandel est une société anonyme, inscrite le 26 juin 1928 au Registre du commerce de Bâle-Ville, fondée à Bâle confor-

mément au droit suisse, sur l'initiative de la « I. G. Farben Industrie » à Francfort. Sa première raison sociale était « Société internationale pour entreprises chimiques » (en abrégé « I. G. Chemie »). Quant aux buts de l'entreprise, ils sont définis à l'article 2 des statuts (version de 1940) (annexe 1):

> « Das Unternehmen ist eine Holdinggesellschaft. Ihr Zweck ist die Beteiligung an Industrie- und Handelsunternehmungen aller Art, insbesondere der Chemischen Branche im In- und Auslande unter Ausschluss von Bankgeschäften und unter Ausschluss des gewerbsmässigen An- und Verkaufs von Wertpapieren. »*

Lors de la fondation, le capital social d'Interhandel a été fixé à 20 millions de francs. Il a été élevé jusqu'à 290 millions en 1929, puis subit diverses réductions. Le poste le plus important de l'actif d'Interhandel est constitué par sa participation à la G. A. F. En effet, Interhandel possède aujourd'hui 455.624 des 592.742 actions A de la G. A. F. et le total des 2.050.000 actions B en circulation. Interhandel contrôle ainsi 90 à 95 % des actions en circulation de l'entreprise américaine. Dès juin 1940 cependant, les liens qui avaient uni Interhandel à la « I. G. Farben » furent dénoués. — Dès lors, le contrôle allemand qui s'était exercé sur Interhandel cessa définitivement d'exister.

3. C'est à partir de 1948 que le Gouvernement suisse a demandé la libération des avoirs d'Interhandel se trouvant aux États-Unis. Il se fondait en l'occurrence sur les résultats de plusieurs enquêtes très approfondies qui avaient démontré à satisfaction de droit qu'Interhandel, société suisse, n'était ni propriété allemande, ni contrôlée par des ressortissants allemands. Le Gouvernement suisse invoquait notamment à l'appui de sa demande l'accord financier conclu à Washington le 25 mai 1946 entre les représentants suisses et ceux des États-Unis d'Amérique, de la France et du Royaume-Uni agissant au nom de leurs alliés, appelé ci-après « Accord de Washington » (annexe 2).

a) L'Accord de Washington a eu pour objet d'apporter une solution à quatre problèmes essentiels. D'une part, il faisait droit à deux demandes alliées tendant à la recherche et à la liquidation des avoirs allemands en Suisse ainsi qu'au règlement de ce qu'on appelait alors le problème de l'or « spolié ». En contrepartie, la Suisse obtenait satisfaction sur deux points: les Alliés consentaient à supprimer les « listes noires » dans la mesure où elles concernaient la Suisse; d'autre part, le Gouvernement des États-Unis acceptait de libérer les avoirs suisses aux États-Unis qui durant la guerre avaient été soumis à diverses mesures de restriction. Cette dernière

* *Traduction.* — L'entreprise constitue une société holding. Elle a pour but la participation aux entreprises industrielles et commerciales de toute nature, en particulier dans le domaine chimique, en Suisse et à l'étranger, à l'exclusion des affaires bancaires ainsi que de l'achat et de la vente professionnelle des papiers-valeurs.

disposition a fait l'objet de l'article IV, § 1, de l'Accord de Washington dont le texte est le suivant:

> « Le Gouvernement des États-Unis débloquera les avoirs suisses aux États-Unis. La procédure nécessaire sera fixée sans délai. »

b) Sur le plan interne suisse, les autorités fédérales n'avaient d'ailleurs pas attendu l'Accord de Washington pour examiner le cas d'Interhandel sous l'angle de la législation suisse relative aux biens allemands. On sait en effet que le Conseil fédéral décida, aux termes de son arrêté du 16 février 1945, de placer les avoirs allemands en Suisse sous le contrôle de l'Office suisse de compensation, qui est l'organe suisse responsable pour l'exécution de l'arrêté précité. Étant donné qu'Interhandel avait été fondée, comme on l'a relevé plus haut, sur l'initiative de la I. G. Farben, l'Office suisse de compensation fit procéder, du 11 juin au 7 juillet 1945, à une expertise sur la situation de ladite société. Cette enquête démontra que, dès juin 1940, Interhandel s'était complètement libérée de ses attaches avec la I. G. Farben, que d'ailleurs la participation allemande au capital social était nettement minoritaire et que le conseil d'administration était composé presque exclusivement de ressortissants suisses. L'Office suisse de compensation tira de cet examen la conclusion logique qu'Interhandel était une société suisse, dont les avoirs ne devaient par conséquent pas être soumis aux dispositions de l'arrêté du Conseil fédéral du 16 février 1945.

Déférant toutefois à plusieurs interventions alliées, notamment du Gouvernement américain, qui affirmait avoir trouvé en Allemagne des documents faisant apparaître des liens étroits entre I. G. Farben et Interhandel, l'Office suisse de compensation décida le 30 octobre 1945 de bloquer à titre provisoire les biens de cette dernière société, aux fins de faire procéder à une nouvelle expertise plus approfondie. Celle-ci dura du 5 novembre 1945 au 25 février 1946. Elle ne porta pas seulement sur Interhandel, mais s'étendit aux sociétés et personnes privées qui furent en rapport direct ou indirect avec Interhandel. Comme la première, cette seconde expertise établit qu'Interhandel ne se trouvait nullement sous influence allemande. En dépit de ce résultat pourtant catégorique, l'Office suisse de compensation maintint le blocage d'Interhandel, prenant en considération le fait que les membres alliés de la Commission mixte, instituée entre temps par l'Accord de Washington, n'avaient pas accepté de se ranger aux conclusions de la deuxième expertise.

L'Office suisse de compensation ne put, dans ces conditions, que déférer à l'instance suisse de recours, dont le mandat avait été confirmé par l'Accord de Washington, un recours formé par Interhandel contre la mesure de blocage dont cette société était l'objet. Le 26 novembre 1947, le président de l'autorité suisse de recours, M. Georg Leuch, président du Tribunal fédéral suisse, invita, selon

l'article III de l'Annexe à l'Accord de Washington, la Commission mixte à participer à la procédure de recours et à lui faire tenir dans le délai d'un mois ses conclusions *dûment motivées*. Par lettre du 19 décembre 1947, la majorité de la Commission mixte déclina cette invitation en alléguant que la Commission instruisait elle-même le cas d'I. G. Chemie (aujourd'hui Interhandel). Elle ajoutait que si l'autorité suisse de recours devait prendre une décision avant qu'elle-même eût mené à chef ses travaux, une telle décision n'aurait *aucun effet* sur l'examen en cours.

L'autorité suisse de recours ne vit cependant pas la possibilité de surseoir à l'examen de l'affaire, attendu qu'on ne pouvait guère maintenir plus longtemps une mesure de blocage décidée à titre provisionnel, alors que les gouvernements alliés avaient disposé de plus de deux ans pour administrer la preuve de leurs allégations. L'autorité de recours décida en conséquence, le 5 janvier 1948, de lever le blocage d'Interhandel avec effet rétroactif (annexe 3).

Conformément aux dispositions de l'Accord de Washington, l'autorité suisse de recours notifia sa décision à la Commission mixte. Mais les gouvernements alliés ne firent point usage de la faculté que leur accordait l'article III de l'Annexe à l'Accord de Washington de soumettre le différend au tribunal arbitral prévu par ledit Accord. Dans ces conditions, la décision de l'autorité de recours confirmant le caractère *non-allemand* d'Interhandel acquit force de chose jugée et devint donc opposable à tous les États parties à l'Accord.

4. En dépit de ce qui précède, les autorités américaines refusèrent catégoriquement de faire droit aux requêtes suisses demandant la libération des actions G. A. F. qui se trouvaient aux États-Unis. L'échange de notes qui intervint à ce sujet entre les deux Gouvernements fit apparaître de part et d'autre des points de vue diamétralement opposés. (Voir les communications des 4 mai 1948, 26 juillet 1948, 7 septembre 1948 et 12 octobre 1948, annexes 4, 5, 6, 7.)

Du côté suisse, on continuait fermement à affirmer le caractère suisse d'Interhandel. On demandait en conséquence que, conformément au droit international général et plus spécialement en application de l'article IV de l'Accord de Washington, les avoirs de la société se trouvant aux États-Unis fussent libérés en tant que biens appartenant à des ressortissants d'un pays neutre. On ajoutait que le Gouvernement américain ne pouvait mettre en doute le caractère suisse d'Interhandel à la suite des constatations et expertises faites tant par l'Office suisse de compensation que par l'autorité de recours et contre lesquelles le Gouvernement américain n'avait point recouru, comme il en avait pourtant la faculté. De son côté, l'administration américaine contestait que l'Accord de Washington fût applicable aux avoirs d'Interhandel sis hors de Suisse.

5. Quand il eut acquis la conviction que les autorités américaines ne se départiraient pas de leur refus de libérer les actions G. A. F., le Gouvernement suisse proposa au Gouvernement des États-Unis d'engager avec lui des négociations pour rechercher une solution amiable au différend. Il renouvela cette demande à plusieurs reprises (voir les notes des 9 avril 1953, 1er décembre 1954 et 1er mars 1955, annexes 8, 9, 10).

Aux termes des notes qu'il adressa en réponse en dates des 27 mai 1953 et 7 juin 1955 (annexes 11, 12), le Gouvernement américain rejeta purement et simplement la proposition suisse, déclarant qu'à son avis l'affaire Interhandel ressortissait exclusivement à la juridiction administrative et judiciaire des États-Unis et qu'en conséquence elle ne se prêtait pas à des négociations diplomatiques. Il ajoutait que le département américain de la Justice était cependant disposé à entrer en contact sur le plan privé avec les mandataires des intéressés suisses. On tenait cependant d'ores et déjà à préciser du côté américain qu'une solution transactionnelle qui n'accorderait pas à l'Administration américaine des biens ennemis la plus grande partie (« the larger share ») des avoirs en jeu serait jugée « non réaliste ». Il est clair qu'une telle condition était inacceptable pour le Gouvernement suisse.

Le Conseil fédéral suisse dut tirer de cette attitude des autorités américaines la conclusion que le différend n'était pas susceptible de solution sur le plan diplomatique.

C'est pour ces raisons que le Gouvernement suisse se résolut à proposer au Gouvernement américain, par sa note du 9 août 1956 (annexe 13), de recourir à la procédure d'arbitrage ou de conciliation.

Le Gouvernement suisse se fondait en premier lieu sur le Traité d'arbitrage et de conciliation du 16 février 1931 (annexe 14), dont l'article premier dispose:

> « Tout différend, de quelque nature qu'il soit, qui viendrait à s'élever entre les Parties contractantes sera, en cas d'échec des pourparlers diplomatiques ordinaires, soumis à l'arbitrage ou à la conciliation, suivant ce que décideront alors les Parties contractantes. »

L'engagement de recourir à l'arbitrage est général pour tout différend concernant une prétention de nature juridique; l'article V dispose en effet:

> « Les Parties contractantes s'engagent à soumettre à l'arbitrage tout différend qui se serait élevé ou s'élèverait entre elles sur une prétention de nature juridique, à la condition qu'il n'ait pu être résolu par la voie diplomatique ou qu'il n'ait pas été réglé, en fait, à la suite d'un renvoi à la Commission permanente de conciliation constituée conformément aux articles II et III du présent traité. »

Le Traité d'arbitrage et de conciliation de 1931 prévoit encore une procédure de conciliation qui, dans la règle, ne doit pas nécessairement précéder un arbitrage, mais qui peut avoir un caractère obligatoire lorsque les parties n'ont pas en fait recours à l'arbitrage. L'article II dispose en effet:

> « Tout différend qui n'aurait pu être réglé par la voie diplomatique et pour la solution duquel les parties contractantes n'auraient pas, en fait, recours à un tribunal d'arbitrage, *sera* soumis, aux fins d'enquête et rapport, à une Commission permanente de conciliation constituée conformément à ce qui est prescrit plus loin. »

Le Gouvernement suisse invoquait en outre à l'appui de sa proposition l'article VI de l'Accord de Washington, dont la teneur est la suivante:

> « S'il devait s'élever des divergences d'opinion au sujet de l'application du présent Accord et si ces divergences ne pouvaient être résolues autrement, *il serait fait appel à l'arbitrage.* »

Cette disposition, placée à la fin de l'Accord de Washington, est une disposition de portée générale qui couvre tous les différends pouvant surgir à propos de n'importe quelle disposition de cet Accord. Elle ne concerne pas seulement les obligations assumées par le Gouvernement suisse, mais aussi les engagements pris envers lui par les Gouvernements alliés et en particulier l'article IV, chiffre 1, qui intéresse les seules relations entre la Suisse et les États-Unis.

Le Gouvernement suisse se disait en outre convaincu que s'inspirant en cela des principes du droit des gens le Gouvernement américain s'abstiendrait de prendre toute mesure unilatérale concernant les biens litigieux tant qu'une instance internationale serait en cours, c'est-à-dire en fait surseoirait par provision à la vente annoncée des actions G. A. F.

Dans sa réponse datée du 11 janvier 1957 (annexe 15), le Gouvernement américain rejeta la demande suisse de soumettre le litige à une procédure d'arbitrage. La note du Gouvernement américain repoussa pareillement l'ouverture d'une procédure en conciliation, laquelle selon lui ne saurait aboutir à aucun résultat positif, d'autant moins qu'il avait déjà fait savoir n'être pas en mesure de soumettre le litige à la procédure d'arbitrage subséquente. En outre, le Gouvernement américain refusa de s'engager à respecter le *statu quo* jusqu'au règlement du problème.

Ainsi, le Gouvernement suisse a épuisé tous les moyens qu'il avait à sa disposition pour mettre fin, par la voie diplomatique, au différend qui s'est élevé entre lui et le Gouvernement des États-Unis d'Amérique au sujet de la libération des avoirs d'Interhandel se trouvant aux États-Unis.

* * *

II

1. Le Gouvernement suisse ne pouvant donc pas reconnaître le bien-fondé de l'argumentation américaine, a informé le Gouvernement des États-Unis, par note du 1er octobre 1957, qu'il se voyait obligé de porter le différend devant la Cour internationale de Justice (annexe 16).

2. Les Parties au litige concernant Interhandel, la Suisse et les États-Unis, ont adhéré à l'article 36, alinéa 2, du Statut de la Cour internationale de Justice, et reconnaissent comme obligatoire la juridiction de celle-ci de plein droit et sans convention spéciale, pour tous différends d'ordre juridique ayant, entre autres, pour objet l'interprétation d'un traité et tout point de droit international. Le litige concernant Interhandel remplit ces deux dernières conditions; sa solution implique l'interprétation de l'Accord de Washington et l'examen de points de droit international.

La Suisse a déposé sa déclaration acceptant la juridiction obligatoire de la Cour, dans les termes de l'article 36, chiffre 2, du Statut, le 28 juillet 1948, sans limite de temps et à la seule condition de la réciprocité.

Les États-Unis d'Amérique ont déposé leur déclaration d'adhésion le 26 août 1946, pour cinq années avec une clause de tacite reconduction qui sort toujours ses effets.

Dans ces conditions, le Gouvernement fédéral suisse constate que les déclarations de reconnaissance de juridiction obligatoire des deux États sont concordantes pour la compétence de la Cour aux fins de résoudre les différends relatifs à l'interprétation de l'Accord de Washington et des points de droit international qui concernent le litige. Il en résulte que la Cour est compétente pour se prononcer sur les conclusions prises par le Gouvernement fédéral suisse dans la présente requête.

