CONFIDENTIAL N. 24 21.1.0.

Memorandum

On November 4th, 1953, the Minister of Switzerland addressed a note to the Honorable the Secretary of State calling attention to certain impending actions by agencies of the United States Government which appeared to be directed against the Swiss Watchmaking Industry. There has been no reply to this note. Furthermore, there has been no visible change in the attitude of the agencies involved with respect to the matters discussed in the note which give the Swiss Government such deep concern.

As an example of such impending actions, the investigation into various phases of the Swiss Watchmaking Industry, being conducted by the Antitrust Division of the Department of Justice, has continued unabated. Particular emphasis has been placed upon dealings of importers and American watchmakers with members of the Swiss Watchmaking Industry. The Legation is informed that representatives of the New York office of the Antitrust Division propose to present information to a Grand Jury with a view to instituting a criminal or civil action, or both, about the time the Tariff Commission hearings are scheduled to commence, with respect to the watch, watch movement and watch parts industry. A dispatch appearing in the New York Times of Wednesday, December 16th, discusses the investigation by the Department of Justice in detail, and states

./.

the writer's view of the attitude of the Defense and Justice Departments. The Legation is interested in ascertaining whether this Article reflects the official attitude of the Defense and Justice Departments. On its face this seems most unlikely, inasmuch as the attitude is based upon erroneous information and is most antagonistic to the interests of the Swiss Government.

The facts underlying the conduct of the Swiss Watch-making Industry are matters of public record and virtually general knowledge. It will be recalled that the arrangements for stabilization of the watch making and watch products industry, existing between various members (Swiss and American) of this industry who manufacture in Switzerland, are authorized, and, indeed, required by the laws of Switzerland, and by regulations issued or authorized by the Swiss Government. Any investigation into these arrangements is, therefore, necessarily concerned with the operation of the laws of Switzerland and with a system of regulation decreed by the Swiss Government and its agencies under delegated powers. It will also be recalled that this system of stabilization was undertaken by the Swiss Government to guard against a repetition of conditions which were destructive to the commerce of both Switzerland and the United States.

The right of the United States Government to inquire into violations of its laws and to bring whatever action it deems appropriate is, of course, not questioned. In this

s/.

instance, however, the investigation involves a course of business between companies whose transactions occur both in the United States and in Switzerland. Some of these companies are regarded by both countries as their nationals, and have a national's responsibilities to both Governments. The investigation involves conduct in Switzerland of companies possessing dual nationality, conduct pursuant to, and indeed required by Swiss laws and regulations. It is not too much to say that the investigation may challenge measures which the Swiss Government has evolved for the preservation of an industry essential to the Swiss economy.

These considerations would appear to indicate an obvious case for the application of traditional principles of international comity. For the Government of the United States to proceed in this matter without early consultation with the Government of Switzerland would be contrary to these principles. It would also ignore the peculiar problem of companies who have legal responsibilities to both Governments. An exchange of views between the two Governments, rather than unilateral action in the American courts, would suggest itself as the happiest solution to these problems.

The Legation also wishes to point out that certain control measures which the Swiss Government had carried out in 1946 to facilitate the re-entry of the American watch industry into the civilian market after the last war were only possible under the very system of regulation presently involved in the antitrust investigation.

s/.

The Swiss Legation is also constrained to point out the parallel between its relation to the Swiss watch manufacturers and the relation of local governments in this country to industries within their jurisdiction. The United States Supreme Court, in the case of Parker v. Brown, 317 U.S. 341, has passed upon similar arrangements for stabilization of an industry prescribed by the laws of one of the States of the United States. In that instance directives of the State of California required conduct by its citizens, intended to rationalize the production and sale of raisins, which otherwise might have been contrary to the Federal antitrust laws. Such arrangements, being officially authorized by and participated in by the State were viewed by the Supreme Court as not contrary to the federal antitrust laws, even though the effect of action taken pursuant to California law had repercussions beyond its borders.

At least equally compelling considerations exist for giving recognition under international law to the action of the Swiss Government in requiring conduct which is now the subject of investigation by the American Department of Justice.

May it also be pointed out that the current antitrust investigation involves an attack on arrangements which the Government of Switzerland is obligated to maintain

s/.

and enforce under the Declaration annexed to the Trade Agreement between our two Governments of January 9, 1936. (49 Stat. 3954). Under this Declaration the Swiss Government undertakes to forbid the export of watches from Switzerland except pursuant to the very system of regulation that is now under scrutiny in the investigation. The Declaration provides that watches and watch movements may not be exported from Switzerland to the United States except under export permits issued by a Swiss watch organization to be designated by the Government of Switzerland. It further provides that the appropriate organizations of the Swiss Watch Industry will take such measures as are necessary to insure that infringements of this system of export regulations are punished in accordance with the conventions of the Swiss Watch Industry. When the question of the termination of this Trade Agreement was under consideration by the Government of the United States in 1950, discussion was had between the two Governments relating to the inclusion of an escape clause, but no concern was expressed over the Declaration annexed to the Agreement. As a result of an understanding reached on the inclusion of an escape clause, the Trade Agreement was continued in force, and the Declaration continued in force as part of the undertaking of the Government of Switzerland. The current investigation implies a change of mind on the part of this Government with

s/.

respect to the Declaration, without prior consultation with the Government of Switzerland.

The Swiss economy will be directly affected by the proposed litigation, as will the volume of trade between the two countries. These are matters vital to employment and economic policy in both countries. No action that the United States can take without participation by the Government of Switzerland can possibly achieve results which will fairly balance the interests of the two countries, and prevent conditions which will be deleterious to the mutual friendly relations.

December 22nd, 1953.