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Switzerland: Evaluation of Laws for Controlling the Transfer of Technology

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*TTIC 87-10006
December 1987*

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**Switzerland: Evaluation of
Laws for Controlling the
Transfer of Technology** [Redacted]

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**Switzerland: Evaluation of
Laws for Controlling the
Transfer of Technology** [Redacted]

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This publication, prepared by CIA's Office of General Counsel under the auspices of TTIC, evaluates the export control laws and regulations of Switzerland. Similar studies are planned for other select countries. The study will assist readers in interpreting the Swiss export control system and is based, in part, on information obtained from consultations with knowledgeable US and host government officials. This notebook, which can be readily updated, identifies the strengths and weaknesses in the laws and regulations, assesses the practical operation of current export controls, and evaluates enforcement practices. The translated laws and regulations are included for reference. [Redacted]

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Contents

	<i>Page</i>
Note to Readers	iii
Strengths and Weaknesses	1
In-Depth Assessment	3
Summary and Conclusions	3
Legal and Constitutional Background	4
Law and Ordinances Governing Technology Transfer	5
Practical Operation of Swiss Export Controls	8
Enforcement	12
Problem Areas	18
Laws and Regulations	23

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**Switzerland: Evaluation of
Laws for Controlling the
Transfer of Technology** []

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Strengths**Weaknesses**

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| <p>— The Swiss Government does not permit reexport of controlled commodities if the country of origin requests an import certificate ("Swiss Blue") before approving an export license. []</p> <p>— Should the country of export not request a Swiss Blue, the Swiss Government still may elect not to permit reexport of a particularly sensitive technology. []</p> <p>— Since a 1951 agreement with the United States, the Swiss have permitted exports of indigenous high technology to the Soviet Bloc each year within overall monetary limits (the "courant normal"). []</p> <p>— Swiss officials listen to and occasionally implement the suggestions of their US counterparts through informal but well-established cooperation at the working level. []</p> <p>— For transshipments of controlled commodities, Switzerland requires documentation that shipment to the ultimate destination is lawful. []</p> <p>— Repairs of controlled items stored in Swiss warehouses may be performed with special permission of Swiss Customs; upgrades are not permitted. []</p> <p>— Swiss authorities will conduct prelicense and postshipment checks at the request of US officials. []</p> <p>— Under the Foreign Trade Law of 1982, moderate criminal penalties for export control violations may be imposed. []</p> <p>— Reexports to non-Bloc countries require an IC/DV and an end-user certificate. []</p> <p>— Swiss officials regularly refer technical questions on export control matters to the Swiss Manufacturers Association, a private trade association. []</p> | <p>— Bern permits export of indigenous technology to the Soviet Bloc. [] 25X1</p> <p>— Some COCOM countries, especially France, the United Kingdom, and Italy, are not consistent in requesting Swiss Blues before exporting controlled commodities to Switzerland, which means the Swiss could reexport the goods to the Bloc. [] 25X1</p> <p>— High-technology commodities can be exported to the Bloc without entering or transiting Switzerland by companies registered in Switzerland that conduct their trading outside Swiss borders, trading that is not regulated by Swiss law. [] 25X1
25X1</p> <p>— On-site prelicense and postshipment checks by US officials are prohibited as infringements of Swiss sovereignty. [] 25X1</p> <p>— As a general rule, technology imported under a Swiss Blue and integrated into equipment may be exported lawfully to the Soviet Bloc if it accounts for no more than 15 percent of the value of the completed commodity. [] 25X1
25X1</p> <p>— As an administrative exception to the 1986 transit ordinance, Swiss Customs assumes that shipments bound for European countries (including Austria and Finland) are lawful and do not require presentation of documentation. [] 25X1
25X1</p> <p>— Circumstances of the only known diversion attempt under the new transit ordinance suggest that Swiss Customs may have discovered the attempt only by accident. [] 25X1
25X1</p> <p>— The Swiss Government will not allow the posting of a US customs attache in Bern. [] 25X1</p> <p>— There have been few criminal prosecutions under the Swiss export control system and none reported under the recent transit controls. [] 25X1
25X1</p> <p>— Bern rejects consultations with US officials about particularly sensitive exports as being tantamount to COCOM membership. [] 25X1</p> |
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**Switzerland: Evaluation of
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Summary and Conclusions

Although Switzerland has maintained a centuries-old history of permanent neutrality, its pragmatic approach reflects a willingness to relax the constraints of neutrality in order to serve its economic and political interests and to ensure its access to Western technology.

Nevertheless, administrative exceptions to the requirement to prove lawful shipment raise questions about the effectiveness of the Swiss control system.

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Accordingly, although Switzerland exports its own technology to the Soviet Bloc, it informally and tacitly enforces reexport controls imposed by other countries (in practice, COCOM countries) pursuant to its "autonomous" system. Specifically, it issues import certificates (Swiss Blues) for controlled technology whenever the country of origin requires one before approving an export license. In so doing, the Swiss Government officially certifies that the commodity is intended for use in Switzerland and that a Swiss export license and authorization from the country of origin will be required before the commodity may be reexported to the Soviet Bloc.

The principal institutional weakness in the Swiss export control system remains the export of sensitive technology of Swiss origin to the Soviet Bloc. Pursuant to a "gentlemen's agreement" of 1951, the United States has acquiesced in these exports within certain monetary limits (known as the "courant normal"), which periodically are revised to account for inflation and other factors. Although this trade is but a small portion of Swiss exports to the Soviet Bloc, the limits are based upon monetary value rather than the sophistication of the technology. The Swiss have refused to eliminate this trade and reject consultations with US officials about particularly sensitive exports as being tantamount to COCOM membership and thus an impermissible compromise of Swiss neutrality and sovereignty.

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Swiss reexport controls are effective only to the extent the COCOM country of origin requests a Swiss Blue for exports of controlled technology to Switzerland (and Lichtenstein, which falls within Swiss Customs jurisdiction). Apart from the United States, however, COCOM countries are not consistent in requesting Swiss Blues. If none is requested, but the item appears on Switzerland's own control list, only a Swiss export license (which is granted routinely) is required for reexport anywhere; consent of the country of origin need not be shown. Should the item not be listed on the Swiss control list, it may be reexported freely.

Apart from the wholly Swiss technology exported through the "courant normal," COCOM-controlled technology incorporated into Swiss products also may be exported to the Bloc. This stems from the Swiss position that, if the monetary value of the controlled components does not exceed 10 to 15 percent of the value of the finished product—regardless of the sensitivity of the components—the product is considered to be of Swiss origin and may be exported within the limits of the "courant normal."

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As of 1 January 1986, Switzerland began monitoring transshipments of controlled commodities through its transit zones by requiring documentation establishing that the shipments were bound for lawful destinations under the export regulations of the country of origin (or the last country into which the item legally was imported). Moreover, controlled items stored in Swiss bonded warehouses may not be upgraded, and repairs may be conducted only with special authorization.

Switzerland's decentralized government and strict laws protecting commercial privacy have fostered "mailbox companies," that is, firms that trade in Western high technology, including exports to the Soviet Bloc, without commodities entering or even transiting Switzerland. Although informal cooperation with Swiss authorities and mutual judicial assistance procedures may prove helpful, genuinely effective controls over these enterprises are unlikely because the Swiss rarely assert jurisdiction over business activities that take place outside Switzerland.

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The Swiss Criminal Code prohibits foreign governments from undertaking investigations of an intelligence-gathering nature in Switzerland, regarding them as infringements on Swiss sovereignty. This precludes preclearing or postshipment checks by US officials and prompted the Swiss to reject the posting of a US Customs attache to Bern. The consensus among US Embassy officials, however, is that these constraints are mitigated by the checks conducted by Swiss authorities, often at the request of US officials. [redacted]

Legal and Constitutional Background

Switzerland for centuries has maintained a tradition of permanent yet armed neutrality, dependent upon the recognition of other states but also upon its willingness and capacity to defend itself. It is a neutrality that seeks to avoid the conflicts of others, yet does not eschew an active role in world affairs. Above all, Swiss neutrality is pragmatic and thus accommodates a thriving international trade. Switzerland is dependent upon many countries of varied political character for both raw materials and markets. For instance, Swiss industry relies on access to sophisticated Western technology to remain internationally competitive but receives much of its energy from the Soviet Bloc. The Swiss genuinely believe that the public image of a nonaligned Switzerland must remain inviolate. Therefore, Swiss economic and political policies must appear to be self-initiated and in Swiss self-interest. [redacted]

Thus, the Swiss approach is one of compromise to preserve their national autonomy and a value system that is rooted in Western traditions. Swiss officials maintain informal, closely held contacts, most often at the working level, with their counterparts in other Western nations. This practice is apparent in the field of technology transfer. [redacted]

Switzerland is a confederation consisting of 26 cantons and half-cantons. Each of these is autonomous in law and has its own republican form of government (with separate legislative, executive, and judicial branches) separate from the national government. To the extent their sovereignty is not limited expressly by the Federal Constitution, the cantons retain authority

to govern and are responsible for the execution of Federal laws under the supervision of Federal officials. Many areas of national concern such as foreign affairs are subject to Federal legislative authority in the Constitution. The Federal Assembly (legislature) also has enacted the law governing import and export controls. [redacted]

Apart from the residual powers retained by the cantons, the Swiss people have reserved to themselves an element of direct democratic action. After its enactment by the legislature, but prior to becoming effective, legislation may be challenged by popular referendum if so demanded by eight cantons or 50,000 registered voters. This accounts for the unusually lengthy period between enactment and effectiveness of Swiss laws. Once a law has become effective, however, it may be popularly challenged only by means of an initiative to amend the Constitution, which requires the signatures of 100,000 voters. The initiative then must be approved by majorities of both the cantons and the popular vote. [redacted]

The Federal Assembly is a bicameral legislature. The National Council, consisting of 200 members, is elected every four years by direct popular vote. The Council of State is composed of 46 representatives elected by the 20 cantons (two each) and six half-cantons (one each). The Federal Assembly legislates by either law or decree. Laws must be enacted whenever the legislation is to be effective for an unlimited period and are subject to popular referendum, as described above. Decrees may be in either of two forms: those prescribing general legal standards of an obligatory character, which are subject to referendum; or simple decrees, addressing matters of narrow concern, which are not subject to referendum. In cases of emergency, the Assembly may provide that a decree become effective immediately. Should a referendum subsequently be initiated, however, the effectiveness of the decree ceases after one year unless the decree is affirmed in the referendum. [redacted]

The Federal Council wields the executive authority in the Swiss Government. It is composed of seven members of the Federal Assembly elected for terms of four years by both houses sitting together. Each of the

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seven members supervises one of the ministries composing the "Government," such as Foreign Affairs, Public Economy, and Defense. The Assembly also elects a Chairman and Vice Chairman of the Council for nonsuccessive terms of one year. There is no Prime Minister in Switzerland; the Chairman also serves as President. The Federal Council prepares a legislative program and preliminary drafts of particular laws or decrees, although the Assembly may charge the Council to address a particular question. [redacted]

for convenience, it will be referred to in this report as "the Foreign Trade Law." In its brevity and sweep, it is typical of Swiss legislation. Although composed of only 11 articles, it vests in the Federal Council wide-ranging authority to regulate foreign trade, premised upon the condition that either the actions of other countries or extraordinary circumstances influence trade to such an extent that significant Swiss economic interests are impaired. In such circumstances, the Council may monitor, subject to licensing, restrict, or even prohibit the import, export, or transit of goods or the exchange of services. [redacted] 25X1

The Swiss judiciary consists of civil, criminal, and administrative courts under the supervision of the canton in which they are elected. Some consistency in the law is ensured, however, through appeals from these cantonal courts to the Federal Tribunal, the only "national" court. This court also may rule on appeals from administrative rulings by Federal agencies. Unlike the US system, neither the lower courts nor the Federal Tribunal is empowered to rule on the compliance of legislation with the Constitution. [redacted]

Pursuant to this authority, ordinances have been adopted by the Federal Council governing the export and transit of controlled commodities as well as the use of import certificates. The Council also may regulate international payments by means of agreements on the exchange of goods, services, and payments, even to the extent of joining international organizations. The Council also may commission other governmental departments and private organizations to aid in the implementation of control measures or trade agreements, subject to Council supervision. Fees may be imposed to cover the costs of enforcing controls. [redacted] 25X1

Apart from this formal structure, the Swiss legal system is distinguished by the extraordinary degree of political compromise that attends the legislative process and governing in general. Although there are shifts in alliances among the political parties, there is a longstanding tradition of consensus in the interests of national stability and cooperation between the Federal and cantonal governments. This compromise and resulting consensus is reflected in the Swiss Government's dealings with foreign governments; although a position may have undergone extensive internal debate, it is promulgated as a well-coordinated policy. This consensus is also of paramount importance in maintaining informal cooperation with COCOM governments on matters involving technology transfer. [redacted]

Although the Foreign Trade Law authorizes the regulation of trade, it leaves to the implementing ordinances the task of specifying particular controls. Accordingly, the penal provisions of the Law do not define violations but simply prescribe the maximum punishments that may be imposed. Negligent or intentional violations may be punished by a fine of up to 100,000 francs, while "egregious intentional violations" are subject to the additional penalty of imprisonment for up to one year. A person convicted of such an offense as failure to abide by the obligations incurred in obtaining an import certificate would be subject to these maximum punishments. [redacted] 25X1

Law and Ordinances Governing Technology Transfer

Federal Law of 25 June 1982 on Foreign Trade Measures

The statutory foundation for the Federal Government's control of exports is officially entitled the Law of 25 June 1982 on Foreign Trade Measures (tab A). This law occasionally is referred to as the Law of 1 June 1983, the date on which it became effective;

Misconduct that would violate the ordinances, such as providing incomplete or incorrect descriptions of the controlled commodity for which an import certificate is sought, also would violate the more general provisions of the Customs Act concerning the misdeclaration of goods. Thus, the Foreign Trade Law provides

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that these violations are punished exclusively according to the penal and procedural provisions of the Customs Act. [redacted]

Certain procedural matters also are prescribed in the Foreign Trade Law, including a statute of limitations of five years for all violations. The prosecution of offenses is under Federal rather than cantonal jurisdiction. [redacted]

The remainder of the Foreign Trade Law concerns such administrative matters as the appointment by the Federal Council of a Consultative Commission for Foreign Trade Policy and of an Advisory Commission for International Development Cooperation to conduct hearings on "significant issues of foreign trade policy." It is noteworthy that members of the private Swiss business community often are members of these commissions. The Council also is obliged to report to the Federal Assembly at least yearly on such issues. The Council must report on ordinances or other measures taken pursuant to Article 1, however, within six months of enactment. The Assembly then decides whether the measures adopted should remain in force. None of the regulations enacted recently to control import certificates or the export, reexport, or transit of controlled commodities has been rescinded by the Federal Assembly. [redacted]

Ordinances Adopted Under the Foreign Trade Law
Three ordinances that together form the administrative framework for the import and export of controlled technology were enacted by the Federal Council under the Foreign Trade Law on 7 March 1983. An important amendment to one of these ordinances, which became effective on 1 January 1986, instituted the Swiss system for controlling the transit of controlled commodities. [redacted]

Ordinance on Goods Export and Transit (S.R. 946.221). This Ordinance (tab B) defines both the obligation to obtain a license to export certain types of goods (set out in a Supplement) and the prohibition against the transit of these goods absent proof that shipment to the ultimate destination is lawful under the pertinent regulations of the country of origin. [redacted]

Article 1 requires an export license for the goods listed in the Supplement to the Ordinance, which informally is called the "Red Export List." (See tab C.) This list is derived directly from the COCOM Control List, and the Swiss periodically update the list to reflect changes. Under Article 4, deliveries of goods to foreign diplomatic or consular delegations in Switzerland (other than diplomatic courier deliveries originating outside Switzerland) are considered to be exports for purposes of this licensing requirement. [redacted]

Pursuant to Article 6, an export license is not granted—in the absence of overriding national interests—where the Department of Public Economy (EVD), the cabinet-level ministry with overall responsibility for Swiss export control policies, in consultation with the private business community has determined that export of the goods in question must be restricted to protect domestic supplies. [redacted]

An amendment to the Ordinance dated 16 December 1985 added a new Article 1a, which prohibits transit of listed goods insofar as the country of origin restricts their export. Documentation must be produced during transshipment through Switzerland to show that shipment to the ultimate destination is authorized by the export regulations of the country of origin. In keeping with Swiss neutrality and the "autonomous" control system, the Ordinance makes no mention of COCOM; the restrictions apply to any national or multilateral export-control system. In practice, the controls are designed and operate to implement COCOM restrictions against sales of sensitive technology to the Soviet Bloc. The amended Ordinance also provides that goods bound for Switzerland and prohibited from export by the EVD to protect domestic supplies may not be diverted prior to clearing Swiss customs. [redacted]

Proof that delivery to the ultimate destination is lawful according to the country of origin is to be furnished at the time the goods enter the Swiss customs area, although an extension may be granted (as in when the ultimate purchaser is not yet known). In practice, shippers are allowed 10 days in which to

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furnish the relevant proof; thereafter, the goods will be seized. A potential loophole is closed in the provision that withdrawing controlled goods from a bonded warehouse for further shipment is equivalent to transit and thus must be accompanied by proof that delivery to the ultimate destination is lawful.

Repairs may be made to commodities stored in bonded warehouses only with special permission from Swiss customs; no upgrading of equipment is permitted.

The Division of Import and Export Control (AEA) is designated as the office responsible for issuing export permits, under the supervision of the Office of Foreign Economic Affairs (BAWI), which oversees the implementation of the control system. The AEA is authorized to refer export license applications to the Swiss Manufacturers Association (VSM) or to a chemical trade association for expert assistance in evaluating whether the commodity in question fits within the specifications for controlled technology listed in the Supplement to the Ordinance.

Exports not exceeding the rather low value allowances specified in the Supplement (up to 2,000 francs) are excepted from the export license requirement. This does not apply to goods imported under a Swiss Blue or to deliveries to Soviet Bloc countries (as listed in the Supplement) and to China.

In determining whether a commodity may be described in the license application as of "Swiss origin," the ordinance refers to a related regulation, the Ordinance on Verification of Origin of 4 July 1984. The standard specified in the Verification Ordinance is not used for controlled commodities as a matter of policy. The designation of "Swiss origin" is important since it enables one to export sensitive technology to the Soviet Bloc subject only to the quantitative limits of the "courant normal."

Ordinance on the Exchange of Goods With Foreign Countries (S.R. 946.201.1). This Ordinance (tab D) contains the procedures and standards by which the import and export of goods are subjected to licensing by the Federal Council. It empowers the EVD to grant exceptions to any licensing requirements that

may be authorized by the Federal Council and authorizes the EVD to grant exceptions, to condition, or otherwise to restrict licensing requirements, including the setting of quotas for particular goods or countries.

It states that, where import, export, or transit is restricted, those licenses that are issued must be distributed among applicants in proportion to the extent in which they previously have engaged in similar transactions (and are able to prove this). This provision attempts to distribute equitably the burden of lost business that may be caused by any restriction of trade in certain goods.

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The AEA, acting under the instructions of the BAWI, is established as the office responsible for issuing all licenses and entitled to levy fees for them in accordance with the ordinance that sets forth the pertinent fee schedules. The EVD is authorized to establish other permit offices and to allow them to collect fees, although they also are under the supervision of the BAWI. No other permit offices have been established to date under this authority, although, pursuant to other legislation, the Department of Energy and Environment is responsible for issuing separate export licenses for nuclear materials. Swiss officials also have cited the ordinance as the authority for using the VSM, a private trade association, as a consultant on technical matters relating to export controls.

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Article 3 of the Ordinance sets forth the following standards that are to be applied in the granting of licenses:

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- Licenses are granted, on written application, to persons and firms established for business in Switzerland.
- The applicant must be "commercially involved" in the import, export, or transit of the commodity involved.
- Import licenses are not granted to companies that are protected by the limitations on imports that led to the obligation to obtain a license.
- Licenses are granted under the condition that they may be revoked if the applicant fails to meet the requirements for the license or if regulations subsequently are issued that change the requirements.