* * *

III

Vu les considérations qui précèdent:

Attendu que le différend qui s'est élevé entre la Confédération suisse et les États-Unis d'Amérique au sujet de la restitution des avoirs d'Interhandel, société suisse, soulève des points de droit international dont la question de l'interprétation de l'Accord de Washington du 25 mai 1946;

Attendu que la Confédération suisse et les États-Unis d'Amérique ont adhéré à l'article 36, alinéa 2, du Statut de la Cour internationale de Justice et reconnaissent la juridiction comme obliga-

toire, de plein droit et sans convention spéciale, pour tous différends d'ordre juridique ayant pour objet l'interprétation d'un traité et tout point de droit international;

Attendu que le Gouvernement des États-Unis d'Amérique a décliné la proposition du Gouvernement fédéral suisse de soumettre le présent différend à la procédure arbitrale ou de conciliation, conformément au Traité d'arbitrage et de conciliation du 16 février 1931 entre la Suisse et les États-Unis d'Amérique dont les articles I, II et V prévoient le recours à l'arbitrage ou à la conciliation pour tout différend qui n'aurait pas pu être réglé par la voie diplomatique, ainsi qu'à l'Accord de Washington, dont l'article VI prévoit également l'appel à l'arbitrage s'il devait s'élever des divergences d'opinion au sujet de son application ou de son interprétation;

Attendu que le différend n'a pu être résolu par la voie diplomatique;

En conséquence, et sous réserve de tous mémoires, contre-mémoires et en général de tous moyens de droit à présenter ultérieurement à la Cour, conformément à l'article 43 de son Statut;

PLAISE A LA COUR:

Communiquer la présente requête introductive d'instance au Gouvernement des États-Unis d'Amérique, conformément à l'article 40, chiffre 2, du Statut de la Cour;

Dire et juger, tant en présence qu'en l'absence dudit Gouvernement, après avoir examiné les thèses des Parties,

1. que le Gouvernement des États-Unis d'Amérique est tenu de restituer les avoirs de la Société internationale pour participations industrielles et commerciales S. A. (Interhandel) à cette société;
2. subsidiairement que le différend est de nature à être soumis à la juridiction, à l'arbitrage ou à la conciliation dans les conditions qu'il appartiendra à la Cour de déterminer.

Le Conseil fédéral suisse se réserve en outre le droit de compléter et de modifier ses conclusions.

Le soussigné est désigné par le Conseil fédéral suisse comme son agent aux fins de la présente instance et M. le professeur Paul Guggenheim comme son co-agent. Il est autorisé à porter à la connaissance de la Cour que, pour toutes les notifications et communications qui auront à être faites dans cette instance, le Conseil fédéral suisse élit domicile en l'ambassade de la Confédération suisse à La Haye.

Genève, le 1er octobre 1957.

(Signé) G. SAUSER-HALL.
(Professeur Georges Sauser-Hall.)

Je soussigné, ambassadeur de la Confédération suisse aux Pays-Bas, certifie l'authenticité de la signature ci-dessus du professeur Georges Sauser-Hall, agent du Conseil fédéral.

La Haye, le 2 octobre 1957.

(Signé) E. DE HALLER.

[L. S.]

16 annexes.

Annexe 1

STATUTEN
der
Internationale Gesellschaft für
Chemische Unternehmungen
A.-G.
in
BASEL

I. Firma, Sitz, Zweck und Dauer der Gesellschaft.

§ 1.

Die Gesellschaft ist eine Aktiengesellschaft im Sinne des Schweizerischen Obligationenrechtes. Sie führt die Firma

Internationale Gesellschaft für Chemische Unternehmungen A.-G.
(I.G. Chemie)

Société Internationale pour Entreprises Chimiques S. A.
(I.G. Chemie)

und hat ihren Sitz in Basel.

§ 2.

Das Unternehmen ist eine Holdingsgesellschaft. Ihr Zweck ist die Beteiligung an Industrie- und Handelsunternehmungen aller Art, insbesondere der Chemischen Branche im In- und Auslande unter Ausschluss von Bankgeschäften und unter Ausschluss des gewerbsmässigen An- und Verkaufs von Wertpapieren.

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[Traduction]

STATUTS
de la
Société Internationale pour Entreprises
Chimiques S. A.
à
BÂLE

I. Raison sociale, siège, but et durée de la société.

§ 1

La société est une société anonyme, au sens du Code suisse des obligations. Elle porte la raison sociale suivante

Internationale Gesellschaft für Chemische Unternehmungen A.-G.
(I.G. Chemie)

Société Internationale pour Entreprises Chimiques S. A.
(I.G. Chemie)

et a son siège à Bâle.

§ 2

L'entreprise constitue une société holding. Elle a pour but la participation aux entreprises industrielles et commerciales de toute nature, en particulier dans le domaine chimique, en Suisse et à l'étranger, à l'exclusion des affaires bancaires ainsi que de l'achat et de la vente professionnelle des papiers-valeurs.

. . . . . .

Annexe 2

DÉLÉGATION SUISSE

Washington, D. C., le 25 mai 1946.

Messieurs,

Au cours des négociations qui viennent de se terminer, les Gouvernements alliés, reconnaissant pleinement la souveraineté suisse, ont fait valoir leurs droits aux biens allemands en Suisse, se fondant sur la capitulation de l'Allemagne et l'exercice par eux de l'autorité suprême dans ce pays; d'autre part, ils ont demandé la restitution d'or qu'ils disent avoir été pris contre tout droit par l'Allemagne aux pays occupés, pendant la guerre, et transféré par elle en Suisse.

Le Gouvernement suisse a déclaré ne pouvoir reconnaître de fondement juridique à ces prétentions, mais être désireux de contribuer pour sa part à la pacification et à la reconstruction de l'Europe, y compris le ravitaillement des contrées dévastées.

Dans ces circonstances, nous sommes parvenus à l'Accord ci-après:

I

1. L'Office suisse de compensation poursuivra et complétera les recherches concernant les biens de toute nature en Suisse, appartenant à ou contrôlés par des Allemands en Allemagne et les liquidera. Cette disposition sera également applicable dans le cas de personnes de nationalité allemande qui seront rapatriées.

2. Les Allemands atteints par cette mesure seront indemnisés en monnaie allemande, à un cours fixe applicable dans tous les cas, en contrepartie de leurs biens liquidés en Suisse.

3. La Suisse fournira, sur les fonds à sa disposition en Allemagne, la moitié des sommes en monnaie allemande nécessaires à cet effet.

4. L'Office suisse de compensation exécutera les tâches qui lui sont confiées en étroit contact avec une Commission mixte au sein de laquelle chacun des trois Gouvernements alliés aura un représentant et dont fera partie également un représentant du Gouvernement suisse. Elle pourra, tout comme les personnes privées intéressées, recourir contre les décisions de l'Office de compensation.

5. Le Gouvernement suisse prendra à sa charge les frais d'administration et de liquidation des biens allemands.

II

1. Sur le produit de la liquidation des biens situés en Suisse et appartenant à des Allemands en Allemagne, une part de 50 % sera bonifiée à la Suisse et une part égale sera mise à la disposition des Alliés en vue de la reconstruction des pays alliés dévastés ou appauvris par la guerre et le ravitaillement des populations affamées.

2. Le Gouvernement suisse s'engage à mettre à la disposition des trois Gouvernements alliés un montant de 250 millions de francs suisses, payable à vue en or à New York. Les Gouvernements alliés, de leur côté, déclarent qu'en acceptant ce montant ils renoncent, pour eux-mêmes et pour leurs Banques d'émission, à toutes revendications contre le Gouvernement suisse ou la Banque nationale suisse relatives à l'or acquis par la Suisse de l'Allemagne pendant la guerre. Toute question relative à cet or se trouve ainsi réglée.

III

Les modalités d'application des dispositions qui précèdent figurent à l'Annexe.

IV

1. Le Gouvernement des États-Unis débloquera les avoirs suisses aux États-Unis. La procédure nécessaire sera fixée sans délai.

2. Les Alliés supprimeront sans délai les « listes noires » pour autant qu'elles concernent la Suisse.

V

Le représentant soussigné du Gouvernement suisse déclare agir également au nom de la Principauté de Liechtenstein.

Remarques: La lettre envoyée par les délégations alliées à la délégation suisse est d'une teneur identique, sauf en ce qui concerne le paragraphe V qui, dans la lettre des Alliés, est rédigé de la façon suivante:

Les représentants soussignés des Gouvernements des États-Unis d'Amérique, de la France et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord déclarent qu'en ce qui concerne les dispositions qui précèdent ils agissent également pour le compte des Gouvernements des pays suivants: Albanie, Australie, Belgique, Canada, Danemark, Égypte, Grèce, Inde, Luxembourg, Norvège, Nouvelle-Zélande, Pays-Bas, Tchécoslovaquie, Union de l'Afrique du Sud, Yougoslavie et, autant que de besoin, pour le compte de leurs banques d'émission.

VI

S'il devait s'élever des divergences d'opinion au sujet de l'application ou de l'interprétation du présent accord et si ces divergences ne pouvaient être résolues autrement, il serait fait appel à l'arbitrage.

VII

Le présent Accord et son Annexe entreront en vigueur dès qu'ils auront été approuvés par le Parlement suisse.

Le présent Accord et son Annexe sont établis en texte anglais et français, les deux textes faisant également foi.

Veuillez agréer, Messieurs, l'assurance de ma haute considération.

Aux Chefs des Délégations alliées,
WASHINGTON, D. C. *(Signé)* STUCKI.

ANNEXE

I

A. — Les biens situés en Suisse et appartenant à des Allemands en Allemagne, définis sous IV ci-dessous et désignés ci-après « biens allemands », seront liquidés comme il suit:

a. Les débiteurs en Suisse d'Allemands en Allemagne seront tenus de verser le montant de leur dette à un compte ouvert auprès de la Banque nationale suisse, au nom de l'Office de compensation. Ce versement aura effet libératoire.

b. Toutes les personnes, physiques et morales, en Suisse, qui, de quelque manière que ce soit, administrent un bien allemand seront tenues de le remettre, avec effet libératoire à l'égard de l'ayant-droit, à l'Office de compensation. Cet Office liquidera ces biens et en versera le produit au compte mentionné sous *a*.

c. Toutes les participations à des entreprises et autres organismes suisses, appartenant à des Allemands en Allemagne, seront prises en charge et liquidées par l'Office de compensation. Le produit de cette liquidation sera versé au compte mentionné sous *a*.

d. Il sera procédé d'une manière analogue en ce qui concerne tous autres biens allemands.

e. La Commission mixte examinera avec bienveillance tous les cas, qui lui seront soumis par l'Office de compensation, de biens d'origine suisse se trouvant en Suisse et qui appartiennent à des femmes de naissance suisse mariées à des Allemands et résidant en Allemagne.

B. — L'Office de compensation s'efforcera, avec l'assistance de la Commission mixte, de déceler et d'assurer l'annulation de toutes manœuvres, telles que prises de gage, privilèges, hypothèques ou autres de nature à couvrir frauduleusement des biens allemands.

C. — L'Office de compensation fera connaître à la Commission mixte, pour transmission aux autorités compétentes en Allemagne, le montant de la liquidation de biens allemands dans chaque cas particulier, avec indication du nom et de l'adresse du titulaire du droit. Les autorités compétentes en Allemagne prendront les mesures nécessaires pour enregistrer le titre des intéressés allemands aux biens liquidés à recevoir la contrepartie de ceux-ci, en monnaie allemande, calculée à un taux de change uniforme. Un montant égal à la moitié du total des indemnités revenant aux intéressés allemands sera débité du crédit existant au compte du Gouvernement suisse à la « Verrechnungskasse » à Berlin. Rien dans cet arrangement ne pourra être invoqué, à l'avenir, par l'une ou l'autre partie au présent Accord comme un précédent pour le règlement des créances suisses sur l'Allemagne, et il ne pourra être allégué que les Gouvernements alliés ont reconnu par là aucun droit à la Suisse à disposer du crédit ci-dessus mentionné.

II

A. — L'Office de compensation sera chargé de rechercher, prendre possession et liquider les biens allemands.

B. — Le Gouvernement suisse assurera l'application du présent Accord en collaboration avec les Gouvernements des États-Unis, de la France et du Royaume-Uni. A ces fins, il sera constitué une Commission mixte, siégeant à Berne ou à Zurich, et composée d'un représentant de chacun des quatre Gouvernements. Cette Commission, dont les fonctions sont indiquées ci-après, statuera à la majorité des voix.

C. — L'Office de compensation et la Commission mixte entreront en fonctions aussitôt que possible après l'entrée en vigueur de l'Accord.

D. — L'Office de compensation exercera ses fonctions en collaboration avec la Commission mixte. Il tiendra celle-ci au courant de son activité périodiquement; il répondra aux questions qui lui seront posées par la Commission, relatives au but commun, à savoir la recherche, le recensement et la liquidation des biens allemands. L'Office ne prendra aucune décision importante sans consulter préalablement la Commission mixte. L'Office de compensation et la Commission mixte mettront à leur disposition réciproque toutes informations et tous documents propres à faciliter l'accomplissement de leurs tâches.

E. — L'Office de compensation continuera, comme par le passé, à procéder à toutes enquêtes utiles en ce qui concerne la situation et le statut de biens que l'Office aura des raisons de considérer comme biens allemands, ou qui lui seront signalés comme tels par la Commission mixte, ou dont la propriété suisse de bonne foi serait suspectée ou contestée. Les conclusions auxquelles parviendra l'Office seront discutées avec la Commission mixte.

F. — L'Office de compensation, après consultation de la Commission mixte, fixera les modalités et conditions de ventes des biens allemands, d'une manière générale ou dans des cas particuliers, en tenant raisonnablement compte à la fois des intérêts nationaux des Gouvernements signataires et de ceux de l'économie suisse, ainsi que de l'opportunité d'obtenir le meilleur prix et de favoriser la liberté du commerce. Seules les personnes de nationalité non-allemande présentant les garanties voulues seront admises à participer à l'acquisition des biens en question, et toutes mesures utiles seront prises pour éviter le rachat ultérieur de ces biens par des ressortissants allemands.

III

Si la Commission mixte, après consultation avec l'Office de compensation, ne peut se déclarer d'accord avec la décision de cet Office, ou si la partie en cause le désire, l'affaire peut être, dans le délai d'un mois, soumise à une Autorité suisse de recours. Cette Autorité sera composée de trois membres et présidée par un juge. Elle statuera dans la forme administrative, dans les délais les plus brefs et suivant la procédure la plus simple. La décision de l'Office de compensation ou, selon le cas, de l'Autorité suisse de recours, sera définitive.

Toutefois, si la Commission mixte est en désaccord avec une décision de l'Autorité suisse de recours, les trois Gouvernements alliés pourront, dans le délai d'un mois, soumettre le différend, s'il porte sur des points visés à l'Accord ou à son Annexe ou s'il est relatif à leur interprétation, à un Tribunal arbitral composé d'un membre désigné par les trois Gouvernements alliés, d'un membre désigné par le Gouvernement suisse et d'un tiers arbitre désigné d'accord entre les quatre Gouvernements. Pour les affaires qui ne

sont pas de première importance, la Commission mixte et l'Office de compensation pourront se mettre d'accord pour soumettre l'affaire au tiers arbitre statuant seul en tant que Tribunal arbitral.

Tous moyens de preuve pourront être produits devant le Tribunal arbitral qui statuera souverainement sur tous les points de fait et de droit qui lui seront soumis.

Les décisions du Tribunal arbitral seront définitives.

Les frais du Tribunal arbitral seront prélevés sur le produit de la liquidation des biens allemands, avant tout partage.

IV

A. — Le terme « bien », tel qu'il est employé dans l'Accord et son Annexe comprendra tous biens, droits et intérêts de quelque nature que ce soit, acquis avant le 1er janvier 1948. Les sommes que des personnes en Suisse ont dû ou doivent payer par l'intermédiaire du clearing germano-suisse ne seront pas considérées pour l'application de l'Accord comme biens allemands.

B. — L'expression « Allemands en Allemagne » vise toutes personnes physiques et morales résidant ou constituées en Allemagne ou ayant le siège de leurs affaires en Allemagne, autres que les organismes de toute nature appartenant à ou contrôlés par des personnes qui ne sont pas de nationalité allemande. Des mesures appropriées seront prises pour liquider les intérêts que des Allemands en Allemagne possèdent en Suisse par l'intermédiaire de tels organismes, ainsi que pour sauvegarder les intérêts substantiels de personnes de nationalité non-allemande qui seraient, sans cela, liquidés.

