

Kopie für den Rechtsdienst des EPD, mit Beilage

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An die Handelsabteilung des EVD

B e r n

Herr Botschafter,

Im Anschluss an unsere Ihnen heute auf schnellstem Wege zugegangene Mitteilung beehre ich mich, Ihnen anbei für Ihre Akten eine Kopie des Herrn Jean Tartter, Economic Adviser des Swiss-Benelux Büros des Staatsdepartements überreichten Memorandums zu übermitteln.

Genehmigen Sie, Herr Botschafter, die Versicherung meiner vorzüglichen Hochachtung.

DER SCHWEIZERISCHE BOTSCHAFTER :

A. ZEHNDER

1 BeilageKopie mit Beilage geht an den Rechtsdienst des EPD

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M e m o r a n d u mThe question of plant inspections viewed on the background of  
Swiss law and policy

The maintenance of the independence of the country is termed by article 2 of the Federal Constitution (FC) as one of the principal objectives of the Swiss Confederation. The Federal Council as supreme executive authority is enjoined in article 102, paragraph 9 FC, to uphold the external security of Switzerland as well as its independence and neutrality. The principle of sovereignty is mentioned explicitly also in article 2 FC. The most important instrument at the disposal of the Federal Council to achieve these objectives is to conduct a strict and unswerving policy of neutrality.

Switzerland, as a sovereign State, cannot tolerate on its territory the exercise of any official function by officials of foreign governments. This principle - recognized by international law - has its corollary in internal law, namely in article 271 of the Swiss Penal Code, which threatens with severe penalties whosoever performs, on Swiss territory, and without due authorization,

- actions which are in the competence of a public authority or a government official,
- actions on behalf of a foreign party or any other foreign organization,
- or whosoever aids and abets such actions.

The question to whose benefit the action is performed - be it the interests of one or the other Government or a private citizen - makes no difference, the essential point being that the order to perform the action emanates from a foreign Government.

According to Swiss law, any kind of inspections carried out on Swiss territory on behalf of a foreign Government, have at all times been considered official functions. It is of no concern, in

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this context, whether the citizen under inspection approves or disapproves of the measure. The point is, that such action represents an interference with the sovereignty of the country, which is not tolerated by Switzerland.

It is true that article 271 of the Swiss Penal Code speaks of the possibility of granting an authorization. Such authorization is only given, however, in very special and exceptional cases. Practically, exceptions were only made in the case of intergovernmental agreements, such as arrangements with various neighbouring countries on a common customs clearance procedure permitting, within narrow limits, certain activities of foreign officials in frontier railway stations. The activity of foreign diplomatic and consular agents according to the Vienna Convention on Diplomatic Relations is another example.

The inspection of Swiss plants by foreign officials, however, is absolutely out of question. As a small neutral State in the heart of Europe Switzerland has to be particularly mindful of preserving its independence. If it were to grant plant inspection authorizations - exceptionally - to certain countries, it could not possibly refuse similar authorizations to other countries in analogous cases. Experience has shown that one condition for Switzerland's maintaining its traditional status as an independent and permanently neutral country is to refuse consistently any attempt at interference in its internal affairs.

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