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Goods subject to licensing requirements may be cleared through customs only if the license is presented to the customs office during import or export processing or its number is indicated on the clearance application. If a license is required only for the export or import of a certain type of goods, transit is permitted without a license (except for private warehousing). Thus, the use of Switzerland for the transit of goods requires a license only if expressly required, as is the case with technology controlled by its country of origin. Licenses are to be used only by the applicant and for his own account, and are subjected to an overall time limit of one year including any extensions. [redacted]

The remaining substantive provisions of the Ordinance detail the responsibilities of applicants to furnish pertinent information and the authority of licensing officials to obtain that information. Applicants are required to furnish complete and correct information, to allow licensing authorities to review pertinent documents and records, and to provide authorities access to their business premises. Enforcement authorities are empowered to exercise these investigative functions. These provisions enable Swiss authorities to conduct extensive preclearing investigations of applicants as a means of determining the likelihood that the controlled commodities they are seeking to import will remain and be used properly in Switzerland. As is discussed later, however, the Swiss Criminal Code prohibits US or other foreign officials from performing such activities on their own or from participating in them with Swiss officials. [redacted]

Ordinance on the Surveillance of Imports (S.R. 946.211). This Ordinance (tab E) is a short statement authorizing the AEA to issue import certificates (provided the prerequisites are met) and to supervise the importation of goods thereunder. It sets forth the "basic principles," or prerequisites, that are to govern the issuance of certificates. Briefly, these principles provide that (1) import certificates are issued only to firms established in Switzerland and registered in the *Trade Registry*; (2) covered goods must be imported immediately and that fact documented to the AEA; (3) the obligations incurred must be passed along to any domestic purchaser; (4) reexport of the goods is allowed only with the permission

of the AEA, which in turn is granted only if consent has been given by the country that demanded the certificate; and (5) certificates expire if not presented to the foreign export authority within six months of issuance. The AEA is also authorized to collect fees for the issuance of import certificates in accordance with a schedule appearing in the Ordinance governing fees. [redacted]

Practical Operation of Swiss Export Controls

Application for Imports

Only those firms established for business in Switzerland and registered in the Trade Registry may obtain a Swiss Blue. The importer submits a completed and signed "import obligation" (which, together with the import certificate itself, is combined in a single form) by which he acknowledges the obligations that are imposed upon him by issuance of the import certificate and agrees to abide by them. The form also must contain a detailed description of the commodity so that it readily may be identified should there be a postshipment investigation to ensure that it in fact was imported. The Swiss Blue also in effect warrants that the importer is trustworthy and that random checks will be made to ensure that consignees are fulfilling their obligations under the certificate. [redacted]

As mentioned before, prospective importer of controlled technology must meet two criteria to be eligible for a Swiss import certificate. The first is that the firm must be established for business in Switzerland. In practice, the firm (especially a first-time applicant) may have to demonstrate that its business has a reasonable relationship to the purpose of the technology to be imported. The second criterion is that the importer must be registered in the *Swiss Trade Registry*, a publication containing names of officers, plant and office addresses, financial records, and other information relating the firm's business activities. [redacted]

To obtain a Swiss Blue, the importer submits an "import obligation" form, a single form consisting of four sheets with the second sheet being the Swiss Blue itself (tab G). The importer completes and signs the

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top copy of the form (the original of the import obligation), on which he furnishes his name and address; a description of the commodity, together with its customs tariff number and quantity, weight, and value in Swiss francs; the country of origin; and the end user, if known. The description of the commodity must be sufficiently detailed with pertinent specifications so that it may be identified subsequently should an investigation of its whereabouts be necessary. The importer's signature indicates his acknowledgment and acceptance of the obligations he incurs upon issuance of the import certificate, which are specified on the reverse of the import obligation. This original remains with the AEA (where it is used to record the subsequent importation); the second sheet is the original of the Swiss Blue. After the application is reviewed by the AEA, the original Swiss Blue is returned to the importer to be dispatched to his supplier for submission to the foreign export authority. The third sheet is returned to the importer, and the last sheet remains in AEA files. [redacted]

will not be reexported (except to COCOM countries) without permission of the country that shipped the goods. [redacted]

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Certain circumstances result in further inquiries by the AEA, including insufficient descriptions of the commodity, the listing of a freight forwarder as the ultimate consignee, a post-office box for an address, or companies of questionable trustworthiness. In such cases, letters are addressed to the applicant and to the stated end user, if any, requesting further details concerning the intended use of the commodity. Visits to facilities of prospective importers also may be conducted, although it is not known how frequently this occurs. [redacted]

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There also are situations in which the application for an import certificate simply is denied. These include cases in which the import obligation form clearly lists a Bloc country as the ultimate destination or in which the end user is listed generically as a non-Bloc country and never specifically identified. Single requests submitted for import certificates to cover a number of controlled items when reexport authority has not been obtained from the country of origin for all of the items also are denied. [redacted]

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Review Process

The completed form is submitted to the AEA where it is screened by the Section Chief and referred to the appropriate staff reviewer, who is responsible for all applicants within a certain alphabetical segment. This practice allows those responsible for reviewing applications to become familiar with individual businesses and patterns of commercial activity. Given the small size of Switzerland and the many years of experience of the AEA staff, most applicants and ultimate consignees are known to the reviewers. [redacted]

If the importer intends to resell the item abroad and the buyer and his domicile are known to him at the time he applies for the Swiss Blue, the application is rejected, because the purpose of the certificate is to guarantee that the commodity will remain in Switzerland or that approval for reexport will be obtained should the need later arise. In such a case, the COCOM country of origin is considered to be responsible for determining the legitimacy of any third-country end user. Similarly, no import certificate is issued for controlled commodities that are shipped "in bond" to Switzerland pending shipment to a destination already approved by the country of origin. [redacted]

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The review process varies in thoroughness, depending on the extent to which the importers are known to the AEA. For instance, well-known reputable firms may be issued special Swiss Blues that set overall monetary limits and permit the firms to import commodities at will within those limits. For first-time applicants, the AEA checks the telephone directory and the Trade Registry. These sources are helpful in determining whether the commodity is likely to be put to an appropriate use by the applicant. First-time applicants also must complete a special Statement of End Use (tab H); it includes a certification that the goods are to be used in the country of destination indicated and

Approved import certificates are signed and stamped by the AEA with the second (the Swiss Blue) and third (a copy of the import obligation) sheets returned to the importer usually within two or three days for

forwarding to his foreign supplier. The original Swiss Blue accompanies the supplier's application for the foreign export license and remains in the files of the foreign export authority. The original of the import obligation and the copy of the Swiss Blue (first and fourth sheets of the form) are retained in the files of the AEA. Affixed to these is a special code that characterizes the importer and identifies the prospective end use of the commodity including any intended resale. These codes are an internal control device used by the AEA to assist in monitoring imports and are not made public.

The Importing Process

The approved Swiss Blue then is submitted by the importer to the export-control authority of his foreign supplier (such as the Department of Commerce in the United States), in whose files it remains. Although regulations provide for a three-month duration for Swiss Blues with a possible extension of three months, it has proved more practical to issue most Swiss Blues with an initial expiration date of six months.

Upon receipt of the approved certificate, the importer is obliged to take "immediate measures" to import the goods into Switzerland, although in practice submission of the Swiss Blue to the foreign export control authorities is all that must be accomplished during the six-month period of the certificate's validity. The AEA maintains a "tickler file" of all Swiss Blues issued; at the expiration of six months, a letter is sent to the importer requesting proof that the goods have been imported. Requests for extensions of up to one year may be granted on a case-by-case basis considering such factors as whether a foreign export license has been granted.

When the commodities covered by the Swiss Blue arrive in Switzerland, the importer or his authorized agent must inform the AEA in either of two ways: (1) the number of the import certificate may be noted on the customs import declaration (which is sent to the AEA) together with the notation "to the attention of the (AEA) for certificate control"; or (2) the importer himself may forward the import duty receipt and a copy of the supplier's invoice to the AEA. In either event, the importation then is noted by the AEA on the reverse of the import obligation form maintained in its files.

Should the importer be unable to import the commodities in whole or in part, he must notify the AEA and request a complete or partial exemption. A written declaration (using a special form) must be submitted; if the Swiss Blue already has been sent to the foreign authority, the importer must have his supplier request its return and the cancellation of any export license obtained thereby. Under Swiss law, this requirement is not a mere administrative formality; failure to request an exemption is a violation of import obligations and could lead to prosecution. In practice, however, there have not been any prosecutions for failing to request an exemption; this may be a reflection of the government's confidence in the Swiss firms and the likelihood that nothing has been amiss. The AEA sends foreign export authorities monthly lists of Swiss Blues that have expired without documented arrival of the commodities in Switzerland.

Items appearing on the Swiss control list, the "Red Export List," which is patterned after and revised to account for changes in the Commodity Control List or International List that are of Swiss origin—and thus that do not involve a Swiss Blue—nonetheless require a Swiss export license. The requirement serves both to enable Swiss authorities to maintain the quantitative limits of the "courant normal" and to prevent the attempted export of foreign goods imported under a Swiss Blue as being of Swiss origin so as to evade the reexport restrictions of the Swiss Blue.

Restrictions on Investigations

Switzerland has a longstanding commitment to business privacy that often is at odds with the efforts of foreign governments to collect information on possible criminal activities involving Swiss business interests. The use of the Swiss bank secrecy laws to evade taxes is one of the best known examples of this. Less publicized, but of far more concern for national security reasons, is the effect of the following Swiss safeguards for business privacy that help conceal diversions of sensitive technology to proscribed destinations.

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Articles 271 through 273 of the Swiss Criminal Code (tab F) prohibit investigations or other activities that may be construed as the gathering of information if such activities are conducted on behalf of a foreign government or business enterprise. Switzerland considers such activities to be impermissible infringements on Swiss sovereignty. Moreover, the Swiss use Article 4 of the Criminal Code—in a rare assertion of extraterritorial jurisdiction—to apply these prohibitions to the operations of Swiss-controlled firms outside Switzerland. Consequently, it is not possible for Swiss firms lawfully to disclose information in foreign court proceedings even if so ordered by a foreign court.

The first paragraph of Article 271 is a general prohibition against the undertaking, without permission, of any activities that benefit an authority or official of a foreign government or other foreign organization. Also forbidden is the encouraging of such activities. This provision has been interpreted as prohibiting both the gathering of information by investigators and the surrender of evidence and other information by the subjects of the investigation. Thus, not only would US officials be violating Swiss law by conducting a prelicense or postshipment check of a Swiss importer but the importer could be subject to criminal liability should he share with those officials, even voluntarily, information that the Swiss Government considers to impinge upon national interests. Violations of Article 271 are punished by imprisonment. Two other paragraphs in the Article prohibit the abduction of persons in a foreign country in order to deliver that person to a foreign authority or organization.

Articles 272 and 273 prohibit activities that could be considered to be political or economic intelligence gathering. In each instance, the activities must have been conducted on behalf of a foreign government or other organization or party, including business enterprises. In the case of either political or military intelligence, some detriment to Switzerland or its institutions or inhabitants also must have resulted. Imprisonment is the specified punishment. As with the general prohibitions of Article 271, the specific ban against industrial espionage appearing in Article

273 also protects business secrecy from the perspectives of both the investigator and the subject of the investigation. Thus, Article 273 subjects to imprisonment anyone who discloses business secrets to a foreign government or organization as well as a recipient who takes advantage of such disclosure.

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These Swiss laws are of long standing and were not enacted specifically to prevent foreign governments from conducting investigations or otherwise attempting to forestall diversions of controlled technology. The Swiss publicly describe them as an outgrowth of their particular view of sovereignty and neutrality.

This strict interpretation contrasts with Austria, another neutral state that nonetheless permits US officials to conduct their own prelicense and postshipment checks so long as the Austrian Government is placed on notice. In fact, the Swiss laws appear to be designed to protect Switzerland's lucrative role as a haven for international business by prohibiting industrial espionage and otherwise protecting business confidentiality. In any event, despite the Swiss Government's increasing intolerance at being used as a diversion point for controlled technology, these provisions are relied upon to preclude US and other foreign officials from pursuing, participating in, or even merely observing investigative activities seeking to prevent diversions. To some extent, however, these prohibitions are tempered by informal cooperation between US and Swiss authorities.

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A 1971 Decree of the Federal Council allows the prohibitions in Articles 271 through 273 to be waived upon application. This procedure was used once to permit US officials to assist Swiss authorities on an inspection of food and drug laboratories. Thus far, the Federal Council has refused to grant a waiver in matters involving technology transfer.

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Questions have arisen concerning the effect of Articles 271 through 273 upon the obligations of Swiss holders of US distribution licenses to meet audit requirements of those licenses. The Swiss Government has displayed some flexibility on this issue and apparently will acquiesce in "compliance reviews" by individual US suppliers of their Swiss customers if these

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are limited to reviews of documents related to whether the customer has met its obligations under the distribution license; wholesale reviews of files are not permitted. [redacted]

Another facet of the audit question is the potential liability of Swiss consignees for providing their US suppliers with business information. With the view to accommodating US distribution license requirements, the Swiss Attorney General has ruled that Swiss companies lawfully may furnish US suppliers with customer names, lists of items sold, and either the sale price or quantity of the item. Because Swiss firms could still be sued by customers for furnishing this information, most firms follow the practice of including contract clauses informing the customer of the firm's obligation to provide such information to US suppliers. The effectiveness of such clauses in protecting Swiss consignees, however, has yet to be tested in court. Although audits of Swiss subsidiaries by their US parent companies raise similar legal issues, in practice there is far less of a problem because it is unlikely that a subsidiary would complain to the Swiss Government about an audit request from its parent. [redacted]

The Criminal Code also has been relied upon by Swiss officials in framing their recent objections to the posting of a US Customs attache to Switzerland. The Swiss acknowledged the possibility of granting exceptions to Article 271's proscription against investigative activities but emphasized that this is done on a case-by-case basis and requires action of the Federal Council itself, which rarely allows an exception. Of particular concern is the possibility that granting such a waiver would set a precedent for other countries to seek similar concessions. Moreover, a Customs attache would require exceptions to these prohibitions each time he wanted to conduct an investigation. The Article 273 prohibition against direct gathering of business secrets also prevents a Customs attache from performing his duties, and there is no policy of granting exceptions to this provision. Finally, under Article 320(1) Swiss officials are prohibited from revealing secrets confided to them in their official capacities—which would limit contacts between a Customs attache and his counterpart or other Swiss officials. [redacted]

On a more general note, the Swiss also have expressed the view that the informal cooperation between Swiss and US officials—which they consider dependent upon confidentiality and mutual trust—would be unduly formalized by the accreditation of a US Customs attache. [redacted]

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Enforcement

The requirement that a Swiss export license be obtained for the reexport of goods imported under a Swiss Blue (and contained on the Red Export List) affords some measure of control over those goods. Although Swiss export licenses otherwise are granted routinely, license applications for controlled commodities may be checked against outstanding import certificates to determine whether approval of the country of origin is required for reexport and has been obtained. The export license also allows for monitoring of reexports by Swiss Customs at the border. [redacted]

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The 1982 Foreign Trade Law sets forth the principles under which violations of the regulatory provisions of the Law and of the regulations adopted under its authority may be punished. There are two types of sanctions—criminal and administrative—that may be imposed depending upon the nature of the violation, each of which has its own enforcement mechanism. [redacted]

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Criminal Prosecutions

The first of the enforcement mechanisms is criminal prosecution, which, as with general criminal cases takes place in the cantonal court system. This results from violating one or more of the ordinances implementing the Foreign Trade Law. An example would be failure on the part of an importer to abide by the obligations imposed upon him under the import certificate system, such as for documenting the fact of importation. The US Embassy in Bern reports that a Swiss firm has been prosecuted for failing to obtain permission to reexport commodities imported under a Swiss Blue, although the punishment was limited to a fine of 5,000 Swiss francs. [redacted]

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According to the Swiss Federal Administrative Criminal Law, when a violation has been committed by a legal entity (such as a corporation), the penal provisions are also applied to the natural person who carried out the act or who willfully or negligently failed to avert an offense by a subordinate, contractor, or representative. [redacted]

The Foreign Trade Act provides that attempted violations as well as aiding and abetting the commission of offenses are punishable. The following maximum punishments are enumerated: for intentional or negligent violations a fine (currently set at 200,000 Swiss francs), with particularly egregious intentional violations further subject to imprisonment of up to one year. [redacted]

The Act is not the sole basis for criminal prosecutions of misconduct related to Swiss technology transfer controls; general criminal misconduct that is outlawed by the Swiss Criminal Code (and related to technology transfer), such as conspiracy, perjury, or fraud, also may be prosecuted. The Swiss Criminal Procedures Code addresses such matters as burden of proof and evidentiary requirements and would apply in these cases. [redacted]

The practical effects of such penalties remain to be demonstrated, although their enactment itself may have had some deterrent effect. The import certificate system has been in place in basically the same form since 1951, but there is little public record of prosecution or enforcement of that system. Although not protected from divulgence by any law, criminal prosecutions are afforded far less publicity than in the United States; there apparently have not been any criminal prosecutions (and only one administrative imposition of sanctions) under the relatively new transit controls. Nonetheless, Swiss officials point to the absence of warnings from US sources as indicating the effectiveness of those controls. [redacted]

Administrative Sanctions

The second enforcement mechanism stems from Article 7(4) of the Foreign Trade Law, which provides that misconduct amounting to a violation of the Customs Act—even if it also violates the Law or its implementing ordinances—is to be punished exclusively under

the provisions of the Customs Act (tab I). This is an important provision because most attempts to evade or otherwise to frustrate Swiss technology transfer controls would appear to be violations of the Customs Act. Certain types of misconduct, such as the failure to pass along to a subsequent purchaser the obligations incurred in importing a commodity under a Swiss Blue, are so narrow and specific that they would violate only the ordinance governing Swiss Blues. Most other offenses under these controls, however, would be of such a general nature as to violate the Customs Act as well. For example, the misdeclaration of goods to avoid reexport restrictions or an attempt to spirit controlled commodities out of Switzerland without clearing customs at all would be offenses under the Customs Act. [redacted]

The Customs Act defines a host of actions as customs infractions. Although these are couched in terms of "dutiability," this concept includes not only the payment of fees but also compliance with requirements to report cross-border traffic. These in turn include such general requirements as those of placing all goods for export under customs control and reporting them for customs processing and compliance with other ordinances of the Federal Government in which the Customs Service cooperates in enforcement. More particular infractions also could relate to illegal technology transfers: importing, exporting, or transiting goods by means of "impermissible transactions or unlawful means"; failing to report dutiable goods for customs processing while crossing the border; and using an incorrect tariff number so that the duty is declared too low. [redacted]

Violations of the Customs Act, or so-called "Bannbruch," are not prosecuted as criminal offenses in court but are subject to administrative penalties levied by the Customs Service itself. This is not to say that these penalties are insubstantial: for illegal technology transfers, fines of up to six times the value of the commodities involved (as opposed to fines of up to 20 times the evaded duty in general cases) may be levied. Imprisonment of up to one year also may be imposed.

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The fines in effect are designed to ensure that the profits from illegal export or transit transactions are confiscated. The imposition of these penalties may be administratively appealed to the Customs Service. If this proves unsuccessful, it next may be challenged in the Swiss court system, ultimately reaching the Swiss Federal Tribunal. [redacted]

To date, there has been at least one instance in which penalties were imposed against a diverter under the Customs Act; this case currently is under challenge in the Swiss Federal courts. Unfortunately, administrative penalties are not made a matter of public record in Switzerland, and little is known about any additional cases or general patterns of enforcement. [redacted]

Transnational Cooperation

The Swiss do not accept the concept of extraterritoriality, that is, the application of a country's laws beyond its borders, except in very narrow circumstances. This legal philosophy surfaces frequently in the area of technology transfer, where even COCOM allies resist US efforts to apply US regulations to commodities that have been exported from the United States. Information about events and persons overseas often can be vital, however, in tracking controlled technology that has originated in the United States. Consequently, there is a need for cooperation from foreign governments to obtain evidence for investigations or prosecutions of diversions. [redacted]

States historically have assisted one another in judicial and related matters by means of "letters rogatory." These involve a burdensome process whereby requests for assistance are initiated in the courts of the requesting state, processed by its prosecutorial authorities, transmitted by means of diplomatic channels, and finally presented to authorities in the requested state by private counsel engaged by the requesting government. These shortcomings prompted the United States to seek agreements with a number of countries that would expedite and expand cooperation on judicial matters and enable the appropriate officials to deal with each other directly. [redacted]

US-Swiss Criminal Investigation Assistance

The Treaty on Mutual Legal Assistance with Switzerland (hereinafter "the Swiss Treaty" or "the Treaty"—tab J) entered into force in January 1977. It was

the first in what is now a number of pacts in which the United States and foreign governments have agreed to procedures by which they will assist each other in criminal and civil matters that transcend their respective borders. Perhaps because it was the first negotiated, the Swiss Treaty is more comprehensive and detailed than subsequent agreements. Both US and Swiss officials have suggested that the procedures outlined in the Treaty and in the indigenous Swiss law governing judicial assistance be used to aid in the investigation and prosecution of technology diversions. Although violations of export controls are not specifically included in the Treaty, there is sufficient flexibility in the document to invoke its procedures in seeking the judicial assistance of Swiss authorities. [redacted]

The Swiss Treaty provides for assistance in both investigations and court proceedings for certain criminal offenses. Formal charges need not have been preferred before assistance may be sought, an important consideration where such preliminary information as the movements of controlled goods often must be ascertained before possible diverters can be criminally charged or even identified. The anticipated charges must be identified, however, because the use of testimony, documents, or other information obtained under the Treaty in the investigation or prosecution of any offenses other than those identified in the request is prohibited. [redacted]

The means of assistance granted under the Treaty is broad but not unlimited. Assistance may be refused (or conditioned) if the requested state finds that its sovereignty, security, or similar essential interests would be prejudiced. The Treaty applies neither to the extradition of persons arrested or convicted nor to the execution of criminal judgments, and assistance is not rendered to investigations or proceedings involving: (1) violations that the requested state considers to be political offenses; (2) violations of military law or laws relating to military obligations; (3) violations of anti-trust laws; or (4) violations relating to taxes, customs duties, monopolies, or exchange controls (other than gambling, narcotics or illegal arms trafficking, and related conspiracies or attempts). It is not believed that the exclusion of offenses relating to customs

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duties would bar assistance in investigations of other customs offenses, such as the misdeclaration of controlled commodities to evade export or transit controls. [redacted]

The pursuit of US organized crime figures (chiefly for tax evasion) was a principal impetus behind the Swiss Treaty. Accordingly, compulsory assistance is to be provided even if the offense is not a crime in both states and listed on the Schedule (such as the political offense and antitrust and other fiscal offense exceptions described above) if the parties agree that the request concerns a person who is believed to be a member of an "organized criminal group." This concept is defined in a manner that does not lend itself to application in technology transfer cases. [redacted]

Apart from these general limitations, certain categories of offenses and specific crimes are excluded. The Swiss Treaty adopted a unique approach in defining covered offenses. First, there is a general requirement of "double criminality," that is, the act must constitute a crime in the requested as well as in the requesting state. Moreover, the offense involved must fit within the categories and specific offenses listed in a schedule that appears at the end of the Treaty. This requirement may be waived, however, if the requested state determines that the offense is sufficiently serious to justify the granting of assistance notwithstanding its omission from the Schedule (although the requirement of double criminality still must be met). [redacted]

Even this fundamental limitation upon the type of offense for which assistance will be granted may be dispensed with in the discretion of the authorities charged with implementing the Treaty's obligations. Thus, although detailed standards and procedures are set forth in the Treaty to guide the Central Authorities in granting assistance, many practical issues are as much political determinations as strict legal interpretations. This in turn points out the importance of establishing the type of close and frequent contacts between the implementing authorities that can encourage a liberal application of the discretion to grant assistance for offenses that are not specifically spelled out in the Schedule. [redacted]

The appended schedule of offenses includes offenses against laws prohibiting or restricting traffic in, or exportation of, "firearms [and] other weapons," which reasonably could include violations of the COCOM Munitions List. Apart from this rather marginal interpretation, however, the Schedule of offenses does not include any that specifically encompass illegal diversion or other misconduct involving controlled technology. Nevertheless, under the laws and ordinances described earlier in this report, the diversion of controlled goods either imported into Switzerland under a Swiss Blue or in transit through Switzerland is an offense in that country. Thus, most violations of US export control regulations involving controlled goods would satisfy the requirement of double criminality. Whether Swiss authorities consider such offenses to warrant assistance, however, remains to be seen. [redacted]

The nature of the compulsory assistance that is rendered in appropriate cases includes:

- Ascertaining the whereabouts of persons.
- Taking the testimony or statements of persons.
- Making available and authenticating judgments and other judicial records, business records, publicly available records, and records and evidentiary materials that are not publicly available.
- Serving judicial writs and other documents and effecting the appearance of witnesses and experts before a court of the requesting state.
- Effecting the return of any objects, articles, or other assets belonging to the requesting state and obtained through the commission of offenses falling within the jurisdiction of that state.