Les Allemands qui auront été rapatriés avant le 1er janvier 1948, ou au sujet desquels sera intervenue, avant cette date, une décision de rapatriement émanant des autorités suisses sont assimilés aux « Allemands en Allemagne ».

V

Le Gouvernement suisse s'engage, eu égard aux circonstances spéciales du cas, à autoriser les trois Gouvernements alliés à tirer immédiatement, jusqu'à concurrence de 50 millions de francs suisses, des avances sur le produit de la liquidation des biens allemands, avances qui seront imputables sur leur part de ce produit. Ces avances seront affectées à la « réhabilitation » et au rétablissement des victimes non rapatriables de l'action allemande, par l'intermédiaire du Comité intergouvernemental des réfugiés.

VI

A. — En attendant la conclusion d'accords multipartites auxquels les trois Gouvernements alliés ont l'intention d'inviter le Gouvernement suisse à adhérer, et en attendant la participation

de ce Gouvernement auxdits arrangements, aucun brevet de propriété allemande en Suisse ne sera vendu sans l'accord de la Commission mixte et de l'Office de compensation et il n'en sera pas disposé autrement sans cet accord.

B. — Il en sera de même de ventes ou transferts de marques de fabriques ou de droits d'auteur allemands.

VII

Les dispositions qui précèdent ne sont pas applicables aux biens de l'État allemand en Suisse, y compris les biens de la Reichsbank et de la Reichsbahn.

Washington, D. C., le 25 mai 1946.

Annexe 3

L'AUTORITÉ SUISSE DE RECOURS

fondée sur l'Accord de Washington

L'Autorité de recours

a décidé
dans sa séance du 5 janvier 1948
dans la cause

Société Internationale pour Entreprises Chimiques S. A. (I.G. Chemie), Peter Merianstrasse 19, à Bâle, représentée par l'avocat Dr E. Wehrli-Bleuler à Zurich,

contre

la décision du 30 octobre/15 novembre 1945 de l'Office suisse de compensation à Zurich,

concernant le blocage des biens:

1. — Le recours est admis et la soumission de la recourante au blocage des biens allemands en Suisse est levée, avec effet rétroactif au 30 octobre 1945.

2. — La présente décision sera communiquée à la recourante, au Département politique fédéral, à la Commission mixte et à l'Office suisse de compensation.

Berne, le 5 janvier 1948.

Au nom de l'Autorité de recours
Le Secrétaire:

NB. L'expédition complète de la décision de recours suivra.

Annexe 4

The Minister of Switzerland presents his compliments to the Honorable the Secretary of State and has the honor to call his attention to the following matter.

1. The assets of Société Internationale pour Participations Industrielles et Commerciales S. A., also known as Internationale Industrie- & Handelsbeteiligungen A.G.; formerly known as Société Internationale pour Entreprises Chimiques S. A. (I.G. Chemie), also formerly known as Internationale Gesellschaft für Chemische Unternehmungen A.G. (and hereinafter called Interhandel), vested in the Office of Alien Property, apparently were seized under the assumption that the company, founded on the initiative of a German combine in 1928, reflected interests in the sphere of section 5 *(b)* of the Trading with the Enemy Act, as amended.

2. Although neither the Swiss authorities nor the American Government has produced evidence against Interhandel, the Swiss blocking provisions were applied provisionally.

3. Interhandel's appeal against this blocking was submitted to the competent Authority of Review, provided for by the Washington Accord of April 25, 1946. Upon completion of extremely thorough investigations made by the Swiss Compensation Office, and after the submission of the result thereof by the Swiss Compensation Office to the Joint Commission, and after their joint co-operation in relation thereto, the Authority of Review, on January 5, 1948, retroactively lifted the blocking of Interhandel. The allegation of an enemy control had proved to be without foundation.

4. According to Annex III, paragraph 2, of the Washington Accord, the three Allied Governments may, within one month, require the difference to be submitted to arbitration, if the Joint Commission is in disagreement with any decision of the Authority of Review. Since the three Allied Governments failed to take this step, the decision of the Authority of Review declaring Interhandel a Swiss concern has become final and binding upon all parties to the Accord.

5. Under Article IV of the Washington Accord, the Government of the United States agreed to the release of Swiss assets in the United States.

The Minister would therefore appreciate it if the Department of State would contact the competent Government agencies with a view to having the vested property returned to Interhandel. The annexed documents are transmitted solely to describe the vested property and to reflect Interhandel's title thereto.

Washington, D.C.
May 4, 1948.
430-8-48 Rh/md.

Enclosures

Form APC-1A — Notice of Claim for Property — concerning 455,448 shares of the A stock and 2,050,000 shares of the B stock of General Aniline and Film Corp.

,, ,, ,, Schedule 9B — Characterization of Corporate Claimant

Supplements (with annexes) Nos. 1, 2, 3, 4, 5, 5A, 6, 6A, 7, 7A, 7B, 7C, 7D, 8, 8A, 8B, 9, 9A, 9B, 9C, 10, 10A, 10B, 10C, 10D, 11, 11A, 11B, 11C, 11D, 12, 12A.

Form APC-1A — Concerning 176 shares of the A stock of General Aniline & Film Corp.

,, ,, ,, Schedule 9B

Supplements (with annexes) Nos. 1, 1A, 1B

Form APC-1A — concerning cash in the agregate amount of $975,244.70.

,, ,, ,, Schedule 9B

Form APC-1A — concerning cash representing dividends paid by General Aniline & Film Corp. on Sept. 28, 1940, Dec. 12, 1940, Oct. 10, 1941 upon 650,000 shares of the B stock of General Aniline & Film Corp. registered in the name of L. D. Pickering & Co. and belonging to the claimant.

,, ,, ,, Schedule 9B

Form APC-1A — concerning cash representing dividends paid by General Aniline & Film Corp. during the years 1940 and 1941 upon 600,000 shares of the B stock of General Aniline registered in the name of Chemo Maatschappij voor Chemische Ondernemingen, and upon 300,000 shares registered in the name of N.V. Maatschappij voor Industrie en Handelsbelangen all belonging to claimant.

,, ,, ,, Schedule 9B

Form APC-1A — concerning cash representing dividend paid by General Aniline on Dec. 15, 1941 upon 650,000 shares of the B stock of General Aniline registered in the name of L. D. Pickering & Co. and belonging to the claimant.

,, ,, ,, Schedule 9B

Form APC-1A — concerning cash representing dividends paid by General Aniline on Oct. 10, 1941 and Dec. 15, 1941 upon 500,000 shares of B stock of General

Aniline registered in the name of Banque Fédérale S.A. and belonging to the claimant.

" " " Schedule 9B

Legation of Switzerland — May 4, 1948

Annexe 5

Copy

The Secretary of State presents his compliments to the Chargé d'Affaires ad interim of Switzerland, and refers to the Minister's note of May 4, 1948, with enclosures, concerning the return of assets in the United States claimed by I.G. Chemie. In the Minister's note attention is called to a decision of the Swiss Authority of Review "declaring Interhandel I.G. Chemie a Swiss concern".

The Department of State has now consulted with the Department of Justice and the Treasury Department, and desires to communicate the following as the final and considered view of this Government on the matter.

As representatives of the Swiss Governments have heretofore been informed, this Government considers the decision of the Swiss Authority of Review as having no effect on the question of the assets in the United States vested by this Government and claimed by I.G. Chemie.

The decision of the Swiss Authority of Review was made on an appeal of I.G. Chemie from a provisional blocking ordered by the Swiss Compensation Office pursuant to the Swiss Federal Council Decree of February 16, 1945, and not on an appeal taken under the terms of the Washington Accord of May 25, 1946. The question of whether the assets in Switzerland held by I.G. Chemie are German assets which come within the provisions of the Washington Accord is still before the Joint Commission. Plainly the decision of the Swiss Authority of Review, when made as a result of an appeal under a Swiss decree rather than as a result of an appeal by the Joint Commission or by an interested party under the Accord, is not binding upon the United States, even as to the status of I.G. Chemie assets in Switzerland.

In any event, the Washington Accord governs only property in Switzerland owned or controlled by Germans in Germany, the proceeds of which are to be used as specified in the Accord. Assets subject to vesting in the United States, whether or not they have been vested, are clearly without the scope of the Accord. The decision on I.G. Chemie's claim to assets in the United States is solely one for the Attorney General under Section 32 of the Trading with the Enemy Act, as amended (Public Law No. 322, 79th Congress, 2nd Session, 50 U.S. C. App. Sec. 32), or for the United States courts if suit should be instituted under Section 9 *(a)* of the Trading with the Enemy Act.

The views of this Government were clearly stated in the negotiations leading to the Accord of May 25, 1946. Thus in the memorandum of June 18, 1947, replying to the Aide-Mémoire of the Swiss Legation of June 4, 1947, raising the same point as now raised, the Department stated:

> "During the course of the negotiations leading to the Accord of May 25, 1946, the United States representatives made clear that a decision on the Interhandel I.G. Chemie case can have no effect on any settlement of or decision on the vesting by the Alien Property Custodian of February 1942 of the stock of the General Aniline and Film Corporation. The United States Government has not changed its view in this matter."

In its Aide-Mémoire of April 21, 1948, the Department also expressed agreement with the view of the Attorney General of the United States that "German assets located outside of Switzerland are not within the scope of the Accord. ***** Property vested by the United States ***** (is) wholly unaffected by the Washington Accord *****." The Department further pointed out that this has been the consistent view of the Government of the United States since May 25, 1946, and that, concurrently with signing of the Accord this understanding was stated to, and understood by, Swiss officials.

This Government's consistent interpretation of Article IV of the Accord has been that it relates only to the establishment of a procedure for the unblocking of Swiss assets in the United States; and, as is true of the entire Accord, it in no way relates to assets in the United States vested or vestible under the Trading with the Enemy Act. This interpretation follows the intent of the negotiators of the Accord. It will be recalled that the implementation of this Article took the form of an agreement between the Treasury Department and the Swiss Minister of Finance for the defrosting of the frozen Swiss assets in the United States. Moreover, under this agreement the Swiss Government was precluded from certification of assets in the United States deemed by this Government to be German tainted, or otherwise ineligible for certification, even though claimed by enterprises organized in Switzerland.

It is therefore clear that no clause of the Accord touches upon or affects in any manner assets or properties in the United States in which a direct or indirect German interest is asserted, and the status of such assets or properties is not subject to any of the procedures of the Accord. The decision of the Swiss Authority of Review is not relevant to the vesting of the property in question and the contention that the assets claimed by I.G. Chemie in the United States should be released must therefore be rejected.

Department of State,
Washington July 26, 1948.

Annexe 6

Copy

LEGATION OF SWITZERLAND
WASHINGTON, 8 D.C.

The Chargé d'Affaires ad interim of Switzerland presents his compliments to the Honorable the Secretary of State, and has the honor to refer to the note of the Department of State of July 26, 1948, concerning the assets of the Swiss corporation Interhandel.

The Legation has been instructed to bring to the Department's attention the following points:

1. The Swiss Government is of the opinion that the decision of the Swiss Authority of Review recognizing *Interhandel* as a Swiss corporation, juridically as well as economically, is binding for the signatories of the Washington Accord of May 25, 1946. The contrary opinion expressed by the Department of State in its note of July 26, 1948, would appear to be based on an erroneous interpretation of the procedure followed in reaching this decision and of certain provisions of the Accord. It is true that the Swiss Compensation Office began its investigations on behalf of Interhandel before the conclusion of the Washington Accord; but it is likewise true that that Office continued its research after the signing of the agreement, and this in accordance with the provisions of Article 1 (1): "The Swiss Compensation Office shall pursue and complete its investigations of property of every description in Switzerland owned and controlled by Germans in Germany..." That the Swiss Office of Compensation acted in conformity with the dispositions of the Accord is apparent from the fact that the Joint Commission participated in the investigations in transmitting documents to the Office, in suggesting steps to be taken, and in discussing with it the result of the investigations. The Joint Commission thus exercised the functions assigned to it in Section II (D) of the Annex to the Accord.

The Joint Commission has no authority except as conferred by the Accord. If the case of Interhandel had been treated by the Swiss Compensation Office as a purely Swiss matter, the Joint Commission would not have asked to collaborate in the investigations of the Office, nor would it have been in a position to do so. By intervening, the Joint Commission indicated that it regarded the Swiss Compensation Office as proceeding in conformity with the terms of the Accord. Consequently, the appeal of Interhandel against blocking has been adjudged by the Authority of Review as an appeal made by a party having an interest in the Accord, under the procedure set forth in Section III of the Annex to the Accord: "If the Joint Commission after consultation with the Compensation Office is unable to agree to the decision of that Office, *or if the party in interest so desires*, the matter may within a period of one month be submitted to a Swiss Authority of Review."

This text gives Interhandel the right to appeal under the provisions of the Accord. This corporation was even obliged to do so because the decision of the Compensation Office was made in observance of the articles of the Accord, as evidenced by the intervention of the Joint Commission in collaboration with the Office.

Furthermore, in declining the invitation of the Authority of Review to participate in the procedure of appeal, the Joint Commission did not state that the examination of the Interhandel case by the Authority of Review was not taking place according to the procedure fixed in the Accord. The only reason given was that the Commission had not completed its investigations. Such being the case, if the Joint Commission had wished to continue its investigations, the three Allied Governments could have required the difference to be submitted to arbitration. In not doing so, these Governments have recognized implicitly the decision reached by the Authority of Review.

Thus the decision, whereby it is established that Interhandel is a Swiss-controlled corporation, is binding for the signatories of the Accord. It is therefore expected that the American Government would act accordingly.

2. Vested property is not excluded from the Washington Accord, and the provisions of the Accord do not allow such an exclusion to be construed.

The Swiss Government, therefore, fails to see how the opinion that such property may escape the dispositions of the Accord can be defended. Moreover, according to the note of the Department of State of July 26, 1948, even property not yet vested but subject to vesting should be excluded from the Accord.

If such opinion were admitted, the distinction between vested and non-vested property would be without meaning, as the American authorities could at any time transform non-vested property into vested property and thereby render the provisions of the Accord inapplicable to it.

Property subject to vesting order is property in which an enemy interest is asserted. Such assertion, however, does not exclude the possibility that this property is non-enemy. Actually, vesting does not finally determine whether or not the property is enemy. This must be decided only after examination of the facts. The real issue is not whether the property in the United States is vested but whether the property is Swiss. Since the Accord fixes a procedure to determine whether or not a property is German, the decision reached after this procedure is completed is applicable as well to vested property as to any other property.

Hence the decision made by the Authority of Review, according to the procedure set forth in the Accord—decision whereby it was established that Interhandel is a Swiss corporation—carries with it the obligation to liberate the assets of Interhandel which were vested.

3. In the records of the negotiations which resulted in the Washington Accord of May 25, 1946, no trace was found of verbal declarations made by the United States representatives, on the strength of which a decision in the Interhandel case could have no effect on the vesting of the stock of the General Aniline and Film Corporation.

At any rate, any such declarations would have no binding effect on the signatories of the Accord by reason of not being mentioned in the Accord, nor in its Annex, nor in the letters exchanged the same day. It is a well-established principle of law that such declarations are meaningless unless reproduced in a written document or communicated to the interested government or to the authority which negotiated the treaty (see for example the decision of the Supreme Court of the United States, re Arizona *vs.* California, May 21, 1934).

4. The observations in the foregoing paragraph apply equally to the declarations contained in the aide-mémoire of the Department of State of April 21, 1948, according to which German assets located outside Switzerland are excluded from the dispositions of the Accord. These declarations do not appear in the records of the Swiss delegation.

The Swiss authorities cannot admit the opinion of the Department of State with regard to German assets located outside Switzerland; but it must furthermore be pointed out that in any event this opinion could not apply in the present case. Interhandel having been recognized as a Swiss corporation, through the procedure established by the Accord, its assets in the United States cannot possibly be considered as German.