Assistance in proceedings relating to compensation for damages suffered by persons unjustifiably detained as a result of actions taken under the Treaty also is provided for in that Treaty. [redacted]

The standards and procedures to be applied in obtaining testimony, documents, and other evidence by compulsory means generally are those in effect in the requested state. The requested state may consent, however, to execution of requests in accordance with the laws of the requesting state (except for searches and seizures) so long as the procedure involved is not

specifically prohibited in the requested state. As an example of the general rule, if testimony is sought from a person who is in the requested state, then he or she is required to testify (and to produce documents or other materials) to the same extent as would be required in the same or a similar type of investigation or proceeding in the requested state. Similarly, articles of evidence and related materials are available to the requesting state, subject to the discretion of the requested state, to the extent that they are available to law enforcement officials in the requested state. Persons appearing before authorities in the requesting state may not be compelled to testify if they would have a right to refuse under the law of either state, however. [redacted]

The Swiss Treaty represents a unique effort by the US negotiators to secure a means of obtaining evidence that otherwise would be protected from disclosure under the Swiss Penal Code. Accordingly, if a person cannot otherwise establish a right to refuse to testify, he or she may be compelled to testify in the United States about facts that Swiss banks must protect or that are "manufacturing or business secrets" if the person is not connected with the offense and if the following additional conditions are met: the offense is "serious," the information is vital, and reasonable but unsuccessful efforts to obtain the evidence by other means have been made. This rather convoluted procedure reflects a compromise between traditional Swiss safeguarding of business interests and US Government efforts to obtain information about tax evaders and other customers of the Swiss banking system. The reference to information concerning "business secrets" suggests that this provision may be used to compel testimony and the production of information about technology diverters, although it would not enable the suspected diverters themselves to be questioned. The use of search and seizure as a means of obtaining evidentiary materials is also available to the requesting state, although it "may only be made in accordance with the law of the place where the request is executed." [redacted]

Certain authorities in each country are responsible for handling requests for assistance under the Treaty as the "Central Authority." For the United States, this is the Attorney General or his designee (as is the case

with all mutual assistance treaties). Responsibility initially was delegated to the Assistant Attorney General for the Criminal Division and subsequently to the Deputy Attorney General and Director of the Office of International Affairs in the Criminal Division. On the Swiss side, the Division of Police of the Federal Department of Justice and Police in Bern serves as the Central Authority. [redacted]

The requirements as to form and content of requests are outlined in a rather extensive listing in the Treaty. To date, the Swiss have demonstrated strict adherence to these requirements in deciding whether to grant requests for judicial assistance. They have rejected a number of such requests upon the grounds that the requirements have been poorly addressed or ignored altogether. [redacted]

A well-prepared request for judicial assistance entails thoroughness, however, and thoroughness means that even the most expeditiously handled request and response is likely to be a time-consuming process. Thus, the treaty is most useful in relatively long-term investigations and prosecutions of diverters, rather than as a tool for interdicting shipments in the course of being diverted. [redacted]

Swiss Law and Regulations on International Assistance in Criminal Matters

The Swiss have adopted a Law (tab K) and Ordinance (tab L) to implement their cooperation with other countries in criminal matters. This law governs several matters that are specifically excluded in the Mutual Assistance Treaty with the United States but present in treaties with other countries, such as extradition and the execution of criminal judgments. The parts of the Law and Ordinance that could apply to export control violations are summarized below. [redacted]

Most of the provisions of the Law and Ordinance that do relate to implementation of the Swiss Treaty are merely explanatory of that Treaty. For instance, the Law describes in considerable detail political and fiscal offenses, both of which are excluded under the Treaty. Conversely, an additional requirement is imposed that the state requesting assistance guarantees

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reciprocity (with certain exceptions), although the structure of the Swiss Treaty ensures that the assistance contemplated is provided on a mutual basis. [redacted]

The Swiss Treaty envisions the disclosure of business secrets that otherwise would be illegal under the Swiss Penal Code, and the Law prohibits such disclosure if to do so "threatens to cause severe harm to the Swiss economy and such harm cannot be tolerated because the offense is not serious enough." [redacted]

The Law contains a number of protections afforded persons in Switzerland who are the subject of a request for judicial assistance. They are entitled to an attorney, including a court-appointed one if they are unable or even merely unwilling to obtain one themselves. Decisions of the Federal or cantonal authorities in response to a request are subject to appeal and valid only if they indicate both the right to that appeal and the attendant procedures. The Law details the procedures to be followed in executing requests for assistance from foreign states and in pursuing requests on behalf of Swiss authorities. The Federal Department of Justice and Police ("Federal Office") is the clearinghouse for all requests. [redacted]

Part II of the Law governs extraditions, including a number of limitations (the most important of which is that only foreign nationals may be extradited) and detailed implementing procedures. Unlike the "double criminality" requirement for judicial assistance, if the offense also falls under Swiss jurisdiction, the person may not be extradited. Protections afforded the accused include the right to a hearing. Part III of the Law contains the standards and procedures for transmitting information and granting other types of assistance contemplated in the Treaty with the United States. [redacted]

The implementing Ordinance specifies detailed procedures that are to be followed by Swiss officials in responding to requests for assistance. To the extent that it addresses definitional or substantive questions, the Ordinance merely reiterates the standards enunciated in the Treaty. [redacted]

Informal Cooperation

It is difficult to evaluate Swiss support of COCOM because of their avoidance of any publicity concerning their export control system even if it favors COCOM goals. Nevertheless, many Swiss authorities have supported COCOM for many years, and a deliberately informal yet well-established working relationship has developed between these authorities and US officials. 25X1

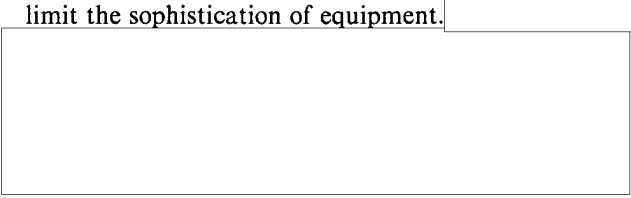
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The reason for the Swiss insistence upon secrecy is that cooperation with COCOM member countries is not in keeping with Swiss neutrality and notions of national autonomy. Indeed, these traditions limit Swiss willingness to cooperate regardless of whether secrecy could be ensured. This is illustrated by Swiss refusal to engage in "early warning" discussions about particular shipments in the "courant normal" that US officials considered to be particularly sensitive. Informal cooperation nonetheless does take place most frequently in responding to inquiries about Swiss applicants for US export licenses or recipients of commodities under distribution licenses. Swiss authorities also occasionally volunteer information to Embassy contacts about particular commodities that have entered Swiss commerce or transit zones without Swiss Blues or other appropriate documentation. 25X1

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US Embassy officials have identified other initiatives that could be undertaken to increase this cooperation. An alternative to the rejected "early warning" briefings that is under consideration is "technical discussions" in which US experts periodically would hold consultations with Swiss export control authorities to advise them of general concerns about exports of Swiss technology. Another approach would be for these experts to offer training seminars about the specifications of sophisticated equipment for Swiss authorities, who for the most part are not familiar with advanced technology. It is hoped that these would encourage the authorities to deny export licenses to Bloc nations for sophisticated equipment regardless of whether the limits of the "courant normal" are a factor. Inasmuch as the Swiss will ship 25X1

a given amount of technology to the Soviet Bloc under the "courant normal," attempts should be made to limit the sophistication of equipment. [redacted]



Another possibility for cooperation is the sharing of intelligence about specific Soviet activities in industrial espionage and technology diversion. At present, US inquiries and intelligence sharing focus on the misdeeds of Swiss and other Western diverters. Sharing information with the Swiss about the specific threats posed by advances in Soviet weaponry that were made possible by the acquisition of Western technology could heighten Swiss awareness. [redacted]

Problem Areas

Failure of COCOM Countries To Use Swiss Blues

Ironically, one of the most serious flaws in the Swiss import certificate system is not of Swiss making. Swiss officials have long complained about the inconsistency with which the various COCOM countries avail themselves of the Swiss Blue before permitting the export of controlled technology to Switzerland. As early as 1951, the Swiss undertook the institutional compromise of creating an import certificate system that respects and enforces multilateral reexport controls, reconciling this with their neutrality by making it available to all countries. Having done so, they are anxious that countries make use of the system, because they steadfastly refuse to impose reexport controls in cases where the country of origin has neglected to request a Swiss Blue. To control reexports in the absence of a Swiss Blue is seen by the Swiss as tantamount to joining COCOM and thus an impossible breach of their neutrality. [redacted]

According to Swiss trade officials, there is no precise way of determining export patterns if Swiss Blues are not requested. Nevertheless, it is clear that the United States is the COCOM member that most consistently requests Swiss Blues for all types of controlled equipment. [redacted]

Within this general pattern there are differences among the other COCOM countries. Among Switzerland's major trading partners, the Federal Republic of Germany is the strictest of the European countries in requiring Swiss Blues and apparently does so rather consistently for individual licenses for more sophisticated items. Nevertheless, the FRG does not request Swiss Blues for exports under distribution licenses, which account for an appreciable proportion of their exports of high technology. Swiss authorities have encouraged the FRG to request Swiss Blues in such circumstances. Receiving no favorable response, they have reached an independent agreement with a Swiss subsidiary of a private West German firm to cover its technology imports under "Global Swiss Blues." These are import certificates assigned monthly by the AEA under which trusted importers are permitted to report imports of a number of individual items referring to the number of the Global Swiss Blue. [redacted]

France is more lax about requesting import certificates. Swiss officials report that there also is a surprising dearth of requests for Swiss Blues from the United Kingdom; although the United Kingdom may not export much sensitive technology to Switzerland, the Swiss believe that the British Government does consistently require its companies to obtain Swiss Blues. Italy stands as a demonstrably poor performer among Switzerland's major trading partners. Indeed, there are reports that Italy has used its willingness to flout the multilateral reexport controls as a competitive advantage in securing related business. Japan frequently requests Swiss Blues, at times with strict attention to detail; overall, its use of the Swiss system appears to be effective. [redacted]

Among the remainder of the COCOM countries, the practice is best described as erratic. Neither Belgium nor the Netherlands exports much high technology to Switzerland, and they lack consistent policies regarding the sophistication of the items needing a Swiss Blue. Both countries also represent a problem with respect to diversions of transit shipments. The Swiss report that Canada has increased its requests for Swiss Blues. Norway makes consistent use of Swiss Blues, although it does not appear to export much sensitive technology. [redacted]

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The inconsistent requests from many COCOM countries is contrasted with the consistent usage of Swiss Blues by such certain third countries as Austria, Ireland, and Sweden. The erratic requests by most COCOM countries that produce critical technology appear largely to reflect an unofficial shortening of the Commodity Control List. Swiss Blues are requested for items of technological sophistication but not for lower-level commodities like personal computers. Sensing this discrimination, the Swiss refuse to enforce COCOM controls by issuing Swiss Blues or otherwise attempting to enforce reexport controls when COCOM countries themselves fail to do so. [redacted]

before issuing an export license the Swiss impose upon end users requirements that appear to be as stringent as those that would be applied by the COCOM country of origin. Such requirements include an import certificate and delivery verification and the submission of an end user certificate. [redacted] 25X1

Exports of Swiss Technology to the Soviet Bloc
Apart from any practical shortcomings in the Swiss legal framework for controlling technology transfers, the most noteworthy institutional weakness remaining is the legal export of sensitive indigenous technology to the Soviet Bloc,¹ the "courant normal." [redacted] 25X1

There is yet another respect in which COCOM countries fail to utilize the Swiss import certificate system. If an importer of goods brought into Switzerland under a Swiss Blue requests permission to reexport them, the AEA will petition the export authority of the country of supply for its consent to the reexport. In such cases, these authorities (apart from that of the United States) frequently ignore the request. Sometimes they refuse to act, while stating that reexport controls are an unwarranted exercise in extraterritorial jurisdiction. In such circumstances Swiss authorities claim that reexport permission will be denied. In yet another demonstration of Swiss neutrality, they refuse to decide whether a particular reexport is appropriate under COCOM guidelines. [redacted]

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Another instance of COCOM laxness apparently is that no COCOM country except the United States requests the Swiss to perform preclearance checks. The Swiss consider such checks unnecessary in cases where an import certificate has been issued (and thus where the Swiss Government has vouched for the trustworthiness of the importer). This position, however, begs the question of whether the Swiss Blue in fact is an effective control mechanism without at least occasional follow-up investigations of applicants and their business activities. [redacted]

Although estimates necessarily are speculative, the Swiss believe that their industry is capable of exporting to the Bloc sensitive technology of a value considerably in excess of the present "courant normal" of 55-60 million Swiss francs (approximately \$37-40 million at current rates of exchange). In 1986, this figure represented 2.7 percent of total Swiss exports to the Soviet Bloc. [redacted] 25X1

A final point in the utilization of the Swiss reexport control system by COCOM countries is the practice whereby most COCOM countries (with the notable exception of the United States) delegate to Switzerland the authority to permit reexports to non-Soviet Bloc countries. This is not a major problem, because

Because sensitive indigenous technology appears on the Swiss Red Export List, an export license must be obtained prior to shipment. This allows Swiss authorities to monitor such exports and restrict them within the applicable limit. If the "courant normal" is exceeded in a given year, exporters are placed on a waiting list on a first-come-first-served basis. [redacted] 25X1

¹ In keeping with COCOM policy changes, the Swiss have relaxed restrictions for exports of technology to China. [redacted] 25X1

The limits of the "courant normal" serve as annual targets rather than as fixed quotas and periodically are adjusted upward. It has been believed that this adjustment was simply to account for inflation, but in fact there are four criteria considered in establishing the target figure: (1) the growth of total Swiss exports; (2) the growth of total Swiss exports to the Soviet Bloc; (3) inflation; and (4) the effect of any revisions to the COCOM control list. This last factor has important policy implications because Swiss officials informally have indicated that they would consider a reduction in the control list as one factor—mitigating toward a smaller target figure—in determining the "courant normal." [redacted]

Swiss resistance to eliminating the "courant normal" is a result of several factors, two of which are of paramount importance. First, because the United States has acquiesced in this trade for 35 years, the Swiss resent pressures to abandon even a relatively small part of their foreign trade. Second, exports of Swiss technology to Western countries will continue; a total embargo of Swiss goods to the Soviet Bloc would be tantamount to joining COCOM and thus a compromise of Swiss neutrality. [redacted]

This same concern for neutrality and sovereignty underlies the rejection by the Swiss Government of a US proposal to hold "prior consultations" during which American technical experts would alert Swiss authorities to proposed exports of particularly sensitive technology, in an attempt to forestall such exports. In keeping with the autonomous nature of their export control system, the Swiss reserve to themselves the right to decide what is of critical sensitivity. This, however, raises the question whether Swiss export authorities have the requisite technical competence to determine which sophisticated technology is of critical importance to Western security. The private trade association VSM serves as a semiofficial adviser to the government on technical matters related to export licensing; there are conflicting reports, however, on the frequency with which the VSM is consulted on particular exports under the "courant normal." The Swiss maintain that, in practice, they have restricted proposed exports of especially sensitive indigenous technology on a case-by-case basis apart from the "courant normal." Unfortunately, it is difficult to

discern the effectiveness of this informal practice, as Swiss authorities are constrained from revealing details of their activities by the laws respecting business confidentiality. [redacted]

In any event, informal cooperation and assistance appear to be the only means of addressing the problem of the "courant normal." It may be possible to hold "technical discussions" between Swiss export authorities and US technical experts to consist of periodic briefings about especially sensitive types of technology rather than particular export transactions. The premise of such discussions would be the threat to the security of Switzerland as well as other Western countries that would result from the sale of such technology to the Soviet Bloc. [redacted]

Integration of Controlled Components Into Swiss Systems Exported to the Soviet Bloc

In addition to the export of wholly indigenous Swiss technology, another troublesome issue involves the incorporation of COCOM-controlled components into equipment manufactured in Switzerland for eventual export. Under current Swiss practice even technology that was imported into Switzerland under a Swiss Blue may be integrated into equipment and lawfully exported to the Soviet Bloc. [redacted]

The current AEA guidelines provide that for an item that includes controlled foreign technology to be considered of Swiss origin the following tests must be met: (1) the foreign components must account for no more than 10 to 15 percent of the final value of the system; and (2) the components must be sufficiently integrated into the system so that they may not be removed easily and such removal would seriously damage the system. [redacted]

This policy allows components imported under a Swiss Blue to be exported from Switzerland without the consent of the country of origin. The Swiss position is that, by virtue of their integration into equipment of "Swiss origin," such components have been "consumed" in Switzerland. Since the obligation imposed by the Swiss Blue is that controlled goods either must be consumed in Switzerland or reexported only

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with the consent of the country of origin, Swiss authorities consider the obligation to have been fulfilled. [redacted]

Of more pressing concern, however, is the use of a monetary formula to determine whether COCOM-controlled technology may be exported to embargoed countries. Such a standard ignores the technical sophistication of the integrated components regardless of how critical they may be to Western security. Although the second criterion is intended to address this problem, it is still possible that purchasers from the Soviet Bloc may procure Swiss systems in order to obtain and remove sensitive components. [redacted]

Questionable Enforcement of the Transit Controls

The amended Ordinance governing control of Swiss transit zones (tab B) establishes a comprehensive system: no transshipments (including removal from bonded warehouses in the transit zones) of controlled commodities are permitted without showing that the country of origin has approved export to the ultimate destination. The amendment went into effect on 1 January 1986, and there have been few indications of how well the system is functioning. In fairness, should the system be functioning well, there most likely would be little demonstrable evidence of that. For instance, deterrence is obviously one aim of the controls but it would be difficult to prove the negative, that is, that diverters were avoiding Swiss transit zones because of the new controls. [redacted]

Nevertheless, there is reason to question whether the transit controls are as effective in practice as they appear in the Ordinance. This stems first from an administrative exception that has been made to the crucial requirement to document that shipment to the ultimate destination is lawful under the export controls of the country of origin. As a rule, Swiss Customs assume that shipments bound for member countries of the Economic Community (EC) and the European Free Trade Association (EFTA) are lawful under the export regulations of the country of origin, and thus they routinely permit shipment without requiring presentation of appropriate documents. [redacted]

This practice is particularly troublesome with respect to certain EFTA countries such as Austria and Finland that have far less stringent reexport controls than Switzerland, let alone the COCOM countries. Austria in particular is a popular diversion route with a questionable import-certificate system. Thus far, Austria has resisted imposing any transit controls and expressly has rejected the Swiss model. If controlled technology routinely is permitted to transit Switzerland en route to Austria, regardless of whether the shipper can prove that the country of origin has approved shipment to Austria, the Swiss transit controls contribute nothing more to preventing diversion than do the considerably weaker Austrian reexport controls. [redacted] 25X1

Swiss authorities maintain that this practice is necessary in the face of the overwhelming administrative burden that would be created were the documentation for every shipment that transits Switzerland to be checked. Should anything about a shipment to an EC or EFTA country arouse suspicion, a complete document check would be undertaken. Nevertheless, in the absence of even a cursory check it is difficult to perceive how any suspicious circumstances would be discovered. Moreover, should this practice become generally known, it would dilute any deterrent effect resulting from the adoption of the transit-control system. [redacted] 25X1

The second cause for concern about the actual operation of the transit controls arises from the circumstances surrounding the only known instance in which they have been applied. Although little specific information has been forthcoming from the Swiss about this case, it does appear that a piece of sensitive equipment (a VAX computer) was impounded in the Zurich transit zone as it was in the process of being diverted from Italy to the Soviet Bloc. The crates apparently were incompletely or inaccurately labeled and came to the attention of a Customs officer. The shipper then was requested to provide documentation that shipment to the Bloc was lawful; after he failed to do so the shipment was impounded. It now awaits a [redacted] 25X1

court determination of the authority of Customs to seize (and ultimately to dispose of) a shipment under the transit controls. [redacted]

Conclusions about the functioning of the transit controls are difficult to draw in the absence of crucial information regarding how the attempted VAX computer diversion first came to the attention of Swiss Customs. Nevertheless, if the controls had functioned as designed, the shipping papers should have been checked by a Customs officer as a matter of course inasmuch as the shipment was clearly destined for a Bloc country. Had such been the case, it is reasonable to assume that Swiss authorities would be willing, if not anxious, to have it known that the system had worked as designed. In the absence of indications to that effect, there is an inference that the discovery of the near-diversion was entirely serendipitous. [redacted]

The Swiss in recent years have made significant improvements in the formal legal controls that may be imposed upon the reexport and transit of controlled technology. Traditional Swiss neutrality legitimately accounts for much of their hesitation in enacting these controls and for their reluctance to propose further institutional changes. There appears to be inconsistent, even lackadaisical, use of Swiss controls by most COCOM countries. In the face of that record it is

hardly surprising that the Swiss continue to resist such overtures as the request that they issue Swiss Blues even if the country of origin does not bother to request one. The Swiss appear genuinely to believe that their export control system works at least as well as that of any COCOM country except the United States, and there is no readily available evidence to the contrary. [redacted]

Nevertheless, the practical functioning of the Swiss control system has yet to be demonstrated, and, indeed, the minuscule record available raises serious questions about the effectiveness of that system. Rather than attempting to obtain legal or other formal strengthening of the Swiss system, the United States should prevail upon Swiss authorities to demonstrate through the informal and discrete channels already established that their ostensibly strict controls do in fact function as designed. [redacted]

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A.	Federal Law of 25 June 1982 on Foreign Trade Measures
B.	Ordinance on Goods Export and Transit (S.R. 946.221)
C.	Swiss Ausfuhrliste ("Red Export List")
D.	Ordinance on the Exchange of Goods With Foreign Countries (S.R. 946.201.1)
E.	Ordinance on the Surveillance of Imports (S.R. 946.211)
F.	Articles 271-273 of the Swiss Criminal Code
G.	International Import Certificate ("Swiss Blue")
H.	Statement of End Use
I.	Selected Provisions of the Swiss Customs Act
J.	Treaty Between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters
K.	Federal Law of 20 March 1981 on International Mutual Assistance in Penal Matters
L.	Ordinance of 24 February 1982 on International Mutual Assistance in Penal Matters
M.	Ordinance of 4 July 1984 on Origin Certification



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APPENDIX A

FEDERAL LAW OF 25 JUNE 1982 ON
FOREIGN TRADE MEASURES

Federal Law on Foreign Trade Measures
of 25 June 1982 (946.201)

The Federal Assembly of the Swiss Confederation,

based on the competence of the federal government for foreign affairs and on Articles 28 and 29 of the Federal Constitution, considering a message from the Federal Council of 7 December 1980¹,

resolves:

Art. 1 Protection Against the Effects of Foreign Measures or Extraordinary Circumstances Abroad

Insofar as foreign measures or extraordinary circumstances abroad influence the exchange of goods, services or payments for Switzerland to such an extent that significant Swiss economic interests are impaired, the Federal Council can undertake the following measures for as long as circumstances require:

- a. monitor, make subject to permission, restrict or prohibit the import, export and transit of goods, as well as the exchange of services;
- b. regulate international payments with certain countries and if necessary order the imposition of fees in order to bridge price- or exchange-related disruptions in the exchange of goods, services and payments.

Art. 2 Temporary Application of Agreements

¹BB1 1982 I 61

The Federal Council can temporarily apply agreements on the exchange of goods, services and payments that are not subject to referendum, in order to safeguard critical Swiss economic interests. This authority is also at its disposal in urgent circumstances, when these agreements provide for joining an international organization.

Art. 3 Implementation of Agreements

The Federal Council issues the necessary regulations on the implementation of agreements on the exchange of goods, services and payments.

Art. 4 Cooperation of Organizations and Institutions

¹The Federal Council and the departments can commission organizations and institutions, especially those involved in the economy, with the implementation of measures according to Article 1 and of agreements on the exchange of goods, services and payments.

²In this regard, these organizations and institutions are subject to the supervision and directives of the Federal Council or of the administrative units designated by it.

³The entities and employees of these organizations and institutions are subject to the regulations concerning responsibility to criminal and property law and are subject to the pledge of confidentiality of federal government officials.

Art. 5 Fees

The Federal Council can impose fees in order to cover the costs of enforcement and can authorize the commissioned organizations

and institutions to impose fees. The rates of these fees require the approval of the competent department.

Art. 6 Legal Protection

¹The Federal Council can stipulate that an appeal of rulings made on the basis of the regulatory decrees to this law must be preceded by objection proceedings.

²Otherwise, the general provisions on the administrative process and the administration of justice apply.

Art. 7 Penal Provisions

¹Whoever deliberately or negligently violates the regulatory provisions of this law is punished by fines of up to 100,000 francs. In the case of serious, deliberate violation, the perpetrator can additionally be punished with imprisonment of up to one year.

²Attempted violations, as well as aiding and abetting are punishable. Articles 6 and 7 of the Federal Law on Administrative Criminal Law¹ apply.

³The statute of limitations in all cases in five years.

⁴Violations of the Customs Act² are punished exclusively according to the penal and procedural provisions of that law, even if the elements of an offense correspond to the provisions of this article.

⁵Violations of the regulations concerning origin certification

¹SR 313.0

²SR 631.0

are prosecuted and judged according to the Certificate of Origin Ordinance of 9 December 1929¹

⁶The right to criminal prosecution on the basis of the special provisions of the Criminal Code² is in all cases reserved.

Art. 8 Criminal Procedure

The prosecution and judgement of the violations are subject to federal jurisdiction. Article 7 Para. 4-6 are reserved.

Art. 9 Hearing of Advisory Commissions

¹The Federal Council appoints a Consultative Commission for Foreign Trade Policy. It conducts hearings with this commission on significant issues of foreign trade policy.

²Issues affecting international development cooperation are dealt with at a joint session with the Advisory Commission for International Development Cooperation.

Art. 10 Reporting and Approval

¹The Federal Council reports to the Federal Assembly at least once a year on important issues of foreign trade policy. However, approval of administrative policy takes place during the handling of the Federal Council's annual report.

²In addition, the Federal Council reports to the Federal Assembly within six months if it has ordained measures (Art. 1) or is temporarily applying agreements (Art. 2). The Federal Assembly decides on the basis of the Federal Council report whether the

¹SR 946.31

²SR 311.0

measures should remain in force, be supplemented or be modified, and whether the agreements should be approved.

³The Federal Council can submit in its reports further agreements on the exchange of goods, services and payments for approval.

Art. 11 Final Provisions

¹The regulatory provisions to the Federal Resolution of 28 June 1972¹ on Foreign Trade Measures remain in force insofar as they have not been repealed prior to their expiration.

²This law is subject to the facultative referendum.

³It goes into effect on 1 January 1983.

¹AS 1972 2422

B

APPENDIX B

ORDINANCE ON GOODS EXPORTS AND TRANSIT
(S.R. 946.221)

Ordinance on Goods Export and Transit
of 7 March 1983 (946.221),
as last amended on 16 December 1985

The Swiss Federal Council,
based on Articles 1, 4 and 5 of the Federal Law of 25 June 1982¹
on Foreign Trade Measures,
ordains:

Art. 1 Goods Export²

The export of the goods listed in the Supplement is subject to the permit obligation according to the Ordinance of 7 March 1983³ on the Exchange of Goods with Foreign Countries.

Art. 1a⁴ Goods Transit

¹Insofar as the country of origin restricts the export of the goods listed in the Supplement, the transit of such goods is prohibited if the authorized agent cannot prove lawful dispatch, according to the regulations of the country of origin, to the new country of destination. Excepted from this are the goods desig-

¹SR 946.201

²As last amended by No. I of the Ordinance of 16 December 1985 (AS 1985 2023).

³SR 946 201.1

⁴Added by No. I of the Ordinance of 16 December 1985 (AS 1985 2023)

nated by the Swiss Department of Public Economy on the basis of Article 6.

*²Proof of lawful dispatch to the new country of destination is to be presented during the entry of the goods into the Swiss customs area. Where justified, an extension can be granted.

*³Withdrawal from a bonded warehouse is equivalent to transit.

Art. 2 Permit Office

¹The permit office is the Import and Export Section; it rules on the instructions of the Federal Office for Foreign Trade.

²The Import and Export Section can distribute export applications to the Swiss Association for Chemical Industry or the Swiss Association of Engineers for assessment. These organizations are subject to the supervision and directives of the Federal Office for Foreign Trade insofar as their assessment activity is concerned.

Art. 3 Permit-Free Export

For the export of goods that fall under a tariff number in the supplement but that are not themselves listed in the supplement, the exporter must indicate on the export declaration that these goods are not subject to the permit obligation.

Art. 4 Deliveries to Diplomatic or Consular Delegations

* The delivery of goods to foreign diplomatic or consular delegations in Switzerland is considered an export.

Art. 5 Exceptions to the Permit Obligation

Shipments that do not exceed the allowances defined in the supplement do not need an export permit. The export ban on goods

imported into Switzerland for which the importer has agreed not to reexport them remains valid.

Art. 6 Export Restriction

The Confederation Department of National Economy stipulates which of the goods listed in the supplement are subject to restricted export in order to assure domestic supplies. Exports can be permitted insofar as overriding interests so demand. The affected segments of the business community are to be consulted.

Art. 7 Origin Criteria

¹The applicant may indicate Switzerland as the country of origin in the export application only if the requirements in keeping with Para. 2 (Origin Criteria) of the Ordinance of 4 July 1984¹ on Verification of Origin are met.²

²The Import and Export Section can in any case require that the applicant present verification of origin issued by the competent certificate of origin office.

Art. 8 Implementation

The Confederation Department of National Economy issues the necessary enforcement provisions.

Art. 9 Final Provisions

¹The Ordinance of 20 February 1974³ on Goods Export is repealed.

¹SR 946.31

²According to Art. 27, No. 3 of the Ordinance of 4 July 1984 on Verification of Origin, in effect since 1 January 1985 (SR 946.31).

³[AS 1974 581, 1975 2370, 1977 2325 No. I 23]

The repealed provisions remain applicable to all cases initiated prior to the repeal.

²This ordinance goes into effect on 1 June 1983.

APPENDIX C

SWISS AUSF^URLISTE
("RED EXPORT LIST")

(Introduction translated; items on the list
have not been translated from the German)

Export List
(As of 1 January 1986)

1. Explanation of abbreviations and footnotes:

SR Systematische Sammlung des Bundesrechts

V Ordinance

AEA Import and Export Section, Zieglerstrasse 30, 3003
Bern, Tel. 031/612361, 612375, 612365 and 612339;
telex 911172 aea ch

BEN Federal Office for Energy Economics, Kapellen-
strasse 14, 3003 Bern, Tel. 031/615631 and 615632

DMV Directorate of the Confederation Military
Administration, 3003 Bern

AL-free Permit-free according to the Export List

Footnote¹ These goods are permit-free for export or not
subject to the prohibition on transit according to
No. 2a for values up to 2000 francs. However,
this value limit does not apply to goods imported
with an import certificate as well as for
deliveries to the following countries:

Afghanistan	North Korea
Albania	Poland
Bulgaria	Romania
China (PR)	Soviet Union
German Democratic Republic	Czechoslovakia

Kampuchea

Hungary

Laos

Vietnam

Moñgolia

Footnote² These goods can be exported to any country without a permit, for net weights of up to 20 kg.

2. The Export List (AL) includes:

a) Goods that in accordance with the V of 7 March 1983 on Goods Export and Transit (SR 946.221)

-- require an export permit from the AEA or

-- are prohibited from transit if the authorized agent cannot prove lawful dispatch to the new country of destination according to the regulations of the country of origin during entry into the Swiss customs area (cf. column AEA).

b) Goods that, in keeping with the V of 18 January 1984 on Definitions and Permits in the Area of Atomic Energy (Atomic Ordinance) (SR 732.11) require an export permit from the BEN (cf. column BEN).

Additional Provision: In this V, in addition to the permit procedure for concrete goods listed in the V and AL, there is a **reporting requirement** which is described in Art. 16, as follows:

The export of the following goods, which are intended for facilities for the enrichment or reprocessing of nuclear fuels or for the production of heavy water, deuterium or

deuterium compounds, must be reported to the BEN no later than 20 days prior to dispatch:

- a. facility components that, according to the use foreseen for them will be in direct contact with nuclear fuel;
- b. facility components without which the process cannot be conducted for reasons of radiological safety;
- c. facility components for the registration and regulation of material flow, insofar as these components were designed or produced specifically for that process.

If the report is made later than 20 days prior to the dispatch, then the facility component may only be exported with the consent of the BEN.

If a permit according to the V on Goods Export and Transit (cf. letter a above) is required for export, then the export permit application to the AEA is considered a report if the exporter notes on the application that the goods are subject to the reporting requirement according to the Atomic Ordinance.

3. Not included are:

Goods that require an export permit from the DMV according to the V of 10 January 1973 on Munitions (SR 514.511).

The permit and export provisions of the DMV apply to the export of such goods.

4. For goods that require permits both according to the V on Definitions and Permits in the Area of Atomic Energy and

according to the V on Goods Export and Transit, the BEN is the permit office. These goods are listed in the export list in cursive.

5. For the export of goods that fall under one of the numbers listed below, without being subject to the permit obligation on the basis of existing provisions (not listed in the AL), this fact is to be confirmed in the export declaration (Art. 11, Para. 4 of the Atomic Ordinance and Art. 3 of the V on Goods Export and Transit).

This confirmation is to be made by the note "AL-free," written in the "Export Permit" column of the export declaration.

6. Violations

- a) Goods requiring permits and those prohibited for transit in keeping with the V on Goods Export and Transit:

Violations of the permit obligation and the transit prohibition are punished in keeping with Art. 7 Para. 4 of the Federal Law of 25 June 1982 on Foreign Trade Measures (SR 946.201) according to the Customs Act (SR 631.0).

- b) Goods requiring permits in keeping with the Atomic Ordinance:

Violations of the permit obligation are punished according to Art. 35 Para. 1 of the Federal Law of 23 December 1959 on the Peaceful Use of Atomic Energy and Radiation Protection (SR 732.0).

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D

APPENDIX D

ORDINANCE ON THE EXCHANGE OF GOODS
WITH FOREIGN COUNTRIES
(S.R. 946.201.1)

Ordinance on Exchange of Goods with Foreign Countries
of 7 March 1983

The Swiss Federal Council,
based on Articles 1, 4 and 5 of the Federal Law of 25 June 1982¹
on Foreign Trade Measures,
ordains:

Art. 1 Permit Obligation; Implementation

¹Insofar as the Federal Council designates goods for which import, export and transit is dependent on a permit, the Confederation Department of Public Economy can order exceptions, or restrict the measures as pertain to goods imported from certain countries or exported to certain countries; it specifies the details of such restrictions and it can in particular stipulate quotas for individual goods and countries. Conditions can be linked to the granting of permits.

²If the import, export and transit is restricted in terms of quantity, permits are generally granted in proportion to the extent of previous, similar transactions. If a company cannot produce evidence of previous import, export or transit activities, but does meet the other requirements in keeping with Article 3, Letters a and b, then it should nevertheless be taken into account accordingly within the framework of the existing quotas.

¹SR 946.201

Art. 2 Permit Office

¹The Import and Export Division is responsible for granting permits; it acts on the instructions of the Federal Office for Foreign Trade. It levies the fees in accordance with the Tariff of 17 December 1956¹ for the Granting of Permits, Certificates and Visas in the Exchange of Goods with Foreign Countries.

²The Confederation Department of Public Economy can, where necessary, set up other permit offices and enlist the cooperation of other organizations. It can authorize permit offices to levy fees.

³The permit offices and the other organizations whose cooperation has been enlisted are under the jurisdiction of the Federal Office for Foreign Trade, which issues to them the necessary instructions and exercises supervision over them.

Art. 3 Principles for Permits

The following principles in particular are definitive in the granting of permits:

- a. Permits are granted, upon written application, to persons and companies that are established for business in the Swiss customs territory.
- b. The persons and companies must be commercially involved in import, export or transit in the corresponding line of business in keeping with relevant regulations.

¹[AS 1956 1570, 1975 402 No I 1.SR 946.203 Art. 11, Para. 2]. Today: in accordance with the Ordinance of 11 May 1983 on Fees for the Granting of Permits, Certificates and Visas in the Exchange of Goods with Foreign Countries (SR 946.203).

c. Permits are generally not granted to companies and their organizations that are to be protected by the permit obligation.

d. Permits are always granted under the condition that they can be revoked if the requirements for their granting are no longer being met or if contrary regulations are subsequently issued.

Art. 4 Revocation and Denial of Permits

If the conditions linked to the permit or the regulations or decrees issued on the basis of the Federal Law of 25 June 1982¹ on Foreign Trade Measures are not complied with, the permit offices are authorized to revoke the granted permits ahead of time, to fail to renew them, or to deny companies other permits for a fixed period of time.

Art. 5 Customs Clearance

¹The customs office conducts the final or interim clearance of goods subject to the permit obligation only if it has been presented with a corresponding permit or the number of the permit has been indicated on the clearance application.

²If only the import or export of a type of goods is subject to the permit obligation, customs clearance for transit or for stock trade, with the exception of private warehousing, is permissible without a permit.

Art. 6 Use, Term of Validity of Permits

¹SR 946.201

¹Permits may be used only by the applicant and for his own accounts.

²Permits are subject to a time limit. Their term of validity is no more than one year, including any extensions.

Art. 7 Information Obligation

The applicant must furnish true and complete information and provide the organs of the permit offices with relevant information, allow perusal of all documents and records, and provide access to the business, production and storage premises.

Art. 8 Inspection Authority

The organs entrusted with the enforcement of the Federal Law of 25 June 1982¹ on Foreign Trade Measures and of its execution provisions are authorized to demand from the companies that they are checking for compliance with regulations on the exchange of goods as well as with the conditions imposed thereon perusal of all documents and records as well as access to the business, production and storage premises.

Art. 9 Final Provisions

¹The Ordinance of 17 December 1956² on the Exchange of Goods with Foreign Countries and Federal Council Resolution No. 1 of 17 December 1956³ on the Import of Goods are repealed. The

¹SR 946.201

²[AS 1956 1559]

³[AS 1956 1563, 1959 1642, 1964 1364, 1972 129 No. I Bst. r, 1975 402 No. I 2, 1977 2325 No. I 21; SR 946.212.7 Art. 2]

repealed provisions remain applicable to all cases initiated prior to the repeal.

²This ordinance goes into effect on 1 June 1983.

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APPENDIX E

ORDINANCE ON THE SURVEILLANCE OF IMPORTS
(S.R. 946.211)

ORDINANCE ON THE SURVEILLANCE
OF IMPORTS (SR 946.211)

7 March 1983

The Swiss Federal Council

on the basis of articles 1 and 5 of the Federal Law of 25 June
1982 (SR 946.201) on Foreign Trade Measures,

hereby decrees:

Article 1. Import Surveillance

1. The Division of Imports and Exports may issue import certificates--provided the prerequisites have been met--for the import of goods for which an official end-use certificate is demanded by the foreign supplier state. It issues orders by direction of the Federal Office of Foreign Trade.

2. The Division of Imports and Exports supervises the importation of those goods for which an import certificate has been issued.

Article 2. Basic Principles

The following basic principles are determinative with regard to the issuance of import certificates:

a. Import certificates are issued only to firms that are established in Swiss customs territory and that are registered in the Trade Register.

b. Goods for which an import certificate has been issued must be imported immediately into Swiss customs territory, must be processed through customs, and the fact of importation must be documented to the Division of Imports and Exports by the deadline specified in the certificate.

c. If a commodity for which an import certificate has been issued is conveyed domestically, the obligation undertaken by the importer of the commodity must be passed to the buyer of the commodity, in writing, prior to its conveyance.

d. The re-export of goods for which an import certificate has been issued is allowed only with the permission of the Division of Imports and Exports, which issues orders under the direction of the Federal Office of Foreign Trade. Permission is granted if consent has been given by the country that demanded the import certificate. It furthermore may be made dependent upon an end-user certificate.

e. Import certificates expire if they have not been submitted to the competent foreign authorities within six months after issuance.

f. The Decree of 7 March 1983 on the Exchange of Goods with Foreign Countries (SR 946.201.1) applies accordingly.

Article 3. Fees

For the issuance of import certificates, the Division of Import and Exports collects fees according to the fee schedule of [the Ordinance of 11 May 1983 on Fees (SR 946.203)] for the issuance of permits, certifications, and visas in the exchange of goods with foreign countries.

Article 4. Final Provisions

1. The Federal Council Resolution No. 2 of 30 January 1951 (AS 1951 45 463, 1 1956 1569 1572) on Import Surveillance is hereby rescinded. It remains applicable to situations that arose prior to its repeal becoming effective.

2. This ordinance takes effect on 1 June 1983.

APPENDIX F

ARTICLES 271-273 OF THE
SWISS CRIMINAL CODE

Articles 271-273 of the Swiss Criminal Code (311.0)

Art. 271¹

Prohibited Transactions for a Foreign State

1. Whoever, on Swiss soil and without permission, undertakes transactions for a foreign state that benefit an authority or an official,

whoever undertakes such transactions for a foreign party or some other foreign organization,

whoever encourages such transactions,

is punished by imprisonment, and in serious cases in a penitentiary.

2. Whoever uses force, cunning or threats to abduct someone into a foreign country in order to hand him over to a foreign authority, party or other organization or to subject him to a danger to life and limb, is punished by imprisonment in a penitentiary.

3. Whoever makes plans for such an abduction is punished by imprisonment in a penitentiary or prison.

¹As last amended by No. 1 of the federal law of 5 October 1950, in force since 5 January 1951 (AS 1951 I 16; BB1 1949 I 1249).

Art. 272¹

Prohibited Intelligence. Political Intelligence

1. Whoever engages in political intelligence activities in the interest of a foreign country or a foreign party or another foreign organization to the detriment of Switzerland or its citizens, inhabitants or organizations or arranges such services, whoever recruits for such services or encourages them, is punished by imprisonment.

2. In serious cases, punishment is imprisonment in a penitentiary. One particularly serious case is when the perpetrator incites transactions or gives false reports that constitute a threat to the internal or external security of the Confederation.

Art. 273

Economic Intelligence

Whoever ferrets out a production or business secret in order to make it accessible to a foreign official entity or a foreign organization or private enterprise or its agents,

whoever makes a production or business secret available to a foreign official entity or a foreign organization or private enterprise or its agents,

is punished by imprisonment, in serious cases in a penitentiary. Imprisonment can be linked to additional fines.

¹As last amended by No. 1 of the federal law of 5 October 1950, in force since 5 January 1951 (AS 1951 I 16; BB1 1949 I 1249).

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APPENDIX G

INTERNATIONAL IMPORT CERTIFICATE

("SWISS BLUE")

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APPENDIX H

STATEMENT OF END USE

Industrial Products II
Zieglerstrasse 30

Telex 911 172 aea ch

CH 3003 B e r n

Statement of End - Use

Name and address of Swiss contractor:

.....
.....

Name and address of consignee:

.....
.....

Description of goods (incl. quantity):

.....
.....

Country of destination:

Value free to Swiss border, in Swiss francs:

I (we) certify, for the attention of the Import and Export Division, that the above-described goods are to be used exclusively in the fore-mentioned country of destination. I (we) will not reexport these goods without being in possession of the authorization of the country responsible for delivery (i.e. the country that has shipped the merchandise to Switzerland on supply of a statement of end-use).

Such an authorization is, however, not necessary for the reexport of the goods to one of the following countries: Belgium, Luxembourg, Denmark, France, Greece, the United Kingdom, Ireland, Italy, Japan, Canada, the Netherlands, Norway, Portugal, Spain, Turkey and the United States of America.

Place and date

Name of firm and
signature of consignee

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APPENDIX I

SELECTED PROVISIONS OF THE
CUSTOMS ACT

CUSTOMS LAW (ZG) (OF 1 OCTOBER 1925)

Article 1

1. Anyone who crosses the customs border or who moves goods across the customs border must abide by the regulations of customs legislation.

2. Dutiability encompasses compliance with regulations for traffic across the border (customs reporting obligation) and the payment of legal fees (customs duty payment obligation).

Article 2

1. The Swiss customs border coincides with the political boundaries of the country, with the reservation of the following provisions.

2. In view of their locations, Swiss border regions or border realty [landed property] may be excluded from Swiss customs territory regardless of surveillance by the customs administration (free zones).

3. The customs duty-free district (duty-free warehouses and duty-free ports) are treated as foreign countries in terms of customs processing.

4. Foreign State territory, which is incorporated into Swiss customs territory by virtue of State treaty (free zone [customs union territory]), is considered to be located within the Swiss customs border.

5. The Federal Council shall establish provisions on free zone [customs] exclusions [territories] and customs-duty-free districts as well as on the course of the customs border along boundary waters. This applies with exception of the provisions of Article 42.

Article 3

1. The (import, export, and transit of objects of all kinds, including animals (which are goods in terms of technical customs processing), across the

customs border is permitted, to the extent that bans or restrictions are not provided by law or have not been ordered by the competent authority.

2. The senior customs director may restrict the processing of individual goods categories to certain customs stations or technical customs processing regions.

Article 6

a. With Reference to Customs Processing

1. All goods, which are imported or exported, must be delivered to the competent customs station, must be placed under customs control, and must be reported for processing.

2. This applies except for measures ordered by this law or or on its basis. (Version according to Item I, BG [Federal Law] of 6 October 1972, in force since 1 June 1973; AS 1973 644 650; BB1 [Federal Gazette] II 228.)

Article 7

b. With Reference to Other Obligations

1. Discharging the customs duty obligation also includes compliance with federal law regulations on commercial statistics, monopolies and royalties, as well as the other edicts of the Federal Government in whose implementation the agencies of the customs administration must cooperate.

2. The Federal Council will establish regulations on the certificates of origin for goods as well as the punitive provisions; it may threaten prison sentences for the forgery of certificates of origin and similar actions. (Version according to Figure 7, Appendix, VStrR, in force since 1 January 1975, SR 313.0.)

Article 9

1. Anyone who moves a commodity across the border and the customer are

subject to mandatory customs reporting.