5. By the Washington Accord, the United States has undertaken to unblock Swiss assets. Article IV (1) of the Accord stipulates in very broad terms that the Government of the United States "will unblock Swiss assets in the United States". There is no reason to give to the word "unblock" a special and restrictive meaning nor to consider it applicable only to one category of Swiss assets in the United States and not to others.

"Unblock" means liberate. Consequently, property which has been proved to be Swiss under the procedure set forth in the Accord, as is the case for the property of Interhandel, must be effectively liberated, and no distinction between "frozen" and "vested" assets is justified.

As brought out under point 2 herein, there is no juridical or moral ground which allows that vested property may not be liberated while non-vested but frozen property may be unblocked. Again, the only question is whether or not the property is Swiss.

Although the procedure for certification agreed upon by the exchange of letters of November 22, 1946, in conformity with Article IV (1) of the Washington Accord, does apply only to certain

Swiss assets in the United States, the obligation undertaken by the American Government to unblock Swiss assets should none the less be fulfilled for all other Swiss assets, be they vested or not. Nothing in fact allows the interpretation that by the exchange of letters of November 22, 1946, Switzerland has accepted that Article IV (1) of the Accord is not applicable to vested property or to property subject to vesting.

Inasmuch as it has been established, under the procedure stipulated in the Washington Accord, that Interhandel is a Swiss corporation, it follows that the United States should, according to the obligation assumed under Section IV of the Accord, liberate the assets of this corporation.

The foregoing considerations demonstrate that the position of the United States in the Interhandel case cannot be considered by the Swiss Government as being in conformity with the provisions of the Washington Accord. It is the firm hope of the Government of Switzerland that the American authorities will reconsider the case in the light of the arguments presented in this note and liberate the assets of Interhandel in the United States. Should this expectation not be fulfilled, the Government of Switzerland would have no other recourse but to request that the question be submitted to the arbitration procedure provided for in Article VI of the Accord of May 25, 1946.

Washington, D.C.

September 7, 1948.

Annexe 7

Copy

The Secretary of State presents his compliments to the Honorable the Minister of Switzerland and has the honor to refer to the Legation's note of September 7, 1948 concerning assets in the United States claimed by *I.G. Chemie*.

After careful consideration of the points made in the Legation's note, this Government reaffirms its views stated previously. The question of the return of the property formerly owned by I.G. Chemie and now vested under the Trading with the Enemy Act is wholly beyond the scope of the Washington Accord of May 25, 1946, and is governed solely by the statutes of the United States. The question is far beyond any permissible construction of the Accord and is therefore not subject to the arbitration clause of the Accord.

There follow certain detailed comments on the points raised in the Legation's note, which should not, however, be taken as limiting the finality and generality of this Government's firm views on the question, both as expressed at this time and on prior occasions.

The first point raised by the Legation is to the effect that the decision of the Swiss Authority of Review recognizing I.G. Chemie as a Swiss corporation, is binding upon the signatories of the Washington Accord. The point is of no significance with respect to the instant claim by I.G. Chemie. That claim relates to the return of property located in the United States and subject to this Government's powers of seizure, and, as has been made clear by this Government, such property is nowise subject to the Accord. However, since the Legation seems to stress that the Authority acted under the Accord, it may be pointed out that the Legation is in error.

The proceeding before the Authority of Review was not one under the Accord, but was rather an appeal by Chemie from the provisional blocking under the Swiss Federal Council decree of February 16, 1945. The appeal by Chemie was, indeed, filed before the Accord was signed. The Legation is apparently of the view that the proceeding became one under the Accord by reason of certain "collaboration" between the Joint Commission and the Swiss Compensation Office. This "collaboration", however, was no more than an effort of the Joint Commission to secure information with respect to I.G. Chemie, pursuant to a separate proceeding, under the Accord, initiated by the Commission on July 25, 1947. The Joint Commission was not involved in the proceedings before the Authority. Thus, in response to the offer of the Authority to intervene in the appeal before it, the Joint Commission wrote that the Chemie case under the Washington Accord was still before the Commission and that there was no basis for the Commission to appear before the Authority pursuant to the Accord. In conclusion, it was said, on behalf of a majority of the Commission, that "The appeal presented (by I.G. Chemie) can, naturally, have no effect on any proceedings, undertaken pursuant to the Washington Accord, on the matter by the Joint Commission." This disposes of any possible contention that the decision of the Authority of Review has any effect upon the signatories of the Washington Accord.

The remaining points raised by the Legation relate to the question whether any decision under the Accord can affect the disposition of property which was within the power of the United States to seize as enemy property, i.e., vested or vestible property under the Trading with the Enemy Act.

The text of the Accord disposes of this question. If there were any doubts as to the meaning of the words of the Accord, they would be entirely resolved by its implementation since signature, the record of the negotiations, and the limitations on the authority of all the negotiators for the Allies, and particularly on the authority of the negotiator for the United States. These are all confirmatory of the limitation of the applicability of the Accord to German property within Switzerland, subject to the control of the Swiss

Government, and to the exclusion of German property outside Switzerland, property subject to the seizure powers of the Allies.

The text of the Accord lends no support to the assertion that decisions of the tribunals created or mentioned in the Accord are to affect property in the United States, vested or not. On its face the Accord relates only to property "in Switzerland". There are repeated references, in the Accord, to property "in Switzerland", as well as references to persons in Switzerland administering German property, to persons in Switzerland indebted to Germans, and to the liquidation of property in Switzerland.

The only (and therefore exclusive) reference in the Accord to assets in the United States or to assets outside of Switzerland, is found in Article IV. This article provides in part that "The Government of the United States will unblock Swiss assets in the United States". There has been no doubt since prior to the negotiations for the Accord but that such language refers only to the foreign funds subject to the freezing controls and not at all to the divesting of vested property. This limited meaning of the word "unblock" was well appreciated by the Swiss negotiators for the Accord, who repeatedly expressed their concern over the freezing of Swiss funds in the United States. The term "unblock" had and has had a clear and precise meaning.

The Department has already pointed out that confirmation of the meaning of "unblock", as limited only to frozen property, lies in the terms of the agreement between the Treasury Department and the Swiss Minister of Finance of November 1946 for the defrosting of frozen assets in the United States.

Even aside from explicit views communicated during the negotiations, there are many statements relevant to the question of the applicability of the Accord in the record of the negotiations. Among these are numerous indications that the participating Allied Governments, as successors to the legal authority of the German Government, were directing themselves only to the subjection to reparations of German property which, because of its location in Switzerland, was beyond Allied control. They were not concerned with German property outside of Switzerland, such property being fully within the control of the Allied Governments. As in the case of the Accord itself, there are numerous references, in the negotiations, to German property in Switzerland and none to German property outside of Switzerland. The negotiators moreover made it clear that their concern over assets subject to the control of the Allies was limited to Swiss funds which had been frozen in the United States.

The limitations on the collective authority of the negotiators for the United States, the United Kingdom and France are further support for this interpretation of the Accord. The negotiators, who signed on behalf of all the countries which are now members of the Inter-Allied Reparations Agency, were carrying out the terms of

the Paris Agreement on Reparation of January 24, 1946. Article 6, paragraph C, of the Agreement states that

> "German assets in those countries which remained neutral in the war against Germany shall be removed from German ownership or control and liquidated or disposed of in accordance with the authority of France, the United Kingdom and the United States of America, pursuant to arrangements to be negotiated with the neutrals by these countries."

In the same Article, in paragraph A, it is stated

> "Each Signatory Government shall, under such procedures as it may choose, hold or dispose of German enemy assets within its jurisdiction in manners designed to preclude their return to German ownership or control..."

It can thus be seen that the Agreement explicitly limited the authority of the negotiators to German assets in Switzerland and excluded from their authority any attempt to dispose of German assets already subject to the seizure powers of the countries signatory to the Agreement.

The authority of the negotiator for this Government, moreover, was similarly limited. As the Legation is aware, the statutes of the United States regulating the seizure and disposition of enemy property provide that claims for a voluntary return of vested property may be filed by designated groups of aliens not hostile to the United States, and, if such claims should be rejected, that the courts may entertain suits by non-enemy owners for the return of the property. The Accord was not intended to, and could not, under the constitutional laws of this Government, override these statutes. The return of vested property has been specifically regulated by the Congress and the Congress has only recently, in Public Law No. 896 of July 3, 1948, re-enacted the mandate that German property shall not be returned to its former owners.

On the other hand, there has been no need, and no room, for an agreement that Swiss property in the United States should be released from vesting. This Government has not vested Swiss property but only ostensibly Swiss property, actually enemy property. The forum in which the question of Swiss or enemy ownership of such property is to be determined is governed by statutes enacted by the Congress.

The Legation points out that unvested property may be vested and thereby taken from the applicability of the Accord. The important distinction, however, is not between vested property and unvested property, but between property subject to the seizure power of the United States and property subject to the power of the Swiss Government. The former is not subject to the Accord, the latter is. The only property subject to this Government's power which is mentioned in the Accord is Swiss blocked property,

and the arrangement with respect to such property, consistently with the above principles, leaves the determination of its enemy character exclusively to this Government. While the Accord provides that Swiss property is to be unblocked, it has been agreed that should this Government deem any of it to be enemy-tainted, the Swiss Government may not certify it for unblocking, and this Government need not unblock it.

In summary, the decision of the Swiss Authority of Review has no status under the Accord. If it had such status, it would still be limited by the applicability of the Accord itself, which has no effect on property which is within the power of this Government to seize as enemy property. The suggestions of the last paragraph of the Swiss note under reference are in consequence completely unfounded and cannot be adopted.

It is trusted that the Legation will appreciate that these are the final views of this Government, arrived at after complete re-examination of the position expressed in the Swiss note of September 7, 1948.

Department of State,

Washington. October 12, 1948.

Annexe 8

Copy

LEGATION OF SWITZERLAND
WASHINGTON 8, D.C.

The Minister of Switzerland presents his compliments to the Honorable the Secretary of State and has the honor to inform the Secretary that he has been instructed by the Swiss Government to bring to the attention of the Department of State the following points with respect to the American assets of the Société Internationale pour Participations Industrielles et Commerciales (Interhandel), a Swiss corporation:

(1) The suit brought by Interhandel in the United States District Court to recover the assets vested by the Alien Property Custodian will be dismissed with prejudice on or about June 15, 1953 unless Interhandel in the meantime produces for inspection by the United States Attorney General certain papers in Switzerland.

Thus Interhandel's claim for the return of its assets is about to be denied in the United States courts, solely on procedural grounds, without any opportunity for a hearing on the merits.

(2) The denial of a hearing on the merits affects not only a Swiss corporate entity, Interhandel, but the hundreds of Swiss citizens who have invested their savings in shares of Interhandel

stock. It is true that the decision of the United States Supreme Court in *Kaufman* v. *Société Internationale pour Participations Industrielles et Commerciales*, S.A., 343 U.S. 156 (1952) allows such shareholders to intervene and assert their proportional right to the assets of Interhandel. But the Department will surely agree that the difficulties and costs of such intervention make it of questionable value to shareholders living in Switzerland.

(3) The Swiss Government considers this state of affairs as threatening a grave injustice to a Swiss corporation and its Swiss shareholders. It believes that the perpetration of such injustice can be averted only by action to be taken between the Government of the United States and the Government of Switzerland.

(4) It is proposed, therefore, that the two Governments undertake to enter into negotiations looking toward a settlement of the Interhandel claim upon a mutually satisfactory basis.

(5) The Swiss Government is prepared to co-operate with the United States Government in working out whatever method appears most suitable for resolving their differences with respect to the Interhandel case. What the Swiss Government cannot agree to is the principle that the case may rightfully be disposed of by the unilateral action of the United States Government. It is hopeful that the United States Government, in view of its proclaimed aversion to unilateral action by states and its championing of the pacific settlement of international controversies, will recognize the justice of the Swiss position.

Washington, D.C.,

April 9, 1953.

Annexe 9

H.34.10.1
H.34.11.1. — FW/er

Swiss Assets Vested in the United States

Certain measures taken by the United States during World War II in the field of Economic Warfare affected the interests of a neutral State like Switzerland in a manner, which, in normal times, would have been incompatible with the principle of the inviolability of private property. Since the necessity for such extraordinary measures has ceased to exist, it may be expected that the American Government is anxious to return to normal conditions and to find, as expeditiously as possible, a just and amicable solution for the assets claimed by Swiss citizens and still vested in the United States.

The Swiss Authorities, on their part, have missed no opportunity during the past years to make every possible effort for the solution of this problem, especially, as shown by the enclosure, in the matter of the *Société Internationale pour Participations Industrielles et Commerciales SA* (also known as *Interhandel* or *I.G. Chemie*).

In the spirit of such constructive co-operation it should not be too difficult to reach an arrangement satisfactory to both countries.

Annex (concerning the matter of *Interhandel*).

Summary of the Efforts of the Swiss Government For a Solution in the Interhandel Matter

I

The matter of *Interhandel* has now been pending for a period of over twelve years. The assets of this Swiss Corporation in the United States were apparently vested by the Office of Alien Property under the assumption that this company, founded in 1928, reflected interests in the sense of Section 5 *(b)* of the "Trading with the Enemy Act".

As far back as the summer of 1945, the Swiss Compensation Office, on its own initiative, examined *Interhandel* with regard to a possible continuation of its former ties with the German enterprise, I.G. Farben. Although no evidence whatsoever for any such relationship for the time after 1940 could be produced, the Swiss Compensation Office, upon the insistence of the Allied Governments, particularly the Government of the United States, issued a provisional blocking order on October 30, 1945. Following this order, *Interhandel* was submitted again in 1946 to extremely thorough and lengthy investigations which only confirmed the findings of the first examinations in 1945. The Authority of Review, established under the Washington Accord, arrived, therefore, at the conclusion that *Interhandel* was not German and ordered the Swiss assets of this firm to be unblocked.

In accordance with the procedure of the Washington Accord, this decision was submitted to the Joint Commission. The Washington Accord provided that if the Commission were in disagreement with any decision of the Authority of Review, the three Allied Governments could require that the difference be submitted to an arbitral tribunal within a period of one month. Since the Allied Governments failed to take such a step, the decision of the Authority of Review became final and, in the opinion of the Swiss Government (note of the Swiss Legation to the U.S. Department of State, September 7, 1948), binding on all parties to the Accord.

II

The investigations of *Interhandel* were undertaken mainly because the American Authorities had asserted on several occasions that they had definite proof of the continuation of the former ties of that firm with I.G. Farben. Despite numerous requests, no such proof has yet been communicated to the competent Swiss authorities.

Nevertheless, the measures taken in the United States against the American assets of *Interhandel* were maintained, and this firm was thus compelled to seek relief through litigation, the termination of which cannot as yet be foreseen. In order to facilitate the task of the American courts, the Swiss Government has made the widest possible use of its discretion in the application of the Bank Secrecy and Economic Espionage Laws in order to enable *Interhandel* to produce 70,000 microfilms of its own, and 63,000 of the records of the Swiss Bank Sturzenegger. The American Authorities have consistently refused the examination of the latter.

III

The Swiss authorities have on numerous occasions offered their co-operation in order to work out whatever method would appear to be most suitable in resolving the *Interhandel* case—be it a settlement of this case alone—or one involving all Swiss assets vested in the United States. Such proposals have as yet been either denied or answered inconclusively.

Annexe 10

Copy

H.34.10.1.
H.34.10.—FW/cc
H.34.11.1.

The Minister of Switzerland presents his compliments to the Honorable the Acting Secretary of State and has the honour to call his attention to the problem of the assets vested in the United States as enemy property, but claimed by Swiss citizens or Swiss corporations. This problem has been a cause of serious concern in Switzerland for many years.

Certain measures taken by the United States during and after World War II in the field of Economic Warfare affected the interests of a neutral State like Switzerland in a manner which, in normal times, would be incompatible with the principle of the inviolability of private property. Of course, in order to prevent a possible use of foreign property in the United States for enemy war aims, a tight and far-reaching control may have been considered necessary as long as the state of war lasted. Indeed, if only a slight suspicion

of an enemy influence were entertained, assets located in the United States and owned by neutrals were treated in the same manner as enemy assets.