2. The employer is responsible for the actions performed by his employees, workers, apprentices, or official messengers in exercise of their official or business activities, provided he cannot prove that he exercised every required care to secure compliance with regulations by the above-mentioned persons.

3. In the same sense, the family head is responsible for his under-age, incapacitated [declared incompetent], mentally deficient, or mentally ill house companions.

4.... (Rescinded by Item 7, appendix, VStrR, SR 313.0)

Article 14

a. With Final Processing

The following are duty-free in connection with import, with the exception of Article 19 and the detailed provisions to be issued by decree:

17. War materiel of the Federal Government, with the proviso that it is not further sold domestically;

Article 29

1. The party subject to mandatory customs reporting must take all measures required according to law and decree concerning the implementation of customs inspection and determination of the customs duty payment obligation.

2. This obligation must be discharged--with the exception of the provisions of Article 13--primarily in connection with the following:

In road transportation: persons who carry goods with them or wear them on themselves;

In air transportation: the commander of the aircraft or the traveller or their authorized agents;

In ship transportation:

1. For travelling baggage, the traveller or his authorized agent;
2. For other goods, the ship administration or the ship commander

[captain];

In railroad transportation:

1. For hand baggage, the traveller or his authorized agent;
2. For registered travel baggage, the traveller, his authorized agent, or the railroad administration;

3. For other shipments:

- a. So long as the goods are under way, the railroad administration;
- b. If customs processing is accomplished at the destination station, the person authorized to dispose of items, his authorized agent, or the railroad administration.

Regulations established for railroad traffic apply to all transportation enterprises which have concessions on land;

In postal transportation: the sender or, if he does not meet the obligation, in his place, the PTT [Postal, Telegraph and Telephone] enterprises. Designation according to Article 21 of the PTT Organization Law of 6 October 1960, SR 781.0.)

Article 30

1. Apart from the exceptions provided for in this law or in the executory decree (SR 631.01; today: V in the Customs Law (ZV), the party subject to mandatory customs reporting must deliver every goods item crossing the customs border, unaltered in terms of nature and packaging, to the nearest customs station, without delay, without leaving the customs road and without stopping under way, and must place said item under customs control.

2. The driver of the goods must stop without being asked to do so at surveillance posts near the customs border and must follow the instructions which are given to him concerning the delivery of the goods to the nearest customs station.

3. The person subject to mandatory customs reporting [customs declaration] must deliver certain goods intended for export across the customs border to the pertinent customs office and must place the goods under customs control. This does not apply to the easements determined by decree.

4. Drivers of goods found in the vicinity of the customs border must, when requested to do so, show evidence that the customs duty was complied with for the goods they carry.

Article 31

1. Concerning the goods placed under customs control, the party subject to mandatory customs reporting must submit the processing application and, depending on the destination of the goods, must file the customs declaration along with the submission of the documents, permits, and other certifications required for the particular type of processing procedure in the required number, form, and by the required deadline.

2. At the same time he must, at his own expense and risk, unload the freight and baggage items required for inspection, he must bring them to the inspection premises, and he must take all steps necessary for examination and removal.

3. Anyone who wants to make out customs declarations in a professional manner, may be required to show evidence as to his suitability and good reputation. If he loses the suitability or the good reputation or if he has been sentenced several times for intentional or negligent customs

violations, the senior customs directorate will decide whether and for what duration he is to be denied the professional preparation of customs declarations (version according to Item 7, appendix, VStrR, in force since 1 January 1975, SR 313.0.)

Article 34

1. After acceptance of the processing application, the customs office will examine its own competence. If it considers it as being not authorized to initiate the customs processing procedure applied for, the application must be rejected and it must be left up to the party subject to mandatory customs reporting to deliver the goods to the nearest competent customs office or to return them across the customs border or to renounce export.

2. If the customs office considers itself to be competent, it will examine the customs declaration that was given as to its correctness and completeness in formal terms and as to its agreement with the accompanying papers.

If the customs declaration does not agree with the accompanying papers, if it is not prepared according to regulations or if it contains insufficient, ambiguous data or data not in keeping with the customs tariff, it will-- unless otherwise determined by law or decree--be returned to the applicant for supplementation or correction. If the supplementation or correction is rejected, then the return of the goods across the customs border or storage in the nearest customs depot, at the expense of the party subject to mandatory customs reporting, will be ordered or customs processing will be accomplished according to the provisions of Article 24.

Article 36

1. Unless otherwise ordered by law, decree, or service regulation, the

Article 40

1. Foreign goods intended for transfer into free traffic--whose final processing, at the time of the report filing for import, does not appear feasible--will be cleared through customs provisionally.

2. Goods may also be cleared through customs provisionally under the same condition.

3. The provisional customhouse receipt made out by the customs office is considered to be the customs processing certificate.

4. If there is no further processing application during the time interval specified by decree, a final customhouse certificate is made out officially.

Article 41

1. If goods coming from abroad are to be re-exported or if they are to be routed to another customs office on the border or in the interior or to a customs depot, then--unless otherwise ordered by law or decree--they must be processed on request of the person subject to mandatory customs processing or in accordance with the order issued by the customs administration along with an escort slip (escort slip goods), in return for the payment or securing of the customs duty and the other fee. On request of the party subject to mandatory customs processing or on orders from the customs administration, escort slip goods can be placed under customhouse seal, in which connection the customs duty announced will be calculated according to the highest tariff rate.

2. The person subject to mandatory customs reporting gets an escort slip as processing certificate. The latter must be reported for cancellation to the competent customs office within the deadline specified therein and, at

the same time, the goods item must be displayed in unaltered condition and, if applicable, with the unbroken customhouse seal. If the escort slip is not cancelled, then the fees which were secured will be finally settled and charged. If the escort slip was not cancelled during the export of the goods item for reasons worthy of consideration, then this can be allowed subsequently, if, within 60 days following the expiration of the period of validity of the escort slip, an application is filed to that effect and if re-export as well as the identity of the goods item can be documented perfectly (version according to Item I, BG, 6 October 1972, in force since 1 June 1973, AS 1973 644 650; BB1 1972 II 228).

3. The executory decree (SR 631.01; today: V to the Customs Law, ZV) contains further details on escort slip processing.

Article 45

d. Storage Deadlines

1. The deadline for storage in Confederation warehouses should not exceed 2 years as of the start of storage for one and the same commodity.

The senior customs directorate is authorized, under special circumstances, to approve an extension of the deadline to a maximum of 5 years.

2. The storage deadline for private warehouses is at most 2 years.

3. The transfer of goods from a customs warehouse to another warehouse does not bring about any extension in the legal storage deadlines.

4. In customs-duty-free districts, the duration of storage is unlimited.

5. Goods remaining in Confederation warehouses after expiration of the storage deadline--which has not been properly disposed of in spite of admonition--may be sold at auction by the customs administration at the expense and risk of the person authorized to dispose of them. The demands of the

Federal Government will be covered from the proceeds. If the person authorized to dispose of the items is unknown and if he does not report in within a year after expiration of the storage deadline, in spite of his having been requested to do so, the surplus from the proceeds also goes to the federal treasury.

6. Goods located in private warehouses, which have not been moved out for re-export within the legally determined storage deadline, are immediately subject to import customs duty processing.

Article 46

e. Removal from Storage

1. Goods can be removed from storage in the customs warehouse:

1. By means of final processing (customs processing or official clearance for import);

2. By means of further intermediate processing (provisional import customs processing, escort slip or free pass processing).

3. When goods are removed from storage in duty-free districts or Confederation warehouses, the customs duty amount and the other fees are figured on the basis of the goods quantity determined during removal from storage. In case of removal from storage in private warehouses, the goods quantity determined during initial placement for storage is decisive.

Article 74

A customs infraction is committed by the following:

1. Anyone who imports, exports, or transits goods subject to customs processing without express permission in a way not permitted for customs transactions or using an unlawful landing place or who transports goods across the border in an unnavigable aircraft;

2. Anyone who does not follow the prescribed route to the customs office designated by him with goods subject to customs processing after reporting to a border surveillance post;

3. Anyone who fails completely or partly to report for customs processing dutiable goods while crossing the border;

4. Anyone who, after crossing the customs border, prior to arrival at the border customs office, customs landing place, or customs airfield, unloads or throws out dutiable goods or makes any kind of change on them prior to customs processing;

5. Anyone who outside of prescribed official duty hours, imports or exports dutiable goods, without complying with the regulations issued for the securing of customs duty collection;

6. Anyone who reduces or endangers the customs duty [payment] by declaring dutiable goods at too low a rate or by concealing them during customs inspection;

7. Anyone who specifies a weight for dutiable goods which is more than 3 percent too low;

8. (version according to Item 7, appendix, VStrR, in force since 1 January 1975, SR 313.0) anyone who reduces or endangers customs duty payment by supplying other incorrect information or by misusing genuine, false, or forged customs and identity papers or customs-office identification symbols or identification marks;

9. Anyone who obtains customs duty exemption or customs duty reduction for goods without the prerequisites applying for customs-duty-free goods transportation or preferential customs treatment;

10. Anyone who uses goods--for which customs duty exemption or customs

duty reduction has been approved in view of a specific utilization purpose after completed denaturing--subsequently for another purpose, anyone who facilitates such use or who in any other way cancels the effect of denaturing;

11. Anyone who uses goods--for which customs duty exemption or customs duty reduction was allowed on the basis of correct information--subsequently, without permission and without followup payment of the customs duty amount payment due for a purpose not corresponding to customs duty exemption or customs duty reduction;

12. Anyone who, by means of unlawful action for means, obtains unjustified refund of customs duties or other fees;

13. Anyone who reduces the customs duty by exchanging dutiable goods that were processed in the course of escort slip, storage, free-pass, or advance registration transactions or who alters them in terms of their component parts without express permission;

14. ([Please see reference, Paragraph 8, above]) anyone who in an abusive fashion avails himself of customs duty easements granted in connection with border traffic so as to import or export dutiable goods without paying duty;

15. ([Please see reference, Paragraph 8, above]) anyone who, in a customs processing application, gives an incorrect tariff number or who labels the commodity according to such [an incorrect] number and who in this fashion manages to get the dutiable item to be declared too low;

16. ([Please see reference, Paragraph 8, above]) anyone who, in a manner other than specified here, withholds customs duties from the Federal Government to his own advantage or to the advantage of another or anyone who obtains for himself or another person an unlawful customs advantage or who

prevents lawful assessment (in the French text: "...prevents or seeks to prevent").

Article 75

1. Customs infractions are punished with fines up to 20 times the amount of the evaded or endangered customs duty. If that amount cannot be determined accurately in numerical terms, it shall be determined on the basis of an estimate.

2. In case of aggravated circumstances, the maximum amount of the threatened fine is raised by one half. At the same time, imprisonment of up to 6 months may be ordered.

3. Customs infraction is also punishable if it is carried out negligently (version according to Item 7, appendix, VStrR, in force since 1 January 1975, SR 313.0).

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APPENDIX J

TREATY BETWEEN THE UNITED STATES OF AMERICA
AND THE SWISS CONFEDERATION
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

SWITZERLAND

Mutual Assistance in Criminal Matters

*Treaty signed at Bern May 25, 1973
And interpretative letters signed at Bern May 25, 1973 and December 23, 1975;
Ratification advised by the Senate of the United States of America June 21, 1976;
Ratified by the President of the United States of America July 10, 1976;
Ratified by Switzerland July 7, 1976;
Ratifications exchanged at Washington July 27, 1976;
Proclaimed by the President of the United States of America August 9, 1976;
Date of entry into force January 23, 1977.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters was signed at Bern on May 25, 1973, along with six exchanges of interpretative letters of the same date, and an exchange of interpretative letters dated December 23, 1975, the texts of which Treaty and the interpretative letters, are hereto annexed;

The Senate of the United States of America by its resolution of June 21, 1976, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty and the interpretative letters;

The Treaty and the interpretative letters were ratified by the President of the United States of America on July 10, 1976, in pursuance of the advice and consent of the Senate, and were duly ratified on the part of Switzerland;

It is provided in Article 41 of the Treaty that the Treaty shall enter into force 180 days after the date of the exchange of the instruments of ratification;

The instruments of ratification of the Treaty were exchanged at Washington on July 27, 1976; and accordingly the Treaty and the interpretative letters enter into force on January 23, 1977;

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TIAS 8302

2020

U.S. Treaties and Other International Agreements

[27] UST

Now, THEREFORE, I, Gerald R. Ford, President of the United States of America, proclaim and make public the Treaty and the interpretative letters, to the end that they shall be observed and fulfilled with good faith on and after January 23, 1977, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this ninth day of August in the year of our Lord one thousand nine hundred seventy-six [SEAL] and of the Independence of the United States of America the two hundred first.

GERALD R. FORD

By the President:

CHARLES W ROBINSON

Acting Secretary of State

TIAS 8302

27 UST]

Switzerland—Judicial Assistance—^{May 25, 1973}
_{Dec. 23, 1975}

2021

TREATY BETWEEN THE UNITED STATES OF AMERICA
AND THE SWISS CONFEDERATION
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The President of the United States of America
and
the Swiss Federal Council,

Desiring to conclude a treaty on mutual assistance
in criminal matters,

Having appointed for that purpose as their Pleni-
potentiaries:

The President of the United States of America:

Walter J. Stoessel, Jr.
Assistant Secretary of State for European Affairs

Shelby Cullom Davis
Ambassador Extraordinary and Plenipotentiary
of the United States of America to Switzerland

The Swiss Federal Council:

Dr. Albert Weitnauer
Swiss Ambassador to Great Britain

who, having exchanged their respective full powers, which were
found in good and due form, have agreed as follows:

TIAS 8302

INDEX

Chapter I
Applicability

- Article 1 Obligation to Furnish Assistance
- Article 2 Non-Applicability
- Article 3 Discretionary Assistance
- Article 4 Compulsory Measures
- Article 5 Limitations on Use of Information

Chapter II
Special Provisions Concerning Organized Crime

- Article 6 General Requirements
- Article 7 Extent of Assistance
- Article 8 Applicable Procedure

Chapter III
Obligations of Requested State in Executing Requests

- ~~Article 9 General Provisions for Executing Requests~~
- Article 10 Duty to Testify in Requested State
- Article 11 Locating Persons
- Article 12 Special Procedural Provisions

Chapter IV
Obligations of Requesting State

- Article 13 Restrictions on Use of Testimony
- Article 14 Exclusion of Sanctions
- Article 15 Protection of Secrecy

Chapter V

Documents, Records and Articles of Evidence

Article 16	Court and Investigative Documents
Article 17	Completeness of Documents
Article 18	Business Records
Article 19	Official Records
Article 20	Testimony to Authenticate Documents
Article 21	Rights in Articles of Evidence

Chapter VI

Service for Requesting State and Related Provisions

Article 22	Service of Documents
Article 23	Personal Appearance
Article 24	Effect of Service
Article 25	Compelling Testimony in Requesting State
Article 26	Transfer of Arrested Persons
Article 27	Safe Conduct

Chapter VII

~~General Procedures~~

Article 28	Central Authority
Article 29	Content of Requests
Article 30	Language
Article 31	Execution of Requests
Article 32	Return of Completed Requests
Article 33	Inability to Comply
Article 34	Costs of Assistance
Article 35	Return of Articles of Evidence

2024

U.S. Treaties and Other International Agreements

[27 UST

Chapter VIII

Notice and Review of Determinations

- Article 36 Notice
- Article 37 Review of Determinations

Chapter IX

Final Provisions

- Article 38 Effect on Other Treaties and
Municipal Laws
- Article 39 Consultation and Arbitration
- Article 40 Definition of Terms
- Article 41 Entry into Force and Termination

Schedule

Offenses for Which Compulsory
Measures are Available

TIAS 8302

Chapter I
APPLICABILITY

Article 1

Obligation to Furnish Assistance

1. The Contracting Parties undertake to afford each other, in accordance with provisions of this Treaty, mutual assistance in:

- a. investigations or court proceedings in respect of offenses the punishment of which falls or would fall within the jurisdiction of the judicial authorities of the requesting State or a state or canton thereof;
- b. effecting the return to the requesting State, or a state or canton thereof, of any objects, articles or other property or assets belonging to it and obtained through such offenses;
- c. proceedings concerning compensation for damages suffered by a person through unjustified detention as a result of action taken pursuant to this Treaty.

2. For the purposes of this Treaty, an offense in the requesting State is deemed to have been committed if there exists in that State a reasonable suspicion that acts have been committed which constitute the elements of that offense.

3. The competent authorities of the Contracting Parties may agree that assistance as provided by this Treaty will also be granted in certain ancillary administrative proceedings in respect of measures which may be taken against the perpetrator of an offense falling within the purview of this Treaty. Agreements to this effect shall be concluded by exchange of diplomatic notes.

TIAS 8302

4. Assistance shall include, but not be limited to:
 - a. ascertaining the whereabouts and addresses of persons;
 - b. taking the testimony or statements of persons;
 - c. effecting the production or preservation of judicial and other documents, records, or articles of evidence;
 - d. service of judicial and administrative documents; and
 - e. authentication of documents.

Article 2

Non-Applicability

1. This Treaty shall not apply to:
 - a. extradition or arrests of persons accused or convicted of having committed an offense;
 - b. execution of judgments in criminal matters;
 - c. investigations or proceedings:
 - (1) concerning an offense which the requested State considers a political offense or an offense connected with a political offense;
 - (2) concerning offenses in violation of the laws relating to military obligations;
 - (3) concerning acts by a person subject to military law in the requesting State which constitute an offense under military law in that State but which would not constitute an offense in the requested State if committed by a person not subject to military law in the requested State;
 - (4) for the purpose of enforcing cartel or anti-trust laws; or

TIAS 8302

(5) concerning violations with respect to taxes, customs duties, governmental monopoly charges or exchange control regulations other than the offenses listed in items 26 and 30 of the Schedule to this Treaty (Schedule) and the related offenses in items 34 and 35 of the Schedule.

2. Nevertheless, assistance shall be granted if a request concerns an investigation or proceeding referred to in subparagraphs c. (1), (4) and (5) of paragraph 1, if made for the purpose of investigating or prosecuting a person described in paragraph 2 of Article 6 and

- a. in the case of subparagraphs c. (1) and (4), the request relates to an offense committed in furtherance of the purposes of an organized criminal group described in paragraph 3 of Article 6, or
- b. in the case of subparagraph c. (5), any applicable conditions of Article 7 are satisfied.

3. Contributions to social security and governmental health plans, even if levied as taxes, shall not be considered as taxes for the purpose of this Treaty.

4. If the acts described in the request contain all the elements of an offense for the investigation or prosecution of which assistance is required to be or may be granted as well as all the elements of an offense for which such assistance cannot be granted, assistance shall not be granted if under the law of the requested State punishment could be imposed only for the latter offense unless it is listed in the Schedule.

TIAS 8302

Article 3

Discretionary Assistance

1. Assistance may be refused to the extent that:
 - a. the requested State considers that the execution of the request is likely to prejudice its sovereignty, security or similar essential interests;
 - b. the request is made for the purpose of prosecuting a person, other than a person described in paragraph 2 of Article 6, for acts on the basis of which he has been acquitted or convicted by a final judgment of a court in the requested State for a substantially similar offense and any sentence has been or is being carried out.

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2. Before refusing any request pursuant to paragraph 1, the requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If it so determines, any conditions so imposed shall be observed in the requesting State.

Article 4 ^[1]

Compulsory Measures

1. In executing a request, there shall be employed in the requested State only such compulsory measures as are provided in that State for investigations or proceedings in respect of offenses committed within its jurisdiction.
2. Such measures shall be employed, even if this is not explicitly mentioned in the request, but only if the acts described in the request contain the elements, other than intent or negligence, of an offense:

¹ In a letter dated Oct. 19, 1973, Switzerland informed the United States that in the context of art. 4 the use of the German word "soll" has the same meaning as the English word "shall".

- a. which would be punishable under the law in the requested State if committed within its jurisdiction and is listed in the Schedule;
or
- b. which is described in item 26 of the Schedule.

3. In the case of such an offense not listed in the Schedule, the Central Authority of the requested State shall determine whether the importance of the offense justifies the use of compulsory measures.

4. A decision as to whether the conditions of paragraph 2 have been met shall be made by the requested State only on the basis of its own law. Differences in technical designation and constituent elements added to establish jurisdiction shall be ignored. The Central Authority of the requested State may ignore other differences in constituent elements which do not affect the general character of the offense in that State.

5. In those cases where the conditions of paragraph 2 or 3 have not been met, assistance shall be granted to the extent that it can be furnished without the use of compulsory measures.

Article 5

Limitations on Use of Information

1. Any testimony or statements, documents, records or articles of evidence or other items, or any information contained therein, which were obtained by the requesting State from the requested State pursuant to the Treaty shall not be used for investigative purposes nor be introduced into evidence in the requesting State in any proceeding relating to an offense other than the offense for which assistance has been granted.

... TIAS 8302 ...

2. Nevertheless, the materials described in paragraph 1 may, after the requested State has been so advised and given an opportunity to make its views known as to the applicability of subparagraphs a, b and c of this paragraph, be used in the requesting State for the investigation or prosecution of persons who:

- a. are or were suspects in an investigation or defendants in a proceeding for which assistance was granted and who are suspected or accused of having committed another offense for which assistance is required to be granted;
- b. are suspected or accused of being participants in, or accessories before or after the fact to, an offense for which assistance was granted; or
- c. are described in paragraph 2 of Article 6.

3. Nothing in this Treaty shall be deemed to prohibit governmental authorities in the requesting State from:

- a. using the materials referred to in paragraph 1 in any investigation or proceeding concerning the civil damages connected with an investigation or proceeding for which assistance has been granted; or
- b. using information or knowledge deduced from the materials referred to in paragraph 1 in continuing any criminal investigation or proceeding, provided that:
 - (1) for such investigation or proceeding assistance may be given;
 - (2) prior to the date of the request for assistance referred to in paragraph 1 inquiries have already been carried out for the purpose of establishing an offense; and
 - (3) the materials referred to in paragraph 1 are not introduced into evidence.

Chapter II
SPECIAL PROVISIONS CONCERNING ORGANIZED CRIME

Article 6

General Requirements

1. The Contracting Parties agree to assist each other in the fight against organized crime as provided in this Chapter and with all means otherwise available under this Treaty and other provisions of law.
2. This Chapter shall apply only to investigations and proceedings involving a person who, according to the request, is or is reasonably suspected to be:
 - a. knowingly involved in the illegal activities of an organized criminal group, described in paragraph 3, and who is:
 - (1) a member of such a group; or
 - (2) an affiliate of such a group performing supervisory or managerial functions or regularly supporting it or its members by performing other important services; or
 - (3) a participant in any important activity of such a group; or
 - b. a public official who has violated his official responsibilities in order to knowingly accommodate the desires of such a group or its members.
3. For the purposes of this Chapter the term "organized criminal group" refers to an association or group of persons combined together for a substantial or indefinite period for the purposes of obtaining monetary or commercial gains or profits for itself or for others, wholly or in part by

TIAS 8302

illegal means, and of protecting its illegal activities against criminal prosecution and which, in carrying out its purposes, in a methodical and systematic manner:

- a. at least in part of its activities, commits or threatens to commit acts of violence or other acts which are likely to intimidate and are punishable in both States; and
- b. either:
 - (1) strives to obtain influence in politics or commerce, especially in political bodies or organizations, public administrations, the judiciary, in commercial enterprises, employers' associations or trade unions or other employees' associations; or
 - (2) associates itself formally or informally with one or more similar associations or groups, at least one of which engages in the activities described under subparagraph b (1).

Article 7

Extent of Assistance

1. Compulsory measures referred to in Article 4 shall also be employed in the requested State even if the investigation or proceeding in the requesting State concerns acts which would not be punishable under the law in the requested State, or which are not listed in the Schedule, or neither. This paragraph is subject to the limitations of paragraph 2.

TIAS 8302

2. Assistance under this Chapter shall be rendered in investigations or proceedings involving violations of provisions on taxes on income referred to in Article I of the Convention of May 24, 1951, for the Avoidance of Double Taxation with Respect to Taxes on Income ^[1] only if, according to the information furnished by the requesting State:

- a. the person involved in the investigation or proceeding is reasonably suspected by it of belonging to an upper echelon of an organized criminal group or of participating significantly, as a member, affiliate or otherwise, in any important activity of such a group;
- b. the available evidence is in its opinion insufficient, for the purpose of a prosecution which has a reasonable prospect of success, to link such person with the crimes committed by the organized criminal group with which he is connected in the sense of paragraph 2 of Article 6; and
- c. it has been reasonably concluded by it that the requested assistance will substantially ~~facilitate the successful prosecution of such~~ person and should result in his imprisonment for a sufficient period of time so as to have a significant adverse effect on the organized criminal group.

3. Paragraphs 1 and 2 apply only if the requesting State reasonably concludes that the securing of the information or evidence is not possible without the cooperation of the authorities in the requested State, or that it would place unreasonable burdens on the requesting State or a state or canton thereof.

¹ TIAS 2316; 2 UST 1753.

Article 8

Applicable Procedure

1. In all cases where this Chapter requires a reasonable suspicion or a reasonable conclusion, or the opinion of the requesting State, that State shall furnish to the requested State information in its possession on the basis of which such suspicion, conclusion, or opinion has been arrived at. However, this shall not oblige the requesting State to identify the persons who have provided such information. Upon application of the requesting State, the Central Authority of the requested State shall treat any information furnished in the request as confidential.

2. The Central Authority of the requested State shall have the right to review the determination of the requesting State as to the applicability of this Chapter. It need not accept such determination where the suspicion, conclusion or opinion underlying such determination has not been made credible.

3. In rendering assistance pursuant to paragraph 2 of Article ~~7, all courts and authorities in the requested State shall apply~~ such investigative measures as are provided for in its rules of criminal procedure.

4. Provisions in municipal law which impose restrictions on tax authorities concerning the disclosure of information shall not apply to disclosure to all authorities engaged in the execution of a request under paragraph 2 of Article 7. This paragraph shall not limit the applicability of provisions for disclosure otherwise provided by municipal laws in the Contracting States.

TIAS 8302

Chapter III

OBLIGATIONS OF REQUESTED STATE IN EXECUTING REQUESTS

Article 9

General Provisions for Executing Requests

1. Except as otherwise provided in this Treaty, a request shall be executed in accordance with the usual procedure under the laws applicable for investigations or proceedings in the requested State with respect to offenses committed within its jurisdiction.
2. The requested State may, upon application by the requesting State, consent to apply the procedures applicable in that State for:
 - a. investigations or proceedings; and
 - b. certification and transmission of documents, records or articles of evidence;to the extent that such procedures are not incompatible with the laws in the requested State. A search or seizure may only be made in accordance with the law of the place where the request is executed.
3. The appropriate judicial officers and other officials in each of the two States shall, by all legal means within their power, assist in the execution of requests from the other State.

Article 10

Duty to Testify in Requested State

1. A person whose testimony or statement is requested under this Treaty shall be compelled to appear, testify and produce documents, records and articles of evidence in the same manner and to the same extent as in criminal investigations or proceedings in the requested State. Such person may not be so compelled if under the law in either State he has a right to refuse. If any person claims that such a right is applicable in

TIAS 8302

the requesting State, the requested State shall, with respect thereto, rely on a certificate of the Central Authority of the requesting State.

2. The Swiss Central Authority shall, to the extent that a right to refuse to give testimony or produce evidence is not established, provide evidence or information which would disclose facts which a bank is required to keep secret or are manufacturing or business secrets, and which affect a person who, according to the request, appears not to be connected in any way with the offense which is the basis of the request, only under the following conditions:

- a. the request concerns the investigation or prosecution of a serious offense;
- b. the disclosure is of importance for obtaining or proving facts which are of substantial significance for the investigation or proceeding; and
- c. reasonable but unsuccessful efforts have been made in the United States to obtain the evidence or information in other ways.

3. Whenever the Swiss Central Authority determines that facts of the nature referred to in paragraph 2 would have to be disclosed in order to comply with the request, it shall request from the United States information indicating why it believes that paragraph 2 does not prevent such disclosure. Where, in the opinion of the Swiss Central Authority, such belief has not been made credible, it need not accept the determination of the United States.

4. Any acts of a witness or other person, in connection with the execution of a request, which would be punishable if committed against the administration of justice in the requested State shall be prosecuted in that State in accordance with the laws and enforcement policies therein, regardless of the procedure applied in executing the request.

Article 11

Locating Persons

If in the opinion of the requesting State information as to the location of persons who are believed to be within the territory of the requested State is of importance in an investigation or proceeding pending in the requesting State, the requested State shall make every effort to ascertain the whereabouts and addresses of such persons in its territory.

Article 12

Special Procedural Provisions

1. Upon express application of the requesting State that the testimony or statement of a person be under oath or affirmation, the requested State shall comply with such request even in the event no provisions therefor exist in its procedural laws. In that event, the time and form of the oath or affirmation shall be governed by the procedural provisions applicable in the requesting State. Where an oath is incompatible with law, an affirmation may be substituted, even though an oath has been requested, and testimony or a statement so obtained shall be admitted in the requesting State as though given under oath.
2. The presence of the suspect or defendant, his counsel or both, at the execution of a request will be permitted whenever the requesting State so requests.
3. (a) Where the presence of representatives of an authority in the requesting State at the execution of a request is required by its law in order to obtain admissible evidence, the requested State shall permit such presence.

TIAS 8302

(b) Where the requested State agrees that the complexity of the matter involved or other special factors described in the request for assistance indicate that such presence is likely to substantially facilitate a successful prosecution, it shall also permit such presence.

(c) In other cases the requested State may also permit such presence upon application by the requesting State.

(d) Nevertheless, if such presence would result in providing to the United States facts which in Switzerland a bank is required to keep secret, or facts which are manufacturing or business secrets therein, Switzerland shall permit such presence only where the requirements for disclosure in paragraph 2 of Article 10 have been met.

(e) Switzerland may, furthermore, at any time in the course of the execution of a request, exclude such representatives until it has been determined whether such requirements for disclosure are met.

4. Any person whose presence is permitted under paragraph 2 or 3 shall have, in accordance with the procedures in the requested State, the right to ask questions which are not improper under the laws of either State.

5. If in the requested State testimony or statements are sought in accordance with the procedures in the requesting State, persons giving such testimony or statements shall be entitled to retain counsel who may assist them during the proceeding. Such persons shall be expressly advised at the beginning of the proceeding of their right to counsel. After consent has been given by the Central Authority of the requesting State, counsel may be appointed, if necessary.

6. If the requesting State expressly requests that a verbatim transcript be taken, the executing authority shall make every effort to comply.

TIAS 8302

Chapter IV
OBLIGATIONS OF REQUESTING STATE

Article 13

Restrictions on Use of Testimony

Any testimony obtained pursuant to this Treaty from a citizen of the requested State, interrogated as a witness and not advised of his right to refuse testimony under paragraph 1 of Article 10, may not be introduced as evidence against such witness in a criminal proceeding in the requesting State unless the prosecution is for an offense against the administration of justice.

Article 14

Exclusion of Sanctions

No citizen of the requested State who has refused to give non-compulsory testimony or information or against whom compulsory measures had to be applied in the requested State pursuant to this Treaty shall be subjected to any legal sanction in the requesting State solely because he has exercised such rights as permitted under this Treaty.

Article 15

Protection of Secrecy

Evidence or information disclosed by the requested State pursuant to paragraph 2 of Article 10 shall, if in the opinion of that State its importance so requires and an application to that effect is made, be kept from public disclosure to the fullest extent compatible with constitutional requirements in the requesting State.

TIAS 8302

Chapter V

DOCUMENTS, RECORDS AND ARTICLES OF EVIDENCE

Article 16

Court and Investigative Documents

1. Upon request, the requested State shall make available to the requesting State on the same conditions and to the same extent as they would be available to authorities performing comparable functions in the requested State the following documents and articles:

- a. judgments and decisions of courts; and
- b. documents, records, and articles of evidence, including transcripts and official summaries of testimony, contained in the files of a court or an investigative authority, whether or not obtained by grand juries.

2. Items specified in subparagraph b of paragraph 1 shall be furnished only if they relate solely to a closed case, or to the extent determined by the Central Authority of the requested State in its discretion.

Article 17

Completeness of Documents

All documents and records to be furnished, whether originals or copies thereof or extracts therefrom, shall be complete and in unedited form except to the extent paragraph 1 of Article 3 applies or the documents or records would disclose facts described in paragraph 2 of Article 10 and the requirements of subparagraphs a, b and c thereof are not met. Upon application of the requesting State, the requested State shall make every effort to furnish original documents and records.

TIAS 8302

Article 18Business Records

1. If the production of a document, including a book, paper, statement, record, account or writing, or extract therefrom, other than an official document provided for in Article 19, of whatever character and in whatever form is requested, the official executing the request shall, upon specific request of the requesting State, require the production of such document pursuant to a procedural document. The official shall interrogate under oath or affirmation the person producing such document and examine it in order to determine if it is genuine and if it was made as a memorandum or record of an act, transaction, occurrence, or event, if it was made in the regular course of business and if it was the regular course of such business to make such document at the time of the act, transaction, occurrence or event recorded therein or within a reasonable time thereafter.

2. The official shall cause a record of the testimony taken to be prepared and shall annex it to the document.

3. If the official is satisfied as to the matters set forth in paragraph 1, he shall certify as to the procedure followed and his determinations and shall authenticate by his attestation the document, or a copy thereof or extract therefrom, and the record of the testimony taken. Such certification and attestation shall be signed by the official and state his official position. The seal of the authority executing the request shall be affixed.

4. Any person subsequently transmitting the authenticated document shall certify as to the genuineness of the signature and the official position of the attesting person or, if there are any prior certifications, of the last certifying person.
the final certification may be made by:

TIAS 8302

- a. an official of the Central Authority of the requested State;
- b. a diplomatic or consular official of the requesting State stationed in the requested State; or
- c. a diplomatic or consular official of the requested State stationed in the requesting State.

5. Where a request under this Article pertains to a pending court proceeding, the defendant, upon his application, may be present or represented by counsel or both, and may examine the person producing the document as to its genuineness and admissibility. In the event the defendant elects to be present or represented, a representative of the requesting State or a state or canton thereof may also be present and put such questions to the witness.

6. Any document, copy thereof, entry therein or extract therefrom authenticated in accordance with this Article, and not ~~otherwise inadmissible~~, shall be admissible as evidence of the act, transaction, occurrence or event in any court in the requesting State without any additional foundation or authentication.

7. In the event that the genuineness of any document authenticated in accordance with this Article is denied by any party to a proceeding, he shall have the burden of establishing to the satisfaction of the court before which the proceeding is pending that such document is not genuine in order for the document to be excluded from evidence on such ground.

Article 19

Official Records

1. Upon request, the requested State shall obtain a copy of an official record, or an entry therein, and shall have it authenticated by the attestation of an authorized person. Such attestation shall be signed by, and state the official position of, the attesting person. The seal of the authority executing the request shall be affixed thereto. The procedures for certification set forth in paragraph 4 of Article 18 shall be followed.

2. In addition to any provision therefor in the municipal law of the requesting State, a copy of any official record in the requested State, or entry therein, shall be admissible in evidence without any additional foundation or authentication if authenticated and certified as provided in paragraph 1 and otherwise admissible.

Article 20

Testimony to Authenticate Documents

1. The Central Authority of the requested State shall have the authority to summon persons to appear in that State before representatives of the requesting State or a state or canton thereof in order to produce documents, records or articles of evidence supplied or to be supplied by the requested State and give testimony with respect thereto, whenever, under the applicable law in the requesting State, that is necessary for their admissibility in evidence in a criminal proceeding and such State makes a request to that effect.

2. The Central Authority of the requested State shall have the right to designate a representative to be present at the proceeding under paragraph 1. He shall be entitled to object to questions which either:

- a. are incompatible with the law and practices in the requested State; or
- b. go beyond the scope of paragraph 1.

Article 21

Rights in Articles of Evidence

If the requested State, a state or canton thereof, or a third party claims title or other rights in documents, records or articles of evidence, the production of which was requested or effected, such rights shall be governed by the law of the place where they have been acquired. An obligation for production or surrender under this Treaty shall take precedence ~~over the rights referred to in the preceding sentence. These~~ rights, however, remain otherwise unaffected.

Chapter VI
SERVICE FOR REQUESTING STATE
AND RELATED PROVISIONS

Article 22

Service of Documents

1. The competent authority in the requested State shall effect service of any procedural document, including a court judgment, decision or similar document, which is transmitted to it for this purpose by the requesting State. Unless service in a particular form is requested, it may be effected by registered mail. The requested State shall, upon application, effect personal service or, if consistent with the law in the requested State, service in any other form.
2. The requested State may refuse to effect service of legal process on a person, other than a national of the requesting State, calling for his appearance as a witness in that State if the person to be served is a defendant in the criminal proceeding to which the request relates.
3. A request must be received by the Central Authority of the requested State not later than 30 days before the date set for any appearance. This time limit must be taken into consideration when setting the date for the appearance and forwarding the request. This period may be shortened by the Central Authority of the requested State in very urgent cases.
4. Proof of service shall be made by a receipt dated and signed by the person served or by a declaration specifying the form and date of service and signed by the person effecting it.

TIAS 8302

Article 23

Personal Appearance

1. When the personal appearance of a person, other than a defendant in the criminal proceeding to which the request relates, is considered especially necessary in the requesting State, such State shall so indicate in its request for service and shall state the subject matter of the interrogation. It will also indicate the kind and amount of allowances and expenses payable.

2. The executing authority shall invite the person served to appear before the appropriate authority in the requesting State and ask whether he agrees to the appearance. The requested State shall promptly notify the requesting State of the answer.

3. If requested by the requesting State, the requested State may grant an advance payment to the person agreeing to appear. This shall be recorded on the document calling for his appearance and taken into consideration by the requesting State when making payment.

Article 24

Effect of Service

1. A person, other than a national of the requesting State, who has been served with legal process calling for his appearance in the requesting State, pursuant to Article 22, shall not be subjected to any civil or criminal forfeiture, other legal sanction or measure of restraint because of his failure to comply therewith, even if the document contains a notice of penalty.

TIAS 8302

2. The effect in the proceeding to which any procedural document served pursuant to Article 22 relates, arising from a refusal to accept it or comply therewith, shall be governed by the law in the requesting State.

3. Service of a procedural document pursuant to Article 22 on a person, other than a national of the requesting State, does not confer jurisdiction in the requesting State.

Article 25

Compelling Testimony in Requesting State

1. A person appearing before an authority in the requesting State pursuant to a legal process served under this Treaty may not be compelled to give testimony, make a statement or produce a document, record or article of evidence if under the law in either State he has a right to refuse, or if paragraph 2 below is applicable. Such a right shall be deemed to ~~exist in the requested State to the extent that it could be~~ invoked there if the acts which are the subject of the investigation or proceeding had been committed within its jurisdiction.

2. Such a person appearing before an authority in the United States may only be compelled to give testimony, make a statement or produce a document, record or article of evidence which would disclose facts described in paragraph 2 of Article 10 to the extent that the requirements of subparagraphs a, b and c thereof are met.

3. If any person claims that a right to refuse, pursuant to paragraph 1, exists in the requested State, or invokes the restrictions of paragraph 2, the requesting State shall in that regard rely on a certificate of the Central Authority

of the requested State except that, after due consideration of the certificate, the requesting State may make its own determination as to the applicability of subparagraphs a, b and c of paragraph 2 of Article 10.

Article 26

Transfer of Arrested Persons

1. A request pursuant to Article 22 may also be made if a person held in custody by an authority in the requested State is needed as a witness or for purposes of confrontation before an authority in the requesting State.

2. The person in custody shall be made available to the requesting State if:

- a. he consents;
- b. no substantial extension of his custody is anticipated; and
- ~~c. the Central Authority of the requested State~~ determines that there are no other important reasons against the transfer.

3. Execution of the request may be postponed for as long as the presence of the person is necessary for a criminal investigation or proceeding in the requested State.

4. The requesting State shall have authority, and be obligated, to keep the person in custody unless the requested State authorizes his release. The requesting State shall return the person to the custody of the requested State as soon as circumstances permit or as otherwise agreed. That person, however, shall have the right to use such remedies and recourses as are provided by the law in the requesting State to assure that his custody or return is consistent with this Article and the Constitution of that State.

5. The requesting State shall not decline to return a person transferred solely because such person is a national of that State.

Article 27

Safe Conduct

1. A person appearing before an authority in the requesting State pursuant to legal process served under this Treaty shall not be prosecuted or, except as provided in paragraph 4 of Article 26, be detained or subjected to any other restriction of his personal liberty in that State with respect to any act or conviction which preceded his departure from the requested State.

2. The restrictions of paragraph 1 shall not apply as to a person of whatever nationality appearing for the purpose of answering a criminal charge with respect to any act or conviction which is mentioned in the document calling for his appearance, or a lesser included offense.

3. The safe conduct provided in this Article shall cease if ten days after the person appearing has been officially notified that his appearance is no longer required he has not used the opportunity to leave the requesting State or, after having left it, has returned.

TIAS 8302

Chapter VII
GENERAL PROCEDURES

Article 28

Central Authority

1. Requests for assistance shall be handled by a Central Authority. For the United States, the Central Authority shall be the Attorney General or his designee. For Switzerland, the Central Authority shall be the Division of Police of the Federal Department of Justice and Police in Bern.
2. Such requests which are approved by the Central Authority of the requesting State shall be made by that Authority on behalf of federal, state or cantonal courts or authorities which by law have been authorized to investigate or prosecute offenses.
3. The Central Authorities of the two States may communicate ~~with each other directly for the purpose of carrying out the~~ provisions of this Treaty.

Article 29

Content of Requests

1. A request for assistance shall indicate the name of the authority conducting the investigation or proceeding to which the request relates and insofar as possible shall also indicate:
 - a. the subject matter and nature of the investigation or proceeding and, except in cases of requests for service, a description of the essential acts alleged or sought to be ascertained;

TIAS 8302

- b. the principal need for the evidence or information sought; and
 - c. the full name, place and date of birth, address and any other information which may aid in the identification of the person or persons who are at the time of the request the subject of the investigation or proceeding.
2. Such requests, to the extent necessary and insofar as possible, shall include:
- a. information described under subparagraph c of paragraph 1 concerning any witness or other person who is affected by the request;
 - b. a description of the particular procedure to be followed;
 - c. a statement as to whether sworn or affirmed testimony or statements are required;
 - d. a description of the information, statement or testimony sought;
 - e. a description of the documents, records or articles of evidence to be produced or preserved as well as a description of the appropriate person to be asked to produce them and the form in which they should be reproduced and authenticated; and
 - f. information as to the allowances and expenses to which a person appearing in the requesting State will be entitled.

TIAS 8302

Article 30

Language

1. Requests for assistance and all accompanying documents shall be accompanied by a translation into French in the case of a request to Switzerland, and into English in the case of a request to the United States. The Swiss Central Authority may, whenever necessary, request a translation into German or Italian instead of French.
2. The translation of all transcripts, statements, or documents made, or documents or records obtained, in executing the request shall be incumbent upon the requesting State.

Article 31

Execution of Requests

- ~~1. If, in the opinion of the Central Authority of the requested State, a request does not comply with the provisions of this Treaty, it shall immediately so advise the Central Authority of the requesting State, giving the reasons therefor. The Central Authority of the requested State may take such preliminary action as it may deem advisable.~~
2. If the request complies with the Treaty, the Central Authority of the requested State shall transmit the request for execution to the federal, state or cantonal court or authority having jurisdiction or selected by the Central Authority as appropriate. The court or authority to which a request is transmitted shall have all of the jurisdiction, authority and power in executing the request which it has in investigations or proceedings with respect to an offense committed within its jurisdiction. In the case of a request by

Switzerland, this paragraph shall authorize the use of grand juries to compel the attendance and testimony of witnesses and the production of documents, records and articles of evidence.

3. The court or authority to which a request is transmitted pursuant to paragraph 2 shall, when necessary, issue a procedural document in accordance with its own procedural law to require the attendance and statement or testimony of persons, or the production or preservation of documents, records or articles of evidence.

4. With the consent of the Central Authority of the requesting State, execution of a request may be entrusted to an appropriate private party, if circumstances so require.

5. A request shall be executed as promptly as circumstances permit.

Article 32

Return of Completed Requests

1. Upon completion of a request, the executing authority shall return the original request together with all information and evidence obtained, indicating place and time of execution, to the Central Authority of the requested State. The latter shall forward it to the Central Authority of the requesting State.

2. The delivery of documents, records or articles of evidence may be postponed if they are needed in an official action pending in the requested State and, in case of documents or records, copies have been offered to the requesting State.

Article 33

Inability to Comply

The requested State shall promptly inform the requesting State with a brief statement of the reasons when a request cannot be fully complied with because:

- a. of the limitations of this Treaty;
- b. after diligent search, the person whose testimony or statement is sought or who is to be served cannot be located or is believed to be dead;
- c. after diligent search, the evidence cannot be located; or
- d. of other physical impediments.

Article 34

Costs of Assistance

1. The following expenses incurred by an authority in the requested State in carrying out a request shall, upon application, be paid or reimbursed by the requesting State: travel expenses; fees of experts; costs of stenographic reporting by other than salaried government employees; costs of interpreters; costs of translation; and fees of private counsel appointed with the approval of the requesting State for a person giving testimony or for a defendant.
2. No reimbursement shall be claimed for any other expenses.
3. All expenses incurred in relation to a request pursuant to Article 26 shall be borne by the requesting State.
4. No bond, guarantee, or other security for the expected costs shall be required.

Article 35

Return of Articles of Evidence

Any original documents, records or articles of evidence, delivered in execution of a request, shall be returned by the requesting State as soon as possible, unless the requested State declares that return will not be required. However, an authority in the requesting State shall be entitled to retain articles for disposition in accordance with its law if such articles belong to persons in that State and if no title or other rights are claimed in such articles by a person in the requested State, or if any claims with respect to such rights have been secured.

TIAS 8302

Chapter VIII

NOTICE AND REVIEW OF DETERMINATIONS

Article 36

Notice

Upon receipt of a request for assistance, the requested State shall notify:

- a. any person from whom a statement or testimony or documents, records, or articles of evidence are sought;
- b. any suspect or defendant in a criminal investigation or proceeding in the requesting State who resides in the requested State if the municipal law in the requesting State generally or for admissibility of evidence so requires, and that State so requests; and
- c. any defendant in a criminal proceeding in the requesting State, where the law in the requested State requires such notice.

Article 37

Review of Determinations

1. The existence of restrictions in this Treaty shall not give rise to a right on the part of any person to take any action in the United States to suppress or exclude any evidence or to obtain other judicial relief in connection with requests under this Treaty, except with respect to paragraph 2 of Article 9; paragraph 1 of Article 10; Article 13; paragraph 7 of Article 18; paragraph 1 of Article 25; and Articles 26 and 27.

TIAS 8302

2. The right to and procedures for appeal in Switzerland against decisions of Swiss authorities in connection with requests under this Treaty shall be regulated in accordance with this Treaty by domestic legislation.

3. In the case of any claim that a State, either as the requesting State or the requested State, has failed to comply with obligations imposed by this Treaty and as to such claim a remedy is not provided by paragraph 1 or 2, the claimant may inform the Central Authority of the other State. Where such claim is deemed by that other State to require explanation, an inquiry shall be put to the first-mentioned State; if necessary, the matter shall be resolved under Article 39.

TIAS 8302

Chapter IX

FINAL PROVISIONS

Article 38

Effect on Other Treaties and Municipal Laws

1. Whenever the procedures provided by this Treaty would facilitate assistance in criminal matters between the Contracting Parties provided under any other convention or under the law in the requested State, the procedure provided by this Treaty shall be used to furnish such assistance. Assistance and procedures provided by this Treaty shall be without prejudice to, and shall not prevent or restrict, any available under any other international convention or arrangement or under the municipal laws in the Contracting States.

2. This Treaty shall not prevent the Contracting Parties from conducting investigations and proceedings in criminal matters in accordance with their respective municipal laws.

3. The provisions of this Treaty shall take precedence over any inconsistent provisions of the municipal laws in the Contracting States.

4. The furnishing of information for use in cases concerning taxes which come under the Convention of May 24, 1951, for the Avoidance of Double Taxation with Respect to Taxes on Income, shall be governed exclusively by the provisions thereof, except for investigations or proceedings described in Chapter II of this Treaty to the extent that the conditions in paragraph 2 of Article 7 are satisfied.

TIAS 8302

Article 39

Consultation and Arbitration

1. When it appears advisable, representatives of the Central Authorities may exchange views in writing or meet together for an oral exchange of opinions on the interpretation, application or operation of this Treaty generally or as to a specific case.
2. The Central Authorities shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Treaty. Any dispute between the Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily resolved by the Central Authorities or through diplomatic negotiation between the Contracting Parties, shall, unless they agree to settlement by some other means, be submitted, upon request of either Contracting Party, to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator who shall be a national of that State and these two arbitrators shall nominate a chairman who shall be a national and resident of a third State.
3. If either Contracting Party fails to appoint its arbitrator within three months from the date of the request for the submission of the dispute to arbitration, he shall be appointed, at the request of either Party, by the President of the International Court of Justice.
4. If both arbitrators cannot agree upon the choice of a chairman within two months following their appointment, he shall be appointed, at the request of either Contracting Party, by the President of the International Court of Justice.

TIAS 8302

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27 UST]

Switzerland—Judicial Assistance—
May 25, 1973
Dec. 23, 1975

2161



EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, May 25, 1973.

Excellency:

I have the honor to acknowledge receipt of your letter of May 25, 1973, which reads as follows:

"I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters signed on May 29, 1973, and in particular to paragraph 1 of Article 22 thereof.

It is the understanding of the United States Government that the term 'procedural documents' when used in that paragraph and elsewhere in the Treaty includes, but is not limited to, such documents as subpoenas and summonses to appear or to appear and produce documents, and summonses to appear and answer charges, in the requesting State.

I would appreciate a letter from your Excellency confirming that the understanding described above is also the understanding of the Swiss Federal Council."

I have the honor to confirm that the understanding set forth in your letter accords with that of the Swiss Federal Council.

Accept, Excellency, the renewed assurances of my highest consideration.

Dr. Albert Weitnauer
Ambassador of Switzerland

His Excellency
Shelby Cullom Davis
Ambassador of the United States
of America

B e r n

TIAS 8302

5. References to assistance required to be, or which may be, furnished pursuant to this Treaty shall be deemed to include assistance of a compulsory as well as noncompulsory nature.

6. References to a "request" or "request for assistance" shall be deemed to include any attachments and supplements thereto.

7. References to "acts" in connection with offenses shall be deemed to include omissions.

8. The term "defendant" shall, unless the context otherwise indicates, be deemed to include a suspect who is a subject of an investigation.

9. The term "counsel" shall be deemed to mean counsel admitted in either State.

10. The term "antitrust laws", as applied to laws in the ~~United States, refers to those provisions compiled in~~ Chapter 1, Title 15, United States Code, and Chapter 2 of the same Title up to but not including Section 77a, et seq.

Article 41

Entry into Force and Termination

1. This Treaty shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force 180 days after the date of the exchange of the instruments of ratification ^[1] and apply with respect to acts committed before or after entry into force of this Treaty.

3. This Treaty may be terminated by either Contracting Party at any time after five years from entry into force, provided that at least six months prior notice of termination has been given in writing.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Treaty.

DONE at Bern, in duplicate, in the English and German languages, the two texts being equally authoritative, this 25th of May, 1973.

For the President of the
United States of America:

For the Swiss Federal Council:

Walter J. Stoessel ^[2]
Shelby Cullom Davis ^[3]

A. Weitnauer ^[4]

[SEAL]

¹ Jan. 23, 1977.

² Walter J. Stoessel

³ Shelby Cullom Davis

⁴ A. Weitnauer

SCHEDULE

OFFENSES FOR WHICH COMPULSORY MEASURES ARE AVAILABLE

1. Murder.
2. Voluntary manslaughter.
3. Involuntary manslaughter.
4. Malicious wounding; inflicting grievous bodily harm intentionally or through gross negligence.
5. Threat to commit murder; threat to inflict grievous bodily harm.
6. Unlawful throwing or application of any corrosive or injurious substances upon the person of another.
7. Kidnaping; false imprisonment or other unlawful deprivation of the freedom of an individual.
8. Willful nonsupport or willful abandonment of a minor or other dependent person when the life of that minor or other dependent person is or is likely to be injured or endangered.
9. Rape; indecent assault.
10. Unlawful sexual acts with or upon children under the age of sixteen years.
11. Illegal abortion.
12. Traffic in women and children.
13. Bigamy.
14. Robbery.
15. Larceny; burglary; house-breaking or shop-breaking.
16. Embezzlement; misapplication or misuse of funds.

TIAS 8302

27 UST]

Switzerland—Judicial Assistance—May 25, 1973
Dec. 23, 1975

2065

17. Extortion; blackmail.
- ~~18. Receiving or transporting money, securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.~~
19. Fraud, including:
 - a. obtaining property, services, money or securities by false pretenses or by defrauding by means of deceit, falsehood or any fraudulent means;
 - b. fraud against the requesting State, its states or cantons or municipalities thereof;
 - c. fraud or breach of trust committed by any person;
 - d. use of the mails or other means of communication with intent to defraud or deceive, as punishable under the laws of the requesting State.
20. Fraudulent bankruptcy.
21. False business declarations regarding companies and cooperative associations, inducing speculation, unfaithful management, suppression of documents.
- ~~22. Bribery, including soliciting, offering and accepting.~~
23. Forgery and counterfeiting, including:
 - a. the counterfeiting or forgery of public or private securities, obligations, instructions to make payment, invoices, instruments of credit or other instruments;
 - b. the counterfeiting or alteration of coin or money;
 - c. the counterfeiting or forgery of public seals, stamps or marks;
 - d. the fraudulent use of the foregoing counterfeited or forged articles;
 - e. knowingly and without lawful authority, making or having in possession any instrument, instrumentality, tool or machine adapted or intended for the counterfeiting of money, whether coin or paper.

TIAS 8302

24. Knowingly and willfully making, directly or through another, a false, ~~fictitious or fraudulent statement~~ or representation in a matter within the jurisdiction of any department or agency in the requesting State, and relating to an offense mentioned in this Schedule or otherwise falling under this Treaty.
25. Perjury, subornation of perjury and other false statements under oath.
26. Offenses against the laws relating to bookmaking, lotteries and gambling when conducted as a business.
27. Arson.
28. Willful and unlawful destruction or obstruction of a railroad, aircraft, vessel or other means of transportation or any malicious act done with intent to endanger the safety of any person travelling upon a railroad, or in any aircraft, vessel or other means of transportation.
29. Piracy; mutiny or revolt on board an aircraft or vessel ~~against the authority of the captain or commander of~~ such aircraft or vessel; any seizure or exercise of control, by force or violence or threat of force or violence, of an aircraft or vessel.
30. Offenses against laws (whether in the form of tax laws or other laws) prohibiting, restricting or controlling the traffic in, importation or exportation, possession, concealment, manufacture, production or use of:
- a. narcotic drugs, cannabis sativa-L, psychotropic drugs, cocaine and its derivatives;
 - b. poisonous chemicals and substances injurious to health;
 - c. firearms, other weapons, explosive and incendiary devices;
- when violation of such laws causes the violator to be liable to criminal prosecution and imprisonment.

31. Unlawful obstruction of court proceedings or proceedings before governmental bodies or interference with an investigation of a violation of a criminal statute by the influencing, bribing, impeding, threatening, or injuring of any officer of the court, juror, witness, or duly authorized criminal investigator.
32. Unlawful abuse of official authority which results in deprivation of the life, liberty or property of any person.
33. Unlawful injury, intimidation or interference with voting or candidacy for public office, jury service, government employment, or the receipt or enjoyment of benefits provided by government agencies.
34. Attempts to commit, conspiracy to commit, or participation in, any of the offenses enumerated in the preceding paragraphs of this Schedule; accessory after the fact to the commission of any of the offenses enumerated in this Schedule.
35. Any offense of which one of the above listed offenses is a substantial element, even if, for purposes of ~~jurisdiction of the United States Government, elements~~ such as transporting, transportation, the use of the mails or interstate facilities are also included.

APPENDIX K

FEDERAL LAW OF 20 MARCH 1981 ON
INTERNATIONAL MUTUAL ASSISTANCE IN PENAL MATTERS

1320

SWITZERLAND: LAW ON INTERNATIONAL JUDICIAL ASSISTANCE
IN CRIMINAL MATTERS*
[March 20, 1981]

The Federal Assembly of the Swiss Confederation, based on articles 103 and 114 of the Federal Constitution, as amended, and having considered the Report of the Federal Council of 8 March 1976, resolves as follows:

Part One: General Provisions

Chapter 1: Scope of Application

Section 1: Object and Limits of Cooperation

Art.1 Object

- (1) Unless otherwise provided in international agreements, this Law shall govern all procedures of international cooperation in criminal matters, and in particular:
- (a) extradition of fugitives or convicted persons (Part Two);
 - (b) judicial assistance in aid of criminal proceedings instituted abroad (Part Three);
 - (c) transfer of proceedings and punishment of offenses (Part Four);
 - (d) execution of foreign criminal judgments (Part Five).
- (2) In the application of this Law, the sovereignty, security, and public order and similar essential interests of Switzerland shall be taken into account.
- (3) This Law shall apply only to criminal matters in which an appeal to a court can be taken according to the law of the requesting State.
- (4) This Law shall confer no right to demand international cooperation in criminal matters.

Section 2: Denial of Requests

Art.2 Procedural Defects

A request for cooperation in criminal matters shall not be granted if there are reasons to believe that the foreign proceeding:

- (a) does not meet the procedural requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, or

*[Translated for International Legal Materials by Bruno A. Ristau, of the District of Columbia Bar and member of the I.L.M. Editorial Advisory Committee, from the French and German texts in the final version of the Parliament's Drafting Committee, as adopted by the Swiss Parliament on March 20, 1981. It is anticipated that the effective date of the Law will be January 1, 1983.]

[Switzerland deposited its instrument of ratification of the European Convention on Mutual Assistance in Criminal Matters (1959) on December 20, 1966. It's instrument of ratification of the European Convention on Extradition (1957) was deposited the same day. With the enactment of the above Swiss Law, the Swiss reservations on both of these Conventions will be withdrawn.]

political beliefs, membership in a certain social group, race, religion or nationality, or

(c) could result in aggravating the situation of the fugitive for any of the reasons mentioned under para. (b), or

(d) involves other serious defects.

Art.3 Nature of the Offense

(1) A request shall not be granted if the subject of the proceeding is an act which, according to Swiss conceptions, has a predominantly political character, constitutes a violation of the obligation to do military or similar service, or appears to be directed against the national defense or military power of the requesting State.

(2) The contention that an act is of a political character shall not be taken into account if the act:

(a) was aimed at the extermination or oppression of a segment of the population on account of nationality, race, religion, or ethnic, social or political affiliation; or

(b) appears particularly reprehensible because the offender, for the purpose of extortion or duress, placed or threatened to place into jeopardy the freedom, life or limb of persons, especially by hijacking planes, taking hostages or using means of mass extermination.

(3) A request shall not be granted if the subject of the proceeding is an offense which appears to be aimed at minimizing taxes or which violates regulations concerning currency, trade or economic policy. However, a request for judicial assistance under Part Three of this Law may be granted if the subject of the proceeding is a tax fraud.

Art.4 Significance of the Offense

A request shall be rejected if the significance of the offense does not justify a carrying out of the proceedings.

Art.5 Extinction of the Penal Claim

(1) A request shall not be granted if:

(a) in Switzerland or in the State where the offense was committed, a court

- acquitted the defendant or dismissed the proceedings on the merits, or

- waived, or temporarily abstained from, imposing sentence;

(b) the sentence was executed or cannot be executed according to the laws of the State where the sentence was imposed;

(c) the execution of the request requires compulsory measures and the prosecution or execution of the sentence would be absolutely time-barred under Swiss law.

(2) Paragraph 1, subparas. (a) and (b), do not apply if the requesting State asserts that there are grounds for appeal of the final sentence within the meaning of Art. 229 of the Federal Code of Criminal Procedure.

Art. 6 Concurrence of Conditions Requiring Denial and Grant of Cooperation

(1) If the act imputed to the fugitive falls under several articles of the Swiss penal law, the request may be granted only with respect to offenses for which there are no reasons for a denial of the request and if the requesting State guarantees that it will respect any conditions that may be imposed.

(2) Cooperation shall be denied if the proceedings concern an act which falls under several articles of Swiss or foreign penal law and if, with reference to any aspect of the case which pervades the totality of the act, a request could not be granted.

Section 3: Special Rules

Art.7 Swiss Nationals

(1) No Swiss national may, without his written consent, be extradited or surrendered to a foreign State for prosecution or execution of a sentence. This consent may be withdrawn up to the time the surrender is ordered.

(2) Paragraph (1) shall not apply to the transit or return of a Swiss national who is temporarily surrendered by a third State to Swiss authorities.

Art.8 Reciprocity

(1) In general, a request shall be granted only if the requesting State assures reciprocity. The Federal Office for Police of the Federal Department of Justice and Police (Federal Office) may require a guarantee of reciprocity if it is deemed necessary.

(2) Reciprocity shall not be required specifically in cases of service of documents or if the execution of a request:

(a) seems advisable by reason of the type of offense or the necessity of combatting certain offenses;

(b) is likely to improve the situation of the fugitive or the prospects of his social rehabilitation;

(c) serves to clarify an offense committed against a Swiss national.

(3) The Federal Council may, within the scope of this Law, guarantee to other States reciprocity.

Art.9 Protection of Privacy

In the execution of requests, the right of privacy shall be safeguarded in accordance with legal provisions governing testimonial privileges. The provisions of Art. 69 of the Federal Code of Criminal Procedure shall apply to searches and to the sealing of documents.

Art.10 Privacy of Persons Not Involved in the Criminal Proceedings

(1) Information affecting the right of privacy of persons who, according to the request, are not involved in the criminal proceedings abroad, may be given if it appears imperative to establish the facts and if the seriousness of the offense justifies it.

(2) Disclosure of manufacturing or business secrets in the sense of Art. 273 of the Penal Code, or of facts which a bank must usually keep secret, shall not be made if there is reason to believe that such disclosure would cause serious prejudice to the Swiss economy and it does not appear justified in relation to the seriousness of the offense.

(3) The executing authority shall obtain the opinion of the Federal Office before making a decision.

Art.11 Legal Definitions

- (1) A fugitive within the meaning of this Law is any person suspected, under investigation, or against whom a sentence has been imposed.
- (2) Sentence is any punishment or [penal] measure.

Chapter 2: Applicable Law

Art.12 In General

Unless otherwise provided in this Law, Federal administrative authorities shall apply, by analogy, the Federal Act on Administrative Procedure, and Cantonal authorities their own procedural rules. Procedural rules applicable to criminal proceedings shall apply.

Art.13 Tolling of the Statute of Limitations;
Criminal Complaint

(1) The following events shall have effect in Switzerland in proceedings under this Law:

- (a) the tolling of the statute of limitations according to the law of the requesting State;
- (b) a criminal complaint filed with a foreign authority within the time limit provided for, if a criminal complaint were also required under Swiss law.

(2) If a criminal complaint is required only under Swiss law, no sentence may be pronounced or executed in Switzerland if the victim withdraws the complaint.

Art.14 Credit for Time Served

Art. 69 of the Swiss Penal Code shall be applicable for determining credit for any pre-trial detention abroad or for detention abroad caused by a proceeding instituted under this Law.

Art.15 Indemnity

(1) The Federal and Cantonal provisions governing indemnity for unjustified detention and other detriments shall apply, by analogy, to a proceeding carried out against a fugitive under this Law in Switzerland or abroad at the request of a Swiss authority.

(2) The Confederation shall pay the indemnity if a Federal authority makes or executes a request. The Confederation may charge back the costs of the indemnity to the Canton, if the latter caused the request to be made.

Chapter 3: Procedure in Switzerland

Section 1: Authorities and Powers

Art.16 Cantonal Authorities

(1) The Cantons shall participate in the execution of extradition proceedings. If Federal law does not require otherwise, it is incumbent upon them to execute requests for other assistance, such as the transfer of proceedings and the execution of criminal judgments. In

carrying out the provisions of this Law, the Cantons shall be under the supervision of the Confederation.

(2) The Cantons shall determine the competency, organization and management of their executing authorities.

Art.17 Federal Authorities

(1) The Federal Department of Justice and Police shall decide matters under Art. 1, para. 2.

(2) The Federal Office shall receive requests from abroad and present Swiss requests. It shall execute extradition requests and transmit requests for examination by the appropriate Cantonal or Federal authorities for other assistance, the transfer of proceedings and the execution of criminal judgments if their execution is not manifestly improper.

(3) [The Federal Office] shall decide the following matters:
(a) requests for guarantee of reciprocity (Art. 8, para. 1);
(b) choice of the appropriate procedure (Art. 19);
(c) propriety of Swiss requests (Art. 30, para. 1).

(4) [The Federal Office] may refer a proceeding in part or in whole to the Federal authority which would be competent for the prosecution of the offense if committed in Switzerland.

Art.18 Provisional Measures

Upon the express request of another State, and if the proceeding according to this Law does not appear manifestly inadmissible or inappropriate, provisional measures may be ordered to preserve the status quo, to protect threatened legal interests or to safeguard evidence. If irreparable harm may result from delay, and if there is sufficient information to determine whether all the conditions are met, these measures may be taken upon application of the Federal Office as soon as a request is announced.

Art.19 Choice of Procedure

If the fugitive is abroad and if the law of the State to which the request is addressed offers a choice between different procedures, preference shall be given to that procedure which promises a larger measure of social rehabilitation.

Art.20 Suspension of a Criminal Proceeding or of Imposition of Sanctions

(1) Upon application by the Federal Office, the competent authority may temporarily suspend the institution of criminal proceedings or the imposition of sanctions involving another offense against a fugitive wanted abroad if:

- (a) the potential penalty in Switzerland is insubstantial in comparison to the penalty which is likely to be imposed abroad, or
- (b) the imposition of sanctions in Switzerland does not seem appropriate.

(2) Upon conclusion of the criminal proceedings abroad, the Swiss authority shall decide whether to resume the suspended proceedings or the imposition of sanctions.

Section 2: Assistance of Counsel

Art.21 General Provisions

- (1) A fugitive may retain counsel. If he waives assistance of counsel, or if he is not in a position to retain counsel, counsel shall be officially appointed for him if the protection of his interests require it.
- (2) Other persons who are affected by judicial assistance measures or who, as victims, are present at investigations, may, if the protection of their interests require it, be represented by counsel at the execution of the judicial assistance request as long as the purpose of the investigation is not prejudiced thereby.
- (3) Persons who are not targets of foreign criminal proceedings may challenge decisions only if a measure concerns them personally or could prejudice their right of defense in criminal proceedings.
- (4) An appeal from an order granting extradition or releasing confidential information shall stay that order, notwithstanding the provision of Art. 111, para. 2, of the Federal Law on the Federal Court Organization ("OJ").

Art.22 Notice of Court Review

- (1) Orders and decisions of Federal and Cantonal authorities shall be valid only if they provide notice regarding court review.
- (2) The notice regarding court review must specify the nature of the court review allowed, the reviewing court, and the time period within which court review must be sought.

Art.23 Review of Cantonal Decisions

Cantonal authorities shall provide for court review of decisions of their executing authorities.

Art.24 Challenges to Orders issued by the Federal Office

- (1) Any person affected by an order issued by the Federal Office pursuant to this Law, and who has a legally protected interest in having the order modified or quashed, may challenge the order.
- (2) The challenge must be submitted in writing to the Federal Office within ten days after notice of the order is given. An appropriate extension of time may be granted to substantiate the challenge or to correct errors. If the challenge is not substantiated within the time allotted, it shall be deemed withdrawn.
- (3) A challenge shall stay the order only if implementation of the order would cause irreparable harm to the challenger or if other weighty grounds justify a stay.
- (4) If the challenge cannot be resolved informally, the Federal Office shall issue a decision. It may postpone the issuance of the decision until the termination of the proceedings unless a postponement would cause substantial, irreparable harm to the challenger. Such interlocutory decisions are subject to court review.