After the termination of World War II, and in addition to the above, confiscatory measures were adopted in 1948 with regard to enemy assets. As far as the Swiss Government is informed, the purpose of such measures was to make the property of former enemies available for the compensation of damages caused during the war to the persons and property of American citizens. This new policy of confiscation is essentially different from the one of preventive control, the necessity for which had ceased to exist at the end of the war. Nevertheless, applying the same far-reaching principle as employed for the preventive control, the confiscation in practice was likewise not limited to assets belonging to former enemies, but also was extended to neutral assets. As a consequence, assets of Swiss citizens or corporations are exposed to-day to the risk of being used for the reparation of damages caused in a war in which Switzerland upheld its traditional neutrality.

Viewing the situation almost ten years since the end of World War II, nothing should be overlooked which would help to avoid such a consequence seriously affecting substantial Swiss interests. It is believed that this view will surely be shared by the U.S. Government, all the more as the question of a return of the vested property even to former enemy nationals was made the subject of legislative proposals in the U.S. Congress, and is being given increased attention by the competent American authorities.

The Swiss Government has recently reviewed the problem in all its aspects, and more especially in the light of the present circumstances, which are so fundamentally different than those prevailing during and shortly after the war. The Swiss authorities arrived at the conclusion that a just and amicable solution should be sought on a new basis, in order to relieve both governments from a continuation of the controversies of the past, with all their political and legal implications. They are, of course, aware of the many questions of a more technical nature resulting from the complex character of the whole problem. Nevertheless, the Swiss Government is confident that, in a spirit of understanding and constructive co-operation, it should not be too difficult to find a solution satisfactory to both countries.

The Swiss Government, therefore, proposes that a joint effort be made by Swiss and American authorities to find such a new basis on which a practical solution could be negotiated regarding the assets vested in the United States and claimed by Swiss citizens or corporations.

Washington, D.C.

March 1, 1955.

Annexe 11

Copy

The Acting Secretary of State presents his compliments to the Honorable the Minister of Switzerland, and has the honor to refer to his note of April 9, 1953 suggesting negotiations between the Government of Switzerland and the Government of the United States, looking towards a settlement of the case of *I.G. Chemie* v. *Brownell* (the Court refers to the firm of Interhandel as I.G. Chemie), now pending in the District Court for the District of Columbia. The note points out that the suit will be dismissed with prejudice on or about June 15, 1953 unless I.G. Chemie in the meantime produces for inspection certain papers now located in Switzerland.

I.G. Chemie now has, and at all times has had, the fullest opportunity for a hearing on the merits of its case, in accordance with the principle which prevails in the United States that every complainant against a seizure of property by the Government shall have complete access to the courts in accordance with law. In the execution of this principle, I.G. Chemie has maintained its suit and received the benefits allowed to litigants, among them the right, which it has exercised, to inspect and copy all the documents in the possession of the Government of the United States. Yet it has not obeyed the order of the Court putting upon it the reciprocal obligation to produce the documents located in Switzerland known as the Sturzenegger papers. Chief Judge Laws, of the District Court for the District of Columbia, in his opinion of February 19, 1953, has commented that I.G. Chemie has been in legal default of the order for two and a half years.

These papers, which are required in the investigation of the enemy character of I.G. Chemie by the American Courts under American legal standards, have not been forthcoming, though these very papers were seized and examined by the Swiss Government as necessarily relevant in its investigation of the German ownership of I.G. Chemie, under Swiss laws. If, despite the opinion of the District Court for the District of Columbia, the papers cannot be produced, the ensuing dismissal will be due, as Chief Judge Laws pointed out, to I.G. Chemie's inability to comply with American judicial procedures for "the investigation and discovery of facts in a case, established as conducive to the proper and orderly administration of justice in a Court of the United States". Such a dismissal, by a lawful order of the Court will be subject to appeal to higher courts, all in accordance with the laws of the United States.

The Government of the United States does not question the Swiss Government's sovereign right to administer and enforce its own laws. By the same token, the administration and enforcement of the laws of the United States are within the competence and jurisdiction of the United States Government. The Department of State has, in its note to the Legation of Switzerland of July 25,

1948, among others, stated that the "decision on I.G. Chemie's claim to assets in the United States is solely one ... for the United States courts if suit should be instituted under Section 9 *(a)* of the Trading with the Enemy Act". This position of the United States Government is unchanged.

In these circumstances the Government of the United States cannot agree that if the Court dismisses I.G. Chemie's claim, the dismissal will be without any opportunity for a hearing on the merits or that a "grave injustice" is threatened. To allege that such a dismissal would be "wholly on procedural grounds" is to overlook in Chief Judge Laws' words, that "Procedural laws, provided as a means of attaining just decisions, are fully as important to be observed as substantive laws, provided, of course, the procedural laws involve substantial points". The substantiality of the point is shown by the Chief Judge's conclusion that inspection of the Sturzenegger papers "is essential if the parties are to obtain knowledge of the facts and issues before trial", and is also shown by his decision on the consequences of pursuing any other course, as quoted below:

> "To adopt any other course would lead only to frustration and nullification of established procedures. It would permit a foreign government to release only the documents favorable to one party and to retain or destroy the rest. It would permit a foreign government to stipulate the conditions under which documents required in a court of the United States might be released and thus impose foreign procedures in trials of suits in United States Courts. It would permit a foreign party to be placed in a favored position by the laws or action of his government. It might defeat the purposes of the Trading with the Enemy Act by permitting a foreign national to bring suit in this country to recover property seized under the Act and then seek shelter under the protective cloak of its government when discovery is sought.
>
> The Court concluded that
>
> ... due process would be denied if a foreign government were to be allowed to frustrate the procedures established in the Courts of the United States."

The Legation's note comments that an injustice will be done to the non-enemy shareholders in I.G. Chemie. Chief Judge Laws has, to the contrary, explicitly ruled that if the complaint of I.G. Chemie is dismissed, the stockholders may nevertheless maintain their suits for their proportional share of the assets. No injustice can result to the non-enemy stockholders.

Little cost and no difficulties attach to the maintenance of such suits and several hundred stockholders have moreover already indicated their interest in pursuing their legal remedies. The

attorneys already representing such stockholders, as well as other competent attorneys, no doubt stand ready to prosecute such claims. The fairness of the fees to be charged will be required to be approved by the courts, and the prosecution of these claims, by order of the Special Master, will be without expenditure of unreasonable sums or costs.

This Government is appreciative of the Swiss Government's offer to co-operate in settlement negotiations. The case is, however, one for disposition by United States Courts, or for the parties to dispose of by mutual agreement, if possible, and not one which can be disposed of on the basis of government to government negotiations. The case will be difficult to settle until the number and amount of non-enemy shareholdings become known. If and when settlement becomes possible, it is the view of this Government that it should be done, as is customary in such cases, by direct negotiations between the parties and the Attorney General of the United States.

In conclusion, the Government of the United States is of the opinion that in allowing the case to proceed in accordance with the laws of the United States, either in court or as settled by agreement of the parties to the suit, it is acting with complete propriety in accordance with the principles of law and justice.

Department of State,

Washington, May 27, 1953.

211.5441 *Société internationale pour Participations Industrielles et Commerciales, S.A/4-953.*

Annexe 12

Copy

The Secretary of State presents his compliments to the Honorable the Minister of Switzerland and has the honor to refer to his note of March 1, 1955, with regard to assets vested in the United States as enemy property but claimed by Swiss citizens or Swiss corporations. The Minister's note proposes that a joint effort be made by Swiss and American authorities to find a new basis on which a practical solution can be negotiated.

While there are a number of cases in this field, it is understood the Minister's note has particular reference to the Interhandel case, a settlement of which is fundamental to the whole problem. As the Legation is aware, this case is now pending in the courts as a result of the suit brought by Interhandel A.G. for the return of the shares of General Aniline and Film, vested by the Office of Alien Property under the Trading with the Enemy Act, and is one for disposition by the courts under the statutes of the United States. Nevertheless, the Attorney General, who is the responsible

authority regarding these matters, can, with the agreement of the plaintiffs, reach such private and out-of-court settlement of these questions as is fair and equitable. Accordingly, the Department of Justice is willing, as always, to discuss any proposals, taking into account the relative merits of the positions of the adverse parties, which may lead to settlement. It is the position of the Department of Justice that, even on the basis of the facts so far adduced, any proposal for a division of the assets or of their proceeds would not be realistic unless the larger share reverted to the Office of Alien Property. The Department of Justice also points out that it can only undertake such discussions with persons authorised by the private interests concerned to reach a settlement.

While these problems thus do not lend themselves to settlement by intergovernmental negotiations, the Department of Justice would, of course, be willing to explain the foregoing and other related procedural matters to officials of the Government of Switzerland, as it has to the Legation, if the Swiss Government should so desire.

Department of State,

Washington, June 7, 1955.

Annexe 13

Légation de Suisse.
Washington 8. D.C.

The Chargé d'Affaires ad interim of Switzerland presents his compliments to the Honorable the Secretary of State and, in accordance with instructions of his Government, has the honor to bring to his attention the following matter:

The fact that the considerable assets of the Societé Internationale pour Participations Industrielles et Commerciales S.A., hereafter called "Interhandel", which were vested in 1942 and 1943, have to this date not been returned to their rightful owners, is a cause of great concern to the Government of Switzerland. Indeed, all attempts of the Swiss owners to obtain the return of their property have so far remained unsuccessful. As of the present, in view of the latest American court decisions in this matter, which have been restricted to mere procedural grounds, the prospects for a satisfactory overall solution seem to be remote.

The Federal Council is of the opinion that the refusal of the United States Government to return these assets is contrary to Article IV, paragraph 1, of the Swiss-Allied Accord of May 25, 1946. The Federal Council, in principle, as well as on account of the important interests involved, finds it impossible to acquiesce

in such a situation. Therefore, it is now confronted with the necessity of giving the matter its consideration, not only on the basis of the principles of international law pertaining to the protection of the legitimate interests of a neutral State, which principles are recognized both by the United States and Switzerland, but also because the matter involves adherence to an agreement concluded between the Governments of the two countries.

Since, over a long period of time, differences of opinion have existed between the Governments of Switzerland and the United States with respect to the interpretation of the aforementioned Accord, which have been the subject of discussions on more than one occasion, the Swiss Government now finds itself compelled to submit the matter to settlement by international proceedings.

In view of the close and friendly relations between Switzerland and the United States, as well as in view of the general principles involved, the Swiss Government regrets that its repeated suggestions, made especially in the memorandum of the Swiss Legation in Washington, dated December 1, 1954, and its note of March 1, 1955, concerning the possibility of amicably settling the Interhandel matter in further diplomatic discussions, remained without positive reaction on the part of the United States Government, so that no other way remains open for the preservation of the interests in question. The Treaty of Arbitration and Conciliation concluded between Switzerland and the United States on February 16, 1931, provides in Article I that every dispute arising between the contracting parties shall, when ordinary diplomatic proceedings have failed, be submitted "to arbitration or to conciliation", as the contracting parties may at the time decide. An arbitration clause is also contained in the Accord of May 25, 1946. The Federal Council proposes that all necessary arrangements be made in accordance with the applicable provisions of the Treaty of February 16, 1931, but, in making this proposal, it is not intended to waive any rights under the Accord of May 25, 1946.

The Federal Council is convinced that the Government of the United States of America will, in view of the contemplated arbitration or conciliation proceedings, uphold the principles of the law of nations, whereby good faith demands that all action be avoided during the course of procedure which might prejudice the execution of the decisions of an arbitration court or the acceptance of the proposals of a conciliation commission, and, in addition, that the parties involved refrain from undertaking any kind of action whatsoever which might heighten or increase the differences in question. Therefore, in the sense of these principles of good faith, as laid down in numerous arbitration treaties, and which underlie the authority of the International Court of Justice to take appropriate precautionary measures, the Federal Council requests the Government of the United States of America to ensure that the *status quo* relating to the assets of the Interhandel located in the

United States remains unchanged during the course of the arbitration or conciliation proceedings.

(Sig.) F. SCHNYDER.

Washington, D.C., August 9, 1956.

Annexe 14

TRAITÉ D'ARBITRAGE ET DE CONCILIATION ENTRE LA SUISSE ET LES ÉTATS-UNIS D'AMÉRIQUE

LE CONSEIL FÉDÉRAL SUISSE ET LE PRÉSIDENT DES ÉTATS-UNIS D'AMÉRIQUE

conscients des obligations que la Suisse et les États-Unis d'Amérique ont assumées en vue de ne rechercher que par des moyens pacifiques le règlement de tout différend qui viendrait à s'élever entre eux, quelles qu'en soient la nature ou l'origine; désireux d'affirmer de nouveau l'adhésion des deux pays au principe que tous les différends d'ordre juridique qui pourraient les diviser soient soumis à une décision impartiale, et soucieux de montrer la sincérité de la renonciation à la guerre en tant qu'instrument de politique nationale dans les rapports entre la Suisse et les États-Unis d'Amérique,

ont résolu de conclure un traité d'arbitrage et de conciliation et ont désigné, à cet effet, leurs plénipotentiaires, savoir:

Le Conseil Fédéral Suisse:

M. Marc Peter, Envoyé Extraordinaire et Ministre Plénipotentiaire de Suisse aux États-Unis d'Amérique; et

Le Président des États-Unis d'Amérique:

THE SWISS FEDERAL COUNCIL AND THE PRESIDENT OF THE UNITED STATES OF AMERICA

Mindful of the obligations, which have been assumed by Switzerland and the United States of America, that the settlement of all disputes of whatever nature or of whatever origin, which may arise between them, shall never be sought except by pacific means; desirous moreover of reaffirming the adherence of the two countries to the principle of submitting to impartial decision all juridical controversies in which they may become involved; and eager to demonstrate the sincerity of the renunciation of war as an instrument of national policy in the relations between Switzerland and the United States of America,

Have decided to conclude a treaty of arbitration and conciliation and for that purpose have appointed as their respective Plenipotentiaries:

The Swiss Federal Council:

Marc Peter, Envoy Extraordinary and Minister Plenipotentiary of Switzerland to the United States of America; and

The President of the United States of America:

M. Henry L. Stimson, Secrétaire d'État des États-Unis d'Amérique;

lesquels, après s'être communiqué leurs pleins pouvoirs, reconnus en bonne et due forme, sont convenus des dispositions suivantes:

Article I

Tout différend, de quelque nature qu'il soit, qui viendrait à s'élever entre les parties contractantes sera, en cas d'échec des procédés diplomatiques ordinaires, soumis à l'arbitrage ou à la conciliation suivant ce que décideront alors les parties contractantes.

Article II

Tout différend qui n'aurait pu être réglé par la voie diplomatique et pour la solution duquel les parties contractantes n'auraient pas, en fait, recours à un tribunal d'arbitrage sera soumis, aux fins d'enquête et rapport, à une Commission permanente de conciliation constituée conformément à ce qui est prescrit plus loin.

Article III

La Commission permanente de conciliation comprendra cinq membres et sera constituée aussitôt que possible après l'échange des ratifications du présent traité. Les parties contractantes nommeront chacune deux membres, l'un choisi parmi leurs propres nationaux, le second parmi les ressortissants d'un État tiers. Elles désigneront d'un commun accord le cinquième membre qui ne sera pas un de leurs nationaux et qui sera de plein

Henry L. Stimson, Secretary of State of the United States of America;

Who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

Article I

Every dispute arising between the Contracting Parties, of whatever nature it may be, shall, when ordinary diplomatic proceedings have failed be submitted to arbitration or to conciliation, as the Contracting Parties may at the time decide.

Article II

Any dispute which has not been settled by diplomacy and in regard to which the Contracting Parties do not in fact have recourse to adjudication by an arbitral tribunal shall be submitted for investigation and report to a Permanent Commission of Conciliation constituted in the manner hereinafter prescribed.

Article III

The Permanent Commission of Conciliation shall be composed of five members and shall be constituted as soon as possible after the exchange of ratifications of this Treaty. Each of the Contracting Parties shall appoint two members, one from among its own nationals, the other from among the nationals of a third State. The Contracting Parties will, in common accord, appoint the fifth member, who shall not be one

droit président de la Commission. En cas de désaccord sur le choix du président de la Commission, il sera procédé à sa nomination, conformément au mode prescrit aux alinéas 4, 5 et 6 de l'article 45 de la convention pour le règlement pacifique des conflits internationaux, conclue, à La Haye, le 18 octobre 1907.

En tout temps, lorsqu'il n'y aura aucun cas pendant devant la Commission, chacune des parties contractantes aura la faculté de révoquer tout membre de la Commission nommé par elle et de lui désigner un successeur. Le président de la Commission pourra être révoqué en tout temps à la requête de l'une des parties contractantes lorsqu'il n'y aura aucun cas pendant devant la Commission, à la condition que, si le président a été désigné conformément à la procédure prescrite par les alinéas 4, 5 et 6 de l'article 45 de la convention pour le règlement pacifique des conflits internationaux, conclue, à La Haye, le 18 octobre 1907, aucune demande de révocation ne pourra être faite avant l'expiration d'un délai de deux années à compter de sa nomination. En cas de vacance de siège et quelle qu'en soit la cause, il sera pourvu aussitôt que possible au remplacement des membres de la Commission selon le mode fixé pour leur nomination.

Les membres de la Commission de conciliation recevront une indemnité suffisante pour le temps qu'ils consacreront à l'examen d'un différend soumis à la Com-

of their nationals, and who shall be *ex officio* the President of the Commission. If no agreement is reached as to the choice of the President of the Commission his election shall be conducted in accordance with the method prescribed in the fourth, fifth and sixth paragraphs of Article 45 of the Convention for the Pacific Settlement of International Disputes, concluded at The Hague on October 18, 1907.

At any time when there is no case before the Commission, either of the Contracting Parties may recall a member of the Commission appointed by it and may designate his successor. The recall of the President of the Commission will be effected at any such time on the request of either Contracting Party, provided that if the President shall have been elected in accordance with the method prescribed in the fourth, fifth and sixth paragraphs of Article 45 of the Convention for the Pacific Settlement of International Disputes, concluded at The Hague on October 18, 1907, no request for his recall may be made within a period of two years from the date of his election. Vacancies, from whatever cause, shall be filled as soon as possible in the manner hereinabove provided for the making of original appointments.

Members of the Commission shall receive an adequate honorarium during the time when they are engaged in the performance of duties relating to a case before

mission. Chacune des parties contractantes supportera ses propres frais et une part égale des frais de la Commission.

Article IV

Lorsque les parties contractantes se seront mises d'accord pour soumettre un différend à la procédure de conciliation, la Commission sera saisie sur requête adressée à son président par l'une des parties contractantes.

Sauf accord contraire, la Commission se réunira au lieu désigné par son président.

La Commission peut arrêter ses propres règles de procédure. A défaut de telles règles, elle suivra, autant que possible, la procédure prévue par les articles 18 à 34 inclusivement de la convention pour le règlement pacifique des conflits internationaux, conclue, à La Haye, le 18 octobre 1907.

La Commission présentera son rapport dans le délai d'une année à compter du jour où elle aura été saisie du différend, à moins que les parties contractantes n'abrègent ou ne prorogent ce délai d'un commun accord. Le rapport sera établi en trois exemplaires; un exemplaire sera remis à chaque gouvernement et le troisième, retenu par la Commission pour ses dossiers.

Les parties contractantes s'engagent à fournir à la Commission tous les moyens et facilités nécessaires pour son enquête et son rapport.

Après que le rapport de la Commission leur aura été soumis, les parties contractantes se réserveront le droit d'agir librement

them. Each of the Contracting Parties will bear its own expenses and one-half of the expenses of the Commission.

Article IV

After the Contracting Parties shall have agreed to submit a dispute to conciliation, the Commission shall proceed to the consideration of such dispute upon a request sent to its President by either of them.

The Commission shall meet, in the absence of an agreement otherwise, at the place designated by its President.

The Commission may frame its own rules of procedure. In the absence of such rules it shall follow in so far as practicable the procedure set forth in Articles 18 to 34, inclusive, of the Convention for the Pacific Settlement of International Disputes concluded at The Hague, October 18, 1907.

The Commission shall submit its report within one year after the date on which the case shall have been submitted to it, unless the Contracting Parties should, in common accord, shorten or extend the time limit. The report shall be prepared in triplicate, one copy shall be presented to each Government and the third retained by the Commission for its files.

The Contracting Parties agree to furnish the Commission with all the means and facilities required for its investigation and report.

The Contracting Parties reserve the right to act independently on the subject matter of the dispute after the report of the Commission

dans la question ayant fait l'objet du différend.

Article V

Les parties contractantes s'engagent à soumettre à l'arbitrage tout différend qui se serait élevé ou s'élèverait entre elles sur une prétention de nature juridique, à la condition qu'il n'ait pu être résolu par la voie diplomatique ou qu'il n'ait pas été réglé, en fait, à la suite d'un renvoi à la Commission permanente de conciliation constituée conformément aux articles II et III du présent traité.

Article VI

Les dispositions de l'article V ne pourront être invoquées dans tout différend dont l'objet

a. relève de la compétence exclusive de l'une ou l'autre des parties contractantes;

b. affecte les intérêts d'États tiers;

c. dépend du maintien ou touche au maintien de l'attitude traditionnelle des États-Unis d'Amérique dans les affaires américaines, communément connue sous le nom de doctrine de Monroe;

d. dépend de l'observation ou touche à l'observation des engagements assumés par la Suisse en conformité du Pacte de la Société des Nations.

Article VII

Le tribunal auquel seront soumis les différends d'ordre juridique

shall have been submitted.

Article V

The Contracting Parties bind themselves to submit to arbitration every difference which may have arisen or may arise between them by virtue of a claim of right, which is juridical in its nature, provided that it has not been possible to adjust such difference by diplomacy and it has not in fact been adjusted as a result of reference to the Permanent Commission of Conciliation constituted pursuant to Articles II and III of this Treaty.

Article VI

The provisions of Article V shall not be invoked in respect of any difference the subject matter of which

a. is within the domestic jurisdiction of either of the Contracting Parties;

b. involves the interests of third Parties;

c. depends upon or involves the maintenance of the traditional attitude of the United States of America concerning American questions, commonly described as the Monroe Doctrine;

d. depends upon or involves the observance of the obligations of Switzerland in accordance with the Covenant of the League of Nations.

Article VII

The tribunal to which juridical differences shall be submitted

sera constitué, dans chaque cas particulier, par les parties contractantes. Toutefois et sauf accord contraire, ce tribunal sera la Cour permanente d'arbitrage établie à La Haye par la convention pour le règlement pacifique des conflits internationaux, conclue le 18 octobre 1907. Les décisions relatives au tribunal feront l'objet, dans chaque cas particulier, d'un accord spécial, qui pourvoira, s'il y a lieu, à l'organisation du tribunal, définira ses pouvoirs, exposera la question ou les questions en litige et déterminera les questions à résoudre.

Cet accord spécial sera dans chaque cas conclu, pour la Suisse, conformément à la Constitution fédérale, et, pour les États-Unis d'Amérique, par le Président avec l'avis et le consentement du Sénat

shall be determined in each case by the Contracting Parties but shall, in the absence of other agreement, be the Permanent Court of Arbitration established at The Hague by the Convention for the Pacific Settlement of International Disputes concluded October 18, 1907. Decision as to the tribunal shall be made in each case by a special agreement, which special agreement shall provide for the organization of the tribunal if necessary, shall define its powers, shall state the question or questions at issue and shall settle the terms of reference.

Such special agreement shall, in each case, be made on the part of Switzerland in accordance with its constitutional law, and on the part of the United States of America by the President thereof, by and with the advice and consent of the Senate.

Article VIII

Le présent traité sera ratifié par la Suisse conformément à la Constitution fédérale et par le Président des États-Unis d'Amérique avec l'avis et le consentement du Sénat.

L'échange des ratifications aura lieu à Washington dans le plus bref délai possible et le traité entrera en vigueur le jour de l'échange des ratifications. Il demeurera en vigueur aussi longtemps qu'il n'aura pas été dénoncé sur avis d'une année donné par l'une des parties contractantes à l'autre.

En foi de quoi, les plénipotentiaires ont signé le présent traité,

Article VIII

The present treaty shall be ratified by Switzerland in accordance with its constitutional law and by the President of the United States of America by and with the advice and consent of the Senate thereof.

The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall come into force on the day of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated on notice of one year by either Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this

en deux exemplaires, chacun en langues française et anglaise, les deux textes faisant également foi, et y ont apposé leur cachet.

Fait à Washington le 16 février mil neuf cent trente et un.

treaty in duplicate in the French and English languages, both texts having equal force, and have hereunto affixed their seals.

Done at Washington the sixteenth day of February in the year one thousand nine hundred and thirty-one.

L. S. *(Sig.)* Marc PETER.
L. S. *(Sig.)* Henry L. STIMSON.

Annexe 15

Note des USA-Staatsdepartementes vom 11. Januar 1957

The Secretary of State presents his compliments to the Honorable the Minister of Switzerland and has the honor to refer to the Legation's note dated August 9, 1956, concerning certain shares in General Aniline and Film Corporation, an American corporation, held and owned by the United States under the Trading with the Enemy Act, and claimed by a corporation incorporated under the laws of Switzerland, Société Internationale pour Participations Industrielles et Commerciales S.A., hereinafter called Interhandel and the Swiss claim to the right to a release of this property because of the provisions of the Swiss-Allied Accord of May 25, 1946. The Swiss Government has requested arbitration or conciliation of the claim with respect to the property in question.

In the note under reference, the Government of Switzerland further requested that the *status quo* be maintained in respect of those shares pending arbitration or conciliation proceedings.

The United States Government deeply regrets that the Interhandel case and the interpretation of the provisions of the Swiss-Allied Accord have so long represented sources of disagreement between the United States and Switzerland. Over a period of many years the two Governments have on repeated occasions expressed their views on these subjects.

Mindful of the traditionally fruitful and friendly relations between the United States and Switzerland, the United States Government has given most serious consideration to the views expressed in the aforementioned note. This has involved a thorough and lengthy reexamination by this Government of the varied and complicated issues connected with the proposals of the Swiss Government. This reexamination has resulted in confirming the

views on this matter heretofore communicated to the Swiss Government on repeated occasions since 1947.

The United States Government regrets therefore to inform the Government of Switzerland that for reasons set forth in detail in the enclosed memorandum, it cannot agree to the suggestion of the Government of Switzerland that the said matter be referred to arbitration, on the ground that the matter does not involve a dispute falling withing the scope of the obligation to have recourse to arbitration. Likewise as to the suggestion of conciliation, the United States Government regrets that it cannot accede to this suggestion for the reasons set forth in said memorandum. In view of this conclusion, the United States Government also regrets to state that it cannot agree to the request of the Government of Switzerland that the *status quo* be maintained in respect to the assets of Interhandel located in the United States.

The United States Government recalls its notes of May 27, 1953 and June 7, 1955 to the Government of Switzerland, in which the Attorney General of the United States expressed the willingness to negotiate with the parties a settlement of the case in the United States courts. The Attorney General remains willing to enter into direct negotiations with the parties to the suit or their duly authorized representatives, in the light of the status of the suit, for a settlement of the case which will protect the legitimate interests of all parties concerned.

Enclosure:

Memorandum.

Department of State,

Washington, January 11, 1957.

Memorandum des USA-Staatsdepartementes vom 11. Januar 1957

The Government of Switzerland has requested arbitration or conciliation, pursuant to the Treaty of February 16, 1931 or the Swiss-Allied Accord of May 25, 1946, of the question of its right, under the Accord of 1946, to the release of certain shares in General Aniline and Film Corporation, an American corporation, held and owned by the United States under the Trading with the Enemy Act and claimed by a Swiss corporation, Société Internationale pour Participations Industrielles et Commerciales S.A., hereinafter called Interhandel.

I. *The Treatment of the Case in the United States Courts*

The matter of the ownership of the shares in question has been the subject of proceedings, now concluded after a full and fair hearing, in the competent courts of the United States.

The shares were vested by this Government in 1942, under the Trading with the Enemy Act, as the property of I.G. Farben of Germany. In 1948, Interhandel, a Swiss holding company, brought a suit for the return of the shares against the Attorney General as successor to the Alien Property Custodian. The issues were whether Interhandel was an enemy or was enemy-tainted under United States law, whether Interhandel owned the property, and whether Interhandel had participated in a conspiracy with the Sturzenegger banking firm in Basle and I.G. Farben to cloak properties around the world, in the interest of I.G. Farben, a German concern, and to allow Farben to control such properties.

In the course of proceedings in intervention, begun by minority stockholders of Interhandel and carried to the Supreme Court of the United States, it has been held that any dismissal of the complaint of Interhandel would leave unaffected the rights of minority, non-enemy stockholders.

In 1949, the District Court of the United States for the District of Columbia, in which the suit was pending, ordered that the Department of Justice exhibit to Interhandel all its records, and that Interhandel reciprocally exhibit to the Department of Justice the Interhandel records and the Sturzenegger records controlled by Interhandel. These Interhandel and Sturzenegger records had been examined by the Swiss Compensation Office in an investigation of the German character of Interhandel. Interhandel thereupon examined and photostated all the records of the Department of Justice, consisting of over 20,000 documents. When, however, the time came for exhibition of the Interhandel and Sturzenegger records, the Sturzenegger records were seized, by order of the Swiss Government, under the Swiss bank secrecy and economic espionage laws.

Thereafter, many individual papers were ordered to be released, but others of an unknown number, as well as the books of account ordered produced, were continued under order of seizure. This order, now withdrawn because the litigation in the United States has ended, was many times reaffirmed by the ministries involved and by the Swiss Federal Council, the last instance having occurred on September 5, 1956.

The papers of Interhandel itself were purported to be exhibited to the Department of Justice, but it developed thereafter that several thousand had been withheld and that the books of account exhibited to the United States Department of Justice were a different set from the original books examined by the Swiss Compensation Office. The Basler Nachrichten of March 29, 1956, reports an admission by the management of Interhandel that the books of the company were kept in a preliminary version and that, while this version was available to the Swiss Government, the American Department of Justice was shown only a final version of the books, which omitted certain items, though the United States Court had

ordered Interhandel to produce the documents and books which had been examined by the Swiss Government.

The eventual dismissal of Interhandel's complaint was based on the failure to produce the Sturzenegger papers. The Court originally set the time for production of the papers as July 1949. When after lengthy proceedings it finally appeared that the papers would not be produced, the Court ruled, in 1953, that the suit by Interhandel must be dismissed with prejudice for the failure of the claimant to produce the required papers. 111 Fed. Sup. 435. The Court held that Interhandel had shown itself unable to comply with the fundamental rules of the American judicial system under which the facts must be fully developed and revealed in order that justice be done. It was held irrelevant that Interhandel was prevented by the orders of its Government from producing the papers. The Court noted that it was not sitting in judgment on the secrecy laws of Switzerland; that neutrals as well as citizens, governments as well as individuals, were required to comply with the rules of procedure of United States courts, which are designed to give full discovery of the facts to the adverse party in the interest of fair and just settlement of disputes.

To adopt any other course, the Court held, "would permit a foreign government to release only the documents favorable to one party and to retain or destroy the rest" and "might defeat the purposes of the Trading with the Enemy Act by permitting a foreign national to bring suit in this country to recover property seized under the Act and then seek shelter under the protective cloak of its government when discovery is sought". The Court concluded that "due process would be denied if a foreign government were to be allowed to frustrate the procedures established in the Courts of the United States".

The United States Court of Appeals for the District of Columbia unanimously affirmed this decision and the Supreme Court of the United States has refused to review the case further. 225 F. 2d 532, 350 U.S. 937.

In June 1955, when the Court of Appeals affirmed the decision of the District Court, it granted Interhandel still another extension of time of six months to produce the records, and this extension was prolonged during the Supreme Court's consideration of the matter. The last extension of time expired in August 1956, and the case now stands dismissed without any qualification.

United States courts are known for their independence and readiness to do justice at the suit of all, regardless of whether the suitor is an alien or whether the United States Government is the party against whom complaint is brought. These courts have a continuing preoccupation to maintain the principles both of American constitutional law and of international law that property may not be taken from citizen or alien without due process of law

and that for every taking claimed to be illegal there must be a full remedy.

The course of the proceedings in this case has shown the solicitude of the laws and of the courts of the United States for the rights of Interhandel. By Sections 9 *(a)* and 32 of the Trading with the Enemy Act, Congress has given two remedies to any person claiming that he is the owner of vested property and that he is not enemy-tainted. One is the right to file a claim with the administrative authorities. The second remedy, heard *de novo* by the courts without any prejudice by a failure in the first remedy, is the right to litigate in court. Interhandel has had the benefits of both remedies. Both its claim and suit have been dismissed.

The remedy thus provided by Congress in the Trading with the Enemy Act has been held by the Supreme Court of the United States to be full and adequate and in compliance with the principles of the Constitution mentioned above. *Stoehr* v. *Wallace*, 255 U.S. 239. The rules of procedure in the United States courts regarding disclosure of information are an integral part of the judicial remedy afforded by the United States, and are in compliance with the standards of international law for a fair hearing. Interhandel has received due process of law. The claim of Interhandel to the shares in question has thus been defeated.

II. *The Claim of the Swiss Government*

The Claim which is being made by the Swiss Government is stated to be based upon the Allied-Swiss Accord, signed at Washington on May 25, 1946, and known as the Washington Accord. Arbitration or conciliation is requested under that Accord or under the Treaty of February 16, 1931.

A. *The Claim Under the Washington Accord*

In respect to the Washington Accord, it has been asserted by the Swiss Government that a decision by the Swiss Compensation Office in 1947, affirmed by the Swiss Authority of Review in 1948, to the effect that Interhandel is a Swiss concern and not German owned or controlled, was a decision pursuant to its authority under the Washington Accord of May 25, 1946, and therefore binding on the United States to release Interhandel assets located in the United States, under Article IV of the Accord. Article IV provides that "the Government of the United States will unblock Swiss assets in the United States".

The United States Government cannot accept this argument. The decisions adverted to were not under the Accord but were rather decisions by Swiss tribunals under a Swiss decree of February 16, 1945. Moreover, even had the decisions been made under the Accord, they would necessarily have had to be limited in application to Interhandel's assets in Switzerland and would have had

no effect on the General Aniline and Film shares since those shares are property in the United States, not in Switzerland. The authority of the Swiss Compensation Office and of the Authority of Review under the Accord did not encompass German assets located outside Switzerland, being limited to such assets located in Switzerland. Lastly, the obligation to unblock in Article IV refers to the lifting of United States Treasury controls on admittedly Swiss assets and not to the divesting of property vested by the Alien Property Custodian as German enemy property, which has always been fully understood to be a wholly different matter.

1. The proceedings before the Swiss Compensation Office and the Authority of Review were not proceedings under the Accord and thus could not be binding on the Joint Commission established pursuant to that Accord or on the Allies. The proceedings were purely Swiss, before a Swiss tribunal on a Swiss matter—a blocking of Interhandel by Swiss authorities under a Swiss decree.

The decisions of the Swiss Compensation Office and of the Authority of Review were based on Interhandel's complaint. This complaint, which was instituted even before the Washington Accord was signed, was against a domestic, Swiss blocking of the assets of Interhandel, in October and November 1945, under a Swiss decree of February 16, 1945. It has been claimed that the decision of the Swiss Authority of Review, when it affirmed the decision of the lesser body, was one under the Washington Accord, and in support of this it has been claimed that the sole purpose of the Authority of Review is to hear disputes arising under the Accord. However, by the Swiss decree of December 27, 1946, the Authority was given jurisdiction over purely Swiss matters, including appellate jurisdiction over the decisions of the Swiss Compensation Office in respect of blockings under the Swiss decree of February 16, 1945. Thus, when the Authority of Review on January 5, 1948, affirmed the decision of the Swiss Compensation Office, it was not acting under the Accord but rather as an entirely Swiss body exercising jurisdiction granted by Swiss law to affirm a decision by another Swiss body under a Swiss law—the 1945 blocking decree.

The decision makes this clear. The title of the decision states that the matter involved, is Interhandel's appeal against the 1945 blockings. In the opinion, the Authority concerns itself only with whether the facts warrant the blocking of Interhandel under the 1945 blocking decree. Furthermore, the judgment is only that the Swiss blocking is rescinded retroactive to the date it was imposed, October 30, 1945. This date was long before the Washington Accord was negotiated. The fact that the Joint Commission under the Washington Accord was invited to join in the proceeding and refused to do so did not convert the decision into a decision under the Accord. The Joint Commission made it clear that the Interhandel case before it under the Accord was a separate matter, still

on its agenda and that the decision of the Authority could have no effect on the case under the Accord. In its letter of December 19, 1947, declining the invitation as inappropriate under the Accord, the Joint Commission said:

> "The case in question is still under consideration by the Joint Commission under the terms of the Washington Accord and as yet the Commission has not disagreed with any decision of the Swiss Compensation Office and thus there seems no basis for the Joint Commission to appear before the Commission de Recours at this time as provided in Article III of the Annex to the Washington Accord.
>
> A majority of the Joint Commission would prefer that the case of I.G. Chemie [Interhandel] be postponed by the Commission de Recours until consideration of the matter by the Joint Commission has been concluded. If, however, this wish cannot be granted, a majority of the Joint Commission states that the appeal presented by the aforementioned firm can, naturally, have no effect on any proceedings, undertaken pursuant to the Washington Accord, on the matter by the Joint Commission."

The Authority of Review in its opinion recited the contents of this letter from the Joint Commission. While the Authority could not agree to the postponement of its decision, it did not suggest that its decision would affect the issue under the Accord. It rather went on to write a detailed opinion devoted only to the 1945 Swiss blocking and the decree of February 16, 1945. The Authority by this opinion recognized that it was making a decision on a Swiss blocking case and not one under the Washington Accord. The decision, therefore, cannot be considered to bind anyone under the Washington Accord.

2. Moreover, a decision of the Authority of Review under the Accord could have no effect on any property in the United States such as these shares, for the Accord (except for Article IV thereof) relates only to German property in Switzerland and the authority of the Swiss Authority of Review is as a consequence limited to German property "in Switzerland". This is borne out by the words of the Accord, its purpose, the record of the negotiations and its construction by the parties.

In the entire history of the negotiations of the Washington Accord there was never a suggestion by anybody that the Swiss Compensation Office, which the Accord provided would deal with German assets in Switzerland, or the Swiss Authority of Review should have any jurisdiction regarding assets, German or otherwise, not located in Switzerland. Neither was there any suggestion that either of these bodies should have any jurisdiction in matters arising under Article IV of the Accord.

The negotiations were between representatives of the United States, United Kingdom, and France on the one hand, representing Allied countries entitled to seek reparations from German assets in Switzerland, and representatives of Switzerland on the other. The concern of all, as is about to be demonstrated, was only German assets in Switzerland. It was in this connection that provision was made in Article I of the Accord for the functions of the Swiss Compensation Office with respect to German assets in Switzerland. Article IV, though included in the Accord, dealt with a purely bilateral matter between the United States and Switzerland, namely the unblocking of Swiss assets in the United States. It was not germane to the scheme represented by the rest of the Accord, but related to an entirely separate matter, and is discussed separately below.

That only German assets located in Switzerland were the concern of the negotiators and their Governments is clear. The first two articles demonstrate this limitation. By Article 1, paragraph 1, the Swiss Compensation Office was to investigate and liquidate "property of every description in Switzerland owned or controlled by Germans in Germany", and by paragraph 2 the German owners were to be indemnified "for the property which has been liquidated in Switzerland pursuant to this Accord". The "proceeds of the liquidation of property in Switzerland of Germans in Germany" were to be divided equally between the Allies and Switzerland. Art. II (1).

The Accord did not deal with the title to German property in the United States, although in Article IV it provided for the unblocking of Swiss assets in the United States. Its subject matter as to title was confined to German property in Switzerland.

In the Accord, in the Annex dealing with procedures and in the letters simultaneously exchanged, there are repeated and numerous references confirming that the property which is the subject of the Accord is German property in Switzerland. E.g., pages 42, 57, 59, 66 of the plenary sessions of the negotiators. The chief Swiss negotiator stated, "You ask the German assets in Switzerland for reparations and we ask the German assets in Switzerland for covering at least partially our claims against Germany" (pages 64-65 of the plenary sessions).

The preamble, illuminating the entire purpose and scope of the Accord, opens with words confirming that the outer limits of the Accord are German property in Switzerland. It is said that the Allies have "claimed title to German property in Switzerland by reason of the capitulation of Germany and the exercise of supreme authority within Germany", that the Swiss Government was unable to recognize this claim but desired to contribute to the reconstruction of Europe and that in these circumstances the parties had arrived at the Accord.

The Swiss Government has itself acted on the basis that German property not within Switzerland is not within the Accord, by freeing from restrictions under the Accord such German assets as were administered from Switzerland but were not actually located there, on the ground that "the Washington Accord covers only assets in Switzerland". (Feuille Fédérale, 1949, p. 774-5.)

It must be recognized, too, that the American negotiators of the Accord were not authorized to make an Accord which would affect rights to property in the United States, either vested or subject to vesting as enemy property. Vested property is not only subject to the power of Congress as such but is also subject under the Constitution to Congressional control because it is property of the United States. The disposition of such property was and is solely for Congress, which had then by statutes, since repeated and confirmed, expressed its will as to the release of property deemed enemy property under the standards of United States law. There have been set out above, in Part I, the methods permitted by Congress for the release of property vested as enemy under the Trading with the Enemy Act. These methods were exclusive and could not be varied by negotiators in the Executive Branch, who as to vested property, were bound by the Constitutional provision that only Congress and not the Executive may dispose of property of the United States. The negotiators were thus not authorized to make, and did not make, any agreement in the Accord affecting property vested in the United States.

Other materials, which need not now be specified in detail, confirm that the Accord was in terms and in its construction limited to German assets in Switzerland. In its origin it was intended to be so limited. The genesis of the Accord lies in the Inter-Allied Declaration of January 5, 1943, and in Resolution VI of the Bretton Woods Conference of July 1944. By these declarations the Allies stated their intention to undo acts of looting by the enemy and to take possession of enemy assets in neutral countries. In the Potsdam Protocol of August 2, 1945, it was agreed that the Allies other than the U.S.S.R. were in part to satisfy their reparations claims from German external assets in neutral countries. The Allied Control Council for Germany was directed to take control and power of disposition of German external assets "not already under the control of the United Nations" (Part II (B) (18)). Accordingly, the Control Council enacted its Law No. 5, claiming title to German external assets. The effectuation of this law was the stated purpose of the negotiations, requested by the Allies, which culminated in the signing of the Accord. The Allies already had taken control over German property within their own borders and there was no need for any negotiations or for any Accord with Switzerland with respect to such property. There was, however, need for an Accord which would recognize the Allied rights to the German property in Switzerland.

The Paris Reparation Agreement of January 14, 1946, was the final step in the chain of international events preceding the Washington Accord. By Article 6A of the Agreement the signatory powers agreed to retain the German assets within their borders. Further, they authorized France, the United Kingdom and the United States to negotiate with Switzerland for the disposition of German assets in Switzerland, and with the other neutrals for the disposition of German assets in those other countries. Article 6C provides:

> "German assets in those countries which remained neutral in the war against Germany shall be removed from German ownership or control and liquidated or disposed of in accordance with the authority of France, the United Kingdom and the United States of America, pursuant to arrangements to be negotiated with the neutrals by those countries. The net proceeds of liquidation or disposition shall be made available to the Inter-Allied Reparation Agency..."

It was pursuant to this authorization that the three named powers negotiated the Washington Accord with Switzerland and in Article V of the Accord the negotiating powers noted that they signed on behalf of the governments signatory to the Paris Reparation Agreement. The limitation on the authority of the three powers bound them to seek only to gain control of German assets in the neutral countries, on behalf of the United Nations who are members of the Inter-Allied Reparation Agency. The three powers had no authority to negotiate with respect to assets outside Switzerland.

Accordingly, the powers represented in the Inter-Allied Reparation Agency have declined to accept the Swiss Government's position on the Washington Accord. On January 21, 1949, the Assembly of the Inter-Allied Reparation Agency, comprising all the powers signatory to the Paris Reparation Agreement, having been informed of the Swiss Government's arguments to the contrary denied that the argument had any validity. The resolution of the Assembly reads, in part, as follows:

> "CONSIDERING that the Washington Agreement is clearly limited in scope to apply solely to German assets located in Switzerland, and that its language demonstrates that the negotiating powers recognized that there was no authority vested in them to bind Governments Members of the Inter-Allied Reparation Agency, in a way which would affect the respective rights of those Governments over assets within their own jurisdiction;
>
> CONSIDERING therefore that the decisions of the Joint Commission cannot be binding or have extraterritorial effect on assets within the jurisdiction of Governments Members of the Agency;"

Individual governments, including those of France and Belgium through their courts, have taken a similar position. Cour d'Appel de Colmar, France, May 31, 1949; Cour de Cassation, Belgium, September 17, 1953, 141 Pasicrisie Belge 1. The opinion of the Belgian court, the highest court of that country, states:

> "The Washington Accord relates only to German assets located in Switzerland. Its terms demonstrate that it is entirely inapplicable to assets located in the territory of any of the powers signatories to the Accord, and it has no bearing upon measures which such power may deem appropriate to take with regard to those assets.
>
> The decision of the said Joint Commission therefore, does not bind the Belgian Government or the Belgian courts as concerns the execution of measures in the sequestration of the assets of the Aeroxon Corporation located in Belgian territory.
>
> In this respect, the place where plaintiff's shares are located is irrelevant..."

3. Proceeding from the contention, which, as indicated above, the United States does not accept, namely, that the decision that Interhandel is Swiss was made under the Accord and therefore binds the United States, the Swiss Government assumes that, Interhandel being Swiss, its American assets are Swiss. It then contends that under Article IV of the Washington Accord they are required to be released.

Article IV (1) of the Accord provides:

> "The Government of the United States will unblock Swiss assets in the United States. The necessary procedure will be determined without delay."

The contention, as stated in the earlier notes of the Swiss Legation, is apparently that by this article the United States undertook to "release" or "liberate" any "Swiss" assets such as these, claimed to be Swiss though vested in the United States as enemy.

The United States did not accept such an obligation. For one thing, it would have been beyond the powers of the negotiators. Vested property is property of the United States and can be disposed of only by Congress, whose will is expressed in the Trading with the Enemy Act. In 1946, at the time the Accord was being negotiated, Sections 9 and 32 of that Act had already expressed Congress' intention with respect to the return of property vested as enemy. Only those who proved themselves to be non-enemies under Section 9 or to be only technical enemies such as persecuted persons under Section 32 could obtain a return of vested property. Thereafter, in 1948, the Congress by Section 39 confirmed that there was to be no return of property deemed to be German. These dispositions of law governed the negotiators for the Accord. An Agreement to release property vested as enemy, such as the Government of

Switzerland now contends was made by the Accord, was thus beyond the executive power as an encroachment upon the legislative powers of Congress. It could therefore not be made and it was not purported to be made.

The obligation which was undertaken by the United States under Article IV of the Accord was merely to lift or remove the controls on all recognized Swiss property then maintained by the United States Treasury Foreign Funds Control under Executive Order No. 8389. That the wholly different set of laws and procedures applicable to enemy property under the Trading with the Enemy Act was no part of this obligation was fully understood by all parties at the time of the negotiation.

The reason for this was the great difference between freezing of foreign property—blocking and unblocking—and vesting of enemy property. The foreign funds controls had as their purpose the prevention of enemy advantage from foreign owned assets. Their means was an immobilization of property, without any taking of title or seizure, and a prohibition on dealings without Treasury license. The administering agency was the Treasury Foreign Funds Control, and the method of the release of the controls was the grant of a license, either general or special, in the discretion of the Secretary of the Treasury.

The system for enemy property was another thing entirely. Its purpose was the seizure of enemy property in the beneficial interest of the United States, and its means was a vesting which transferred title to the United States. The administering agency was the Alien Property Custodian (later the Attorney General), and the method of release was an administrative claim before the Attorney General and, if that were denied, a suit in the courts under Section 9 *(a)* of the Trading with the Enemy Act.

The recognized vocabulary descriptive of the Treasury foreign funds was "block" and "blocking", "freeze" and "freezing", for the imposition or existence of the controls, and "unblock" or "defrost" for their lifting or removal. Thus, agreement to the lifting of the controls in what became Article IV was requested in a Swiss letter of April 11, 1946, asking for an end to "freezing". To this request the chief American negotiator responded on April 12 that when the other issues were settled, the United States would discuss "procedures for the unfreezing of legitimate Swiss assets in the United States". The actual lifting was expressed in Article IV of the Accord as an obligation to "unblock".

On the other hand, the recognized vocabulary appropriate for the enemy property program was "vesting" and "divesting" of enemy or German property. The use of the term "Swiss assets" precluded any thought of divesting, for property was vested only when it was deemed to be enemy property, and divesting took place not by executive action but on findings made in an administrative claim proceeding or by the court in a lawsuit. The terms "unblock"

and "Swiss assets" were thus a complete negation of any thought of divesting of enemy assets.

It is clear that the negotiators for the Government of Switzerland, who had great experience in these matters, understood the words used in the sense indicated above. The record of the negotiations discloses that the words "unfreeze" and "unblock", "blocking" and "freezing" were used interchangeably by the Swiss negotiators, and moreover used to refer to Treasury controls.

In an early meeting the chief negotiator for Switzerland said (Meeting of March 18, 1946, p. 29):

> "As far as legally acquired property which came to us is concerned, our attitude is identical with that taken by the United States at the time of the introduction of the 'freezing' and which was defined as follows: 'We have to protect those who have faith in the United States and invested their assets here'. It is strange, indeed, that the Swiss assets which had been blocked with this end in view cannot now be released, precisely because we cannot stoop to observe an attitude which would be the very negation of the American principle which I have quoted." (Plenary Meeting of March 18, 1946, p. 29.)

The speaker here was not only using "blocked" and "freezing" as referring to the United States Treasury foreign funds controls but he was showing an intimate knowledge of the origins and even the rationale of those controls, matters which are in all respects utterly different from the program for the vesting of enemy property.

Other instances in which the chief negotiator for Switzerland repeatedly expressed his concern, in the course of the negotiations for the Accord, over the blocking and freezing of Swiss assets, using the words interchangeably, are to be found at pages 21, 30, 44, 48, 53 of the record of the plenary sessions and in the letters from Minister Stucki of April 17 and 24, 1946. When the matter was discussed in the Swiss Parliament it was so clear that only Treasury controls were being lifted that the totals of the Swiss assets involved were stated as reported by a United States Treasury publication on the results of its freezing controls. Debates, Nationalrat, June 26, 1946, p. 403.

There likewise was no misunderstanding on the part of the United States negotiators, who could not have so ignored the provisions of law stating the exclusive means for the divesting of property vested as enemy.

The Swiss Government has long recognized that the obligation of Article IV to unblock Swiss assets was implemented in exchanges of letters between Secretary of the Treasury Snyder and the Chief of the Federal Political Department, M. Petitpierre, on November 22, 1946, and between Counsellor Dr. Reinhard Hohl and Mr. James H. Mann, United States Treasury Representative, on November 25, 1946. Feuille Fédérale, 1949, 776-7.

In the letter from Dr. Hohl it is said:

> "It was understood throughout the discussions that the arrangements provided for in the foregoing and in the letter [of Secretary Snyder] were designed only to meet practical operation problems and do not in any way alter the status under the *Trading with the Enemy* Act, as amended, or Executive Order No. 8389, as amended, of enemy assets situated within the United States and held through Switzerland."

This was a clear reference to Interhandel, which is precisely such a case.

By the agreements of November 1946 the parties recognized that enemy property, whether vested or subject to vesting, was outside the obligation to unblock. Thus there was agreement that property, though claimed to be Swiss, was not eligible for certification by Switzerland for unblocking if the American authorities deemed it to be enemy. See also Feuille Fédérale, 1946, 131; Feuille Fédérale, 1949, 777.

There is much further evidence to support the conclusion that the obligation to "unblock Swiss assets" has no bearing on the vested enemy property claimed by Interhandel. For instance, it appears that there is no reference in the record of the negotiations either to the Interhandel case, the largest case of vested enemy assets, or even to vested enemy assets generally. Moreover, vested enemy assets were administered by the Department of Justice, a different agency from the Treasury. In the very week of the signing of the Accord while some of the Swiss negotiators met with Treasury officers to discuss the implementation of Article IV, i.e., the provisions which eventually became the Snyder-Petitpierre letter, a somewhat different group of Swiss representatives met with the Department of Justice to discuss a joint Swiss-American investigation of Interhandel, for the purpose of determining procedures to obtain evidence that could be used by the United States in the defense of the suit which it was expected Interhandel would bring against the American authorities under the American Trading with the Enemy Act, in an attempt to recover property of Interhandel already vested by the United States as enemy property. It was recognized by all that any unblocking in the United States pursuant to Article IV was an entirely separate matter from the vesting of the assets in the United States claimed by Interhandel.

The distinction between "block" and "unblock" and "freeze" and "unfreeze" Swiss assets on the one hand, and "vest" and "divest" enemy assets on the other, was and is as great as can be achieved by the use of technical words, deliberately chosen and well understood. Consequently the contention that the United States was committed by Article IV to divest itself of General Aniline and Film shares vested as German is without merit on

two separate grounds. First, the term "unblock" shows an exclusive concern for the lifting of Treasury foreign funds controls and has no relationship to any divesting or return under the procedures appropriate for property vested as enemy. Secondly, even as to an obligation to unblock, this obligation ran only to property admittedly Swiss, and not to property subject to vesting as enemy property.

4. In 1948, this Government, on request of the Swiss Legation, completely reexamined its views on this matter. This Government then reaffirmed to the Swiss Government its position as follows:

> "The question of the return of the property formerly owned by I.G. Chemie [Interhandel] and now vested under the Trading with the Enemy Act is wholly beyond the scope of the Washington Accord of May 25, 1946, and is governed solely by the statutes of the United States. The question is far beyond any permissible construction of the Accord and is therefore not subject to the arbitration clause of the Accord."

These views are again reaffirmed. No claim of a denial of justice in the court proceedings has been asserted by the Government of Switzerland on behalf of its national, Interhandel, nor do any grounds exist for the assertion of such a claim. As stated, there has been full justice and due process of law. The Government of Switzerland has no ground in this respect to request arbitration.

In so far as the claim made is grounded on the Washington Accord, there was no agreement and hence there is no obligation to arbitrate contentions which, as demonstrated, are beyond any permissible construction of the terms of the Accord. The assertion of a claim said to be based upon an international agreement, which clearly has no relation to the claim, cannot give rise to an obligation to arbitrate.

As stated above, under Article IV, Section 3, of the Constitution of the United States only Congress has the power to dispose of property belonging to the United States, and the negotiators of the Accord, in the Executive Branch, had no authority to make (even if they had purported to, which as pointed out they did not) any agreement to transfer property located in the United States and owned by it, property whose disposition had at that time been specifically provided for by statutes enacted by the Congress. Likewise, these negotiators had no authority, no Congressional consent having been given, to agree to submit a question to arbitration which could result in an arbitral decision that the United States should transfer certain of such property to another. Therefore, it was impossible for the negotiators to have agreed, for the United States, that the instant contentions of the Swiss Government, or any other questions affecting the release of property vested as enemy in the United States, were arbitrable matters under the Washington Accord.

The Government of the United States therefore cannot agree to the suggestion of the Swiss Government that the said matter be referred to arbitration under the Accord, on the ground that the matter does not involve a dispute falling within the obligation under the Accord to have recourse to arbitration.

B. *The Claim Under the 1931 Treaty*

As a matter wholly apart from the Accord, the Swiss Government also requests arbitration of "the interests in question", under the Treaty of February 16, 1931. This request would put within the competence of arbitrators the power to dispose of property within the United States, as is here involved. A dispute involving title to such property is not subject to arbitration. Article VI of the Treaty specifically provides that:

> "The provisions of Article V [the arbitration provision] *shall not be invoked* in respect of any difference the subject matter of which
>
> *(a)* is within the domestic jurisdiction of either of the Contracting Parties, ..." (Emphasis supplied.)

The decision on what questions are within the domestic jurisdiction is, under the Treaty, made unilaterally, by each party for itself, without any review or contest by others, who cannot be as fully appreciative of the nature of the domestic jurisdiction of a party as that party itself. Message concerning the ratification of the Treaty of February 16, 1931, Feuille Fédérale, 1931, I, p. 961; Prof. M. Wehberg, *Die Schiedsgerichts- und Vergleichsvertraege der Schweiz*, (1942) Die Friedens-Warte 49, 63; compare 2 Foreign Relations of the United States, 1929, p. 4; J. W. Garner, *The New Arbitration Treaties of the United States*, 23 Am. Journal of International Law, 595, 598 (1929); see also 2 Oppenheim, International Law (7th ed. 1948), p. 31 and note 4.

The disposition of title to property located within a country is manifestly within the domestic jurisdiction of that country unless the country involved has by sovereign act removed the matter from its exclusive domestic jurisdiction. The United States has not removed the matter of the ownership of these shares in General Aniline & Film Corporation from its domestic jurisdiction. Neither by the Washington Accord nor any other act has the United States consented that any body other than its courts should determine the ownership of these shares. It has given an ample remedy in its courts, and the remedy has been fully utilized by Interhandel.

Now to agree that any body other than the United States courts acting under United States statutes has jurisdiction to rule on the ownership of the property here in question, would be to override and ignore the statutes enacted by Congress. These statutes provide the exclusive method, forum and standards for the return of pro-

perty vested in the United States under the Trading with the Enemy Act. Under the Constitution of the United States as noted above the Executive Branch cannot dispose of property of the United States. It can only be disposed of by the Congress through appropriate statutes. It has already been pointed out that the negotiators for the Accord did not seek to bring about, and did not bring about, such an unconstitutional result. This Government could not now do what the negotiators were unable to do and did not do. As a consequence the United States deems the ownership of these shares is a matter "within the domestic jurisdiction of the United States" within the meaning of the Treaty, with the result that the arbitration provisions of the Treaty may not be invoked.

The comments made above regarding the request for arbitration also compel the conclusion that the interests of our mutual relations would not be furthered by resorting to conciliation under the 1931 Treaty. The processes of investigation and reporting by a conciliatory group upon the nature of a claim and its basis where there has been obscurity or lack of clarity therein, enabling the parties better to compose differences which have been based upon such obscurity or lack of clarity, are of course the essence of the provisions of the 1931 Treaty relating to conciliation. In that situation the parties nevertheless retained "the right to act independently upon the subject matter" even after the report is made. The instant case, however, does not represent that kind of situation. Rather, it is a case where the position of the Government of Switzerland and its basis have long been fully understood and the position of the Government of the United States of America has been communicated fully to the Swiss Government. Consequently, it is not the type of situation in which there could be any advantage to be gained from further investigation and reporting. Furthermore, such processes could not, for the reasons set forth above, lead to subsequent arbitration which, under the 1931 Treaty, appears to be one of the objectives of the process of conciliation.

The Swiss Government has not set forth a claim falling within the scope of the 1946 Accord, and the question of title to the shares being a matter within the domestic jurisdiction of the United States, has been finally settled by the competent courts of the United States in proceedings the propriety of which is not questioned. Under the circumstances, and in the light of the constitutional and statutory limitations regarding disposition of property of the United States referred to above, conciliation proceedings could not achieve the objectives of the conciliation provisions of the 1931 Treaty and would necessarily be unproductive. Therefore, the request for conciliation must be respectfully declined.

The position of this Government on this claim is based upon careful and repeated reexamination of the claim over a period of eight years. On each occasion the matter has been raised by the Government of Switzerland, a careful reexamination of the question

has taken place. In each instance the conclusion was the same. This Government again addressed itself to the problem, following receipt of the note of August 9, 1956, and has concluded that no change in its previously declared position is justified.

C. *The Request for the Maintenance of the Status Quo*

There remains for discussion the request for maintenance of the status quo of the assets involved, pending arbitration or conciliation. The note of August 9, 1956, suggests that principles of good faith, which underlie the authority of the International Court of Justice to take appropriate precautionary measures, require that this Government maintain the status quo. We take this request to be one to refrain from making any sale of the General Aniline and Film shares to which claim is made.

The request for maintenance of the status quo falls with the request for arbitration, for the principles above discussed are equally applicable to the request for maintenance of the status quo. In the instant case, moreover, the request for maintenance of the status quo is in fact a request for a change of the status quo. To refrain from making a sale of the assets would prevent the effectuation of the laws of the United States which, once the litigation in the courts reaches a prescribed stage, permit and require a sale of the assets. A sale is desirable in the national interest of the United States, based in part upon considerations of national defense. Only the courts of the United States have jurisdiction to stay such a sale of property located in the United States; such jurisdiction is sovereign and exclusive.

Annexe 16

INTERHANDEL.

Note remise le 1er octobre 1957 au Département d'État

L'Ambassade de Suisse présente ses compliments au Département d'État et a l'honneur de revenir sur sa note du 11 janvier 1957, accompagnée d'un mémorandum, concernant l'affaire de la Société internationale pour participations industrielles et commerciales S. A., à Bâle (Interhandel). Cette note répondait à une note suisse du 9 août 1956. L'Ambassade est chargée par le Conseil fédéral de porter ce qui suit à la connaissance du Département d'État.

Le Conseil fédéral prend acte avec regret que le Gouvernement des États-Unis, après s'être refusé à négocier avec lui en vue de rechercher si un arrangement était possible, s'oppose à ce que le

litige soit soumis au Tribunal arbitral institué par l'article VI de l'Accord de Washington ou à une procédure de conciliation ou d'arbitrage, telle que la prévoit le Traité conclu le 16 février 1931 entre la Suisse et les États-Unis.

Il constate donc que tous les moyens de résoudre le litige ont été épuisés sans succès par la Suisse.

Dans ces conditions, il ne reste au Conseil fédéral d'autre possibilité, en se fondant non seulement sur l'Accord de Washington du 25 mai 1946 mais aussi sur les règles du Droit international général, que de saisir du différend la Cour internationale de Justice à La Haye, dont les deux Gouvernements ont reconnu la juridiction obligatoire conformément à l'article 36, chiffre 2, de son Statut.

En conséquence, le Conseil fédéral a pris la décision de demander à la Cour de se prononcer sur le fond du litige et, subsidiairement, sur l'obligation pour les États-Unis de soumettre ce litige soit à la juridiction internationale, soit à un arbitrage, soit encore à une procédure de conciliation.

Le Gouvernement américain paraît avoir déjà pris des dispositions pour la vente de 75% des actions de la « General Aniline and Film Corporation » appartenant à nIterhandel et semble avoir l'intention de procéder à cette vente avant même que le litige ait été résolu. Aussi le Conseil fédéral demandera-t-il également à la Cour internationale de Justice d'indiquer toutes mesures conservatoires en vue de la sauvegarde des droits qui seraient éventuellement reconnus à la Suisse ou à ses ressortissants et, en particulier, il priera la Cour de demander au Gouvernement américain de ne pas vendre les actions de la « General Aniline and Film Corporation » avant qu'une décision ait été rendue sur le fond du litige.

Le Conseil fédéral informe le Gouvernement des États-Unis qu'il a désigné comme agent auprès de la Cour internationale de Justice M. le Professeur Georges Sauser-Hall et comme co-agent M. le Professeur Paul Guggenheim, tous deux à Genève, et qu'il les a chargés d'adresser

une requête introductive d'instance auprès de la Cour internationale de Justice.