Art.25 Court Review of Administrative Determinations

- (1) Decisions of Federal authorities of the first instance and of the highest Cantonal appellate authorities shall be subject to administrative appeal directly to the Federal Tribunal [Supreme Court] (Arts. 97 - 114, OJ) insofar as this Law does not otherwise stipulate.
- (2) An appeal against the issuance of a Swiss request to another State shall be permitted only if that State is requested to undertake criminal proceedings or the execution of a sentence. In such case, only the fugitive is entitled to appeal.
- (3) The Federal Office may file appeals against decrees of the highest Cantonal appellate authorities. The Cantonal authority is entitled to appeal the refusal of the Federal Office to make a request.
- (4) An appeal may also be taken if foreign law has been erroneously or manifestly improperly applied.
- (5) The provisions regarding the suspension of time limits (Art. 34, para. 1, OJ) shall not apply to the time limits established in this Law.
- (6) The Federal Tribunal shall not be limited by the submissions of the parties.

Art.26 Administrative Recourse

Decisions of the Department under Article 17, para. 1, shall be subject to review by the Federal Council; decrees of the Federal Office under Article 17, paras. 2 and 3, shall be subject to an administrative appeal to the Department, whose decision shall be final.

Chapter 4: Interstate Procedure

Art.27 General Rules for Requests

- (1) Articles 27 - 31 shall apply to all procedures under this Law. Promulgation of special rules of procedure provided for in other Parts is reserved.
- (2) Foreign requests shall be addressed directly to the Federal Office.
- (3) Requests which are addressed to an inappropriate authority shall be forwarded ex officio. The requesting authority shall be so informed.
- (4) Detention requests shall be processed without delay.
- (5) Reasons must be given for the non-acceptance or refusal of a request.

Art.28 Form and Content of Requests

- (1) Requests shall be submitted in writing.
- (2) The request must state:
 - (a) the office from which it emanates and, if necessary, the authority having criminal jurisdiction;
 - (b) the subject matter of, and the reason for, the request;
 - (c) the legal characterization of the offense;

(d) exact and comprehensive information regarding the person who is the target of the criminal proceedings.

(3) To determine the legal characterization of the offense, the request shall include:

(a) a summary of the relevant facts, except in cases of requests for service of process;

(b) the text of the pertinent law in force at the place where the offense was committed, except in cases of requests for assistance according to Part Three [of this Law].

(4) Foreign official records need not be legalized.

(5) Foreign requests and their enclosures shall be submitted in German, French or Italian, or be accompanied by a translation into one of these languages. Translations shall be officially certified as true.

(6) If a request does not meet the formal requirements, its correction or amplification may be demanded; the imposition of preliminary measures will not be affected thereby.

Art.29 Transmission

(1) The Federal Office may receive requests directly from the Ministry of Justice of the requesting State.

(2) If preliminary measures are to be taken, or in cases of urgency, the assistance of the International Criminal Police Organization (Interpol) may be enlisted or a copy of the written request may be sent directly to the authority competent for its execution.

Art.30 Swiss Requests

(1) Swiss authorities may not address to another State requests which they themselves could not execute according to this Law.

(2) The Federal Office shall be competent in cases of requests for extradition, transfer of proceedings or execution of criminal judgments; it shall take action at the request of the Cantonal authority.

(3) Conditions which the requested State attaches to the execution of the request shall be observed by the Swiss authorities.

(4) The Federal Office may decline to issue a request if the significance of the offense does not justify the proceedings.

Art.31 Costs

(1) As a rule, foreign requests shall be executed free of charge.

(2) The Federal Council shall fix the conditions under which the requesting State may be charged the costs in whole or in part.

(3) The expenses for a Swiss request for which another State is reimbursed shall be charged to the proceedings which gave rise to the request.

(4) The Federal Council shall fix the sharing of costs between the Confederation and the Cantons.

Part Two: Extradition

Chapter 1: Conditions

Art.32 Foreign Nationals

Foreign nationals may be surrendered to another State for prosecution or incarceration regarding offenses over which it has jurisdiction if such State requests extradition or if it accepts a Swiss request to prosecute or to impose sanctions.

Art.33 Persons under 20 Years

(1) Children and juveniles as defined in the Swiss Penal Code, whose extradition is requested shall, if possible, be repatriated by juvenile authorities. The same applies for persons between the ages of 18 and 20 if extradition could endanger their development or social rehabilitation.

(2) Repatriation shall have the same effects as extradition.

Art.34 Surrender of Objects

(1) If the conditions for extradition are met, objects and valuables which may serve as evidence or which are derived from the offense shall be surrendered.

(2) The surrender of objects shall be independent of the surrender of the fugitive.

(3) Rights of the authorities and bona fide acquired rights of third parties in objects or valuables which are to be surrendered shall remain unaffected.

(4) If such rights are challenged, the objects and valuables shall not be released until the competent court has ruled or the competent authority has approved the release.

Art.35 Extraditable Offenses

(1) Extradition shall be permitted if, according to the documents supporting the request, the offense:

(a) is punishable not only under the law of Switzerland but also under the law of the requesting State with incarceration for a period of at least one year or more, and

(b) is not subject to Swiss jurisdiction.

(2) In determining whether an act is punishable under Swiss law, special degrees of guilt and conditions for penal responsibility [under Swiss law] shall not be taken into account, nor shall regard be had to the applicability as to persons and the time period concerned of the [Swiss] Military Penal Code regarding penalties for violations of international law in case of armed conflict, as well as looting and pillaging.

Art.36 Special Cases

(1) In an exceptional case a fugitive may be extradited for an offense which comes under Swiss jurisdiction if special circumstances, especially the possibility of better social rehabilitation, justify it.

(2) If one of several offenses is an extraditable offense (Art. 35, para. 1), extradition may be granted for all offenses.

Art.37 Denial

(1) Extradition may be denied if Switzerland can assume the prosecution of the offense or the execution of a penal judgment rendered in the requesting State and the social rehabilitation of the accused appears to justify it.

(2) Extradition shall be denied if the requesting State does not guarantee that the accused person will not be executed in the requesting State or that he will not be subject to treatment which will impair his physical integrity.

Art.38 Conditions

(1) A fugitive may be extradited only on condition that the requesting State:

(a) shall neither prosecute nor sentence nor re-extradite him to a third State for an offense committed prior to his extradition and for which extradition was not granted;

(b) shall not deprive him of his liberty on any other pre-existing ground;

(c) shall not proceed against him before a special court;

(d) shall furnish to the Swiss authorities, upon request, an officially certified true copy of the decision which terminates the penal proceedings.

(2) The conditions of subparagraphs. (a) and (b) of para. 1, above, shall become inapplicable 45 days following the extradited person's conditional or unconditional release, if that person, having been advised of the consequences, fails to leave the territory of the requesting State even though he had an opportunity to do so, or if that person returns to the territory after having left the same, or if he is returned by a third State.

Art.39 Extension

If the extradited person is charged with other offenses, the State to which he was extradited may be permitted, upon a new request, to prosecute these offenses.

Art.40 Request by Several States

(1) If several States request extradition for the same offense, extradition shall, as a general rule, be granted to the State where the offense was committed or where it was principally perpetrated.

(2) If extradition is requested by more than one State for different offenses, the decision to extradite shall be made with due regard to all circumstances, especially the gravity of the offenses, the place of commission, the chronological order in which the requests were received, the nationality of the fugitive, the prospect of social rehabilitation, and the possibility of extradition to another State.

Chapter 2: Procedure

Section 1: Requests

Art.41 Documents Supporting the Request

In addition to the documents specified in Art. 28, para. 3, above, the following shall be enclosed with the request: the original or an officially certified true copy of the final judgment, the warrant of arrest, or of any other document issued in the requesting State, and having the same effect in accordance with its laws.

Art.42 Requests for Searches and Arrest

Requests for searches and apprehension with a view to extradition shall state in addition to the items of information specified in Art. 28, paras. 2 and 3(a), the following:

- (a) the existence of a valid warrant of arrest, the date of its issuance, and the name of the issuing authority;
- (b) the intention of the competent authority to make a request for extradition.

Art.43 Execution of the Request

The Federal Office shall decide whether and under what conditions it will execute the request.

Section 2: Provisional Measures

Art.44 Arrest

Foreign nationals may be arrested with a view to extradition on the basis of a request by a National Office of Interpol, the Ministry of Justice of another State, or on the basis of an international "wanted" notice in a police bulletin. Art. 52, paras. 1 and 2, shall apply by analogy.

Art.45 Seizure of Objects

- (1) At the time of arrest, objects and valuables which can serve as evidence in foreign criminal proceedings or which are derived from an offense shall be seized.
- (2) The Cantonal authorities may, if necessary, order that the arrested person and the rooms be searched.

Art.46 Notice of Execution; Duration of Measures

- (1) Arrest and seizure shall be reported to the Federal Office.
- (2) They shall continue in effect until a decision concerning arrest pending extradition is rendered, but not longer than the third workday after the arrest.

Section 3: Arrest Pending Extradition and Seizure

Art.47 Warrant of Arrest and Other Decrees

- (1) The Federal Office shall issue a warrant of arrest for the purpose of extradition. It may decline to do so, if the fugitive:

(a) is not likely to avoid extradition and will not endanger the criminal investigation, or

(b) can prove forthwith that he was not at the place of the offense when it was committed.

(2) If the fugitive is unfit to be placed in detention or if there are other valid reasons, the Federal Office may order measures other than detention to assure his presence.

(3) At the same time it shall order which objects and valuables shall remain seized or are to be seized.

Art.48 Contents

(1) A decree issued under Art. 47 shall contain:

- (a) the foreign authority's submissions concerning the identity of the fugitive and the offense alleged against him;
- (b) the name of the authority making the request;
- (c) confirmation that extradition is being requested;
- (d) notice regarding the right of appeal according to para. 2 below, and the right to retain counsel.

(2) An appeal against such a decree may be lodged within ten days with the Federal Court, Chamber of Indictments. Art. 214, et seq., of the Federal Code of Criminal Procedure shall apply by analogy.

Art.49 Execution

(1) Execution of decrees issued under Art. 47 shall fall within the jurisdiction of the Cantonal authorities.

(2) A warrant of arrest for purposes of extradition shall not be effective as long as the fugitive is held in preliminary custody or is serving a penal sentence.

(3) The fugitive sought may not be released from custody nor deported from Switzerland without the consent of the Federal Office.

Art.50 Cancellation of Detention

(1) The Federal Office shall cancel the detention 18 days after the arrest if the request for extradition and its enclosures have not been received. This period may be extended for special reasons up to 40 days.

(2) If the fugitive is already under arrest, the time shall start to run when he is arrested for purposes of extradition.

(3) Arrest for purposes of extradition may, in exceptional cases, be lifted at any stage of the proceedings if the circumstances so warrant. The fugitive may file a petition for release at any time.

(4) Articles 53 - 60 of the Federal Code of Criminal Procedure shall apply by analogy to the cancellation of detention.

Art.51 Continuation and Renewal of Detention

(1) If the request and its enclosures are received timely, and if extradition is not inadmissible on its face, detention shall continue throughout the entire proceedings without further order.

(2) If the fugitive was released, detention arrest for purposes of extradition may be reordered.

Section 4: Preparation of Extradition Decision

Art.52 Right to be Heard

(1) The request and its supporting documents shall be made available to the fugitive and his counsel. In initiating the warrant of arrest for the purpose of extradition, the Cantonal authority shall ascertain if the fugitive is identical with the person mentioned in the request; it shall explain to him the conditions for extradition and for informal surrender, and advise him of his right to appeal, to retain counsel, or to have counsel officially appointed.

(2) The fugitive shall be examined briefly with respect to his personal circumstances, especially his nationality and his relationship to the requesting State, and shall be asked whether and for what reasons he raises objections to the warrant of arrest or to his extradition. His counsel may assist in this examination.

(3) Should the extradited person be prosecuted for other offenses or extradited to a third State, the Federal Office shall cause him to be examined on the record with respect to the matters listed in para. 2 by a judicial authority of the requesting State.

Art.53 Proof of Alibi

(1) If the fugitive claims that he is able to prove that he was not at the scene of the offense when it was committed, the Federal Office shall conduct an appropriate investigation.

(2) Extradition shall be denied in clear cases. In other cases, the exculpatory evidence shall be submitted to the requesting State which shall be asked to signify without delay whether it will maintain the request.

Art.54 Informal Surrender

(1) If the fugitive places on the record before a judicial authority a waiver of extradition proceedings and if he requests informal surrender, the Federal Office shall order such in the absence of special considerations.

(2) The waiver may be revoked as long as the Federal Office has not ordered the surrender.

(3) Informal surrender shall have the effect of extradition.

Section 5: Decisions on Extradition

Art.55 Competence

(1) The Federal Office shall render decisions on extradition.

(2) If the fugitive claims to be charged with a political offense, or if the investigation presents serious reasons to believe that the offense is of a political nature, the Federal Court shall decide the case. The Federal Office shall send the file to the Court with its submissions. The fugitive shall have an opportunity to be heard.

(3) The procedure for court review of administrative determinations under Art. 25 shall apply by analogy.

Section 6: Execution

Art.56 Executability

- (1) Extradition may be carried out if the fugitive:
 - (a) explicitly requests immediate extradition, or
 - (b) if he does not signify within five days after notice of the decision to extradite is given that he intends to appeal.
- (2) If extradition is refused, the Federal Office shall cancel the arrest for purposes of extradition.

Art.57 Extradition

- (1) The Federal Office shall issue the necessary orders with the concurrence of the Cantonal authorities.
- (2) It shall notify the requesting State of the decision as well as of the date and place of surrender.

Art.58 Postponement; Provisional Surrender

- (1) The surrender may be postponed as long as the person to be extradited is being prosecuted in Switzerland for other offenses or if he is serving a penal sentence.
- (2) However, provisional surrender of the prosecuted person may be granted, if:
 - (a) Swiss criminal proceedings are not adversely affected thereby, and
 - (b) the requesting State guarantees to keep the fugitive in custody during his stay in that State and to return him regardless of his nationality.

Art.59 Return of Objects

- (1) Objects and valuables which the requesting State does not need as evidence may be retained, particularly if:
 - (a) the victim lives in Switzerland and if they are to be returned to him;
 - (b) a person not involved in the offense makes a showing that he has in good faith acquired rights to the property in Switzerland and that his claims to the property are not secured, or
 - (c) the objects and valuables are necessary for pending criminal proceedings in Switzerland.
- (2) Return of the evidence furnished, free of costs, may be requested under the same conditions.

Art.60 Tax Liens

- (1) If the objects or valuables are handed over and their return is waived, any customs lien or any other liability imposed under Swiss customs or tax-laws shall not be asserted if the owner of the property, who was a victim of the criminal act, is not personally liable for the tax.

(2) A waiver of such lien may be conditioned on reciprocity.

Art.61 Time Period for Assumption of Custody

If the requesting State fails to take steps within ten days after receipt of the extradition decision to assume his custody, the person ordered extradited shall be released. Upon application of the requesting State, and for good cause, the time period may be enlarged to 30 days.

Art.62 Costs

(1) The Confederation shall bear the costs of arrest and transportation in extradition to foreign States, to the extent that international custom imposes such costs on the requested State.

(2) Personal property of the fugitive may be used to cover the costs, to the extent that such property is not delivered up.

Part Three: Other Acts of Assistance

Chapter 1: Conditions

Section 1: In General

Art.63 Basic Principles

(1) Assistance within the meaning of this Part shall comprise the transmittal of information, as well as the performance of procedural acts and other official acts permitted under Swiss law, as far as such acts appear necessary for the proceedings carried out abroad in criminal matters or serve to retrieve the proceeds of an offense.

(2) Acts of assistance shall, in particular, include: service of documents, obtaining of evidence, production of records or documents, search of persons or rooms, seizure, confrontation and transit of fugitives.

(3) Proceedings carried out in criminal matters include the following:
(a) the prosecution of criminal offenses (Art. 1, para. (3));
(b) administrative measures against an offender;
(c) execution of sentences and granting of pardons;
(d) compensation for unjustified detention.

(4) Assistance may also be granted to the European Court of Human Rights and to the European Commission on Human Rights in proceedings relating to the protection of human rights and fundamental freedoms in criminal cases.

(5) Assistance aimed at exculpating a fugitive shall be rendered even if the grounds for exclusion according to Arts. 3 - 5 are given.

Art.64 Compulsory Measures

(1) Measures according to Art. 63 which involve the application of compulsory measures may be ordered only if the statement of the relevant facts shows that the offense prosecuted abroad contains the objective elements of an offense punishable under Swiss law.

(2) Such measures shall be allowed for the exculpation of a fugitive even if the offense prosecuted abroad is not punishable in Switzerland.

Art.65 Application of Foreign Law

(1) The following rules shall apply to acts of assistance:

(a) the presence of the parties to the foreign proceedings and access to the files may be granted if the requesting State so requires based on its laws;

(b) statements of witnesses or experts shall be affirmed in the form prescribed by the laws of the requesting State if expressly required in the request, even if applicable Swiss law does not provide for an affirmation; the manner of taking evidence that is admissible in court may be taken into consideration if the requesting State makes an express request to that effect;

(c) the manner of taking and affirming evidence under para. (b) must be compatible with Swiss law, and no material disadvantages may result therefrom to the persons involved;

(d) testimony may also be refused if the law of the requesting State provides a privilege, or if the giving of testimony would give rise to criminal or disciplinary sanctions under the laws of that State or of the State where the witness resides.

Art.66 Denial of Assistance

Assistance may be denied if the fugitive resides in Switzerland and proceedings have been initiated here regarding the offense to which the request refers.

Art.67 Use of Information

(1) Information obtained through judicial assistance shall not be used for investigative purposes or be introduced into evidence in the requesting State in any proceeding relating to offenses for which assistance could not be granted. Any other use of information requires authorization by the Federal Office.

(2) Permission to inspect files, granted to a foreign State which intervenes in a Swiss penal proceeding as a civilly-damaged party, is subject to the same condition.

Chapter 2: Specific Acts of Assistance

Art.68 Service of Documents; General Provisions

(1) Service of documents which a Swiss authority is asked to make may be effected by personal delivery to the recipient or by mail.

(2) The Federal Council may permit the direct service of documents from abroad upon the recipient in Switzerland. It shall establish the conditions for such service.

(3) Service shall be deemed effected if acceptance or refusal to accept is confirmed in writing.

Art.69 Service of Summons; Safe Conduct

(1) Whoever accepts a summons to appear before a foreign authority need not comply with such summons.

(2) Summonses containing threats of coercion will not be served.

(3) Service of a summons may be made subject to the condition that the recipient shall be guaranteed safe conduct for an appropriate period of time and that he will not be prevented from freely leaving the territory of the requesting State. If the recipient so requires, the authority effecting service shall ask the requesting State to give appropriate written assurances before proof of service is furnished.

Art.70 Transfer of Arrested Persons

(1) Persons held in custody in Switzerland may be transferred to a foreign authority for an official investigation if they are guaranteed safe conduct and if assurances are given that they will be kept in custody and returned to Switzerland upon request.

(2) Persons who are not accused abroad and Swiss citizens may be transferred only with their written consent. This shall not be necessary if a transfer is needed for the execution of a Swiss request or for confrontation with other persons abroad.

Art.71 Transit

(1) In furtherance of a proceeding carried out in another State and permitted under this Law, the Federal Office may grant transit [through Swiss territory] on submission of a request by that State or a third State without notice to the affected person. Such decision is non-reviewable. The decision is to be communicated only to the requesting State.

(2) No authorization shall be required if the detained person is to be transported by aircraft over Swiss territory without intermediate landing. In case of an unscheduled intermediate landing, the detained person may be kept in custody only if:

(a) the conditions for his arrest under Art. 44 (of this Law) are given, or

(b) the State arranging for the transport has previously informed the Federal Office by indicating the reason for the transfer and the offense justifying it.

(3) In case of measures taken for the prosecution or for the execution of sentences in Switzerland, transit may be interrupted only with the approval of the Federal Office.

Art.72 Maintaining of Custody

(1) If a detained person is surrendered to Swiss authorities in the course of an act of assistance, the warrant for his arrest issued abroad shall also be valid in Switzerland for the period of his stay in Switzerland.

(2) During transit, the fugitive shall be kept in custody by virtue of the order for transit given by the Federal Office.

(3) In such cases, the detained person may be released only with the concurrence of the competent foreign authority.

Art.73 Safe Conduct in Switzerland

(1) A person who customarily resides abroad, and who appears in Switzerland pursuant to a summons in a criminal case, may be neither

(2) A fugitive shall enjoy no safe conduct regarding offenses specified in the summons.

(3) The safe conduct provided in para. 1 shall cease when the person leaves Switzerland, but not later than three days after dismissal by the summoning authorities.

Art.74 Surrender of Objects

(1) Upon request, objects, particularly documents and valuables which may be seized under Swiss law, as well as official records and decisions, shall be placed at the disposal of the authorities competent for criminal matters or for issuing or withdrawing drivers' licenses, as far as these objects may be of significance in their decision.

(2) Other objects and valuables originating from an offense may be surrendered for the purpose of returning them to the owner even if he is not involved in the proceedings in the requesting State.

(3) Rights asserted by authorities and third parties shall be governed by Art. 34, paras. (3) and (4); Art. 59 shall apply to the return and Art. 60 to tax liens.

Chapter 2: Procedure

Section 1: Requests for Assistance

Art.75 Competence

(1) Requests for assistance may be submitted by authorities which are competent to investigate and prosecute offenses or to render decisions in other proceedings to which this Law applies.

(2) Where the law of a requesting State imposes upon the parties themselves the obligation to perform certain procedural acts, Swiss authorities may honor requests from the parties.

Art.76 Contents and Documents

In addition to the information and documents required by Art. 28, the following shall be specified in, or added to, a request:

(a) as concerns requests for service: name and address of the recipient, his standing in the proceedings, as well as the type of document to be served;

(b) as concerns requests for transit: one of the documents listed in Art. 41;

(c) as concerns requests for search of persons or rooms, for seizure or surrender of objects: confirmation that these measures are permitted in the requesting State.

Art.77 Address

(1) Foreign requests shall be addressed to the appropriate Cantonal authority through the Federal Office.

(2) Requests for extracts from the penal register or for the identification of a person shall be addressed to the Swiss Central Police Bureau.

Art.78 Federal Office

- (1) The Federal Office shall examine the request to determine whether the formal requirements of this Law have been met and forward the request to the appropriate Cantonal authority, unless assistance appears inadmissible on its face.
- (2) It may impose conditions for the granting of assistance.
- (3) It shall issue necessary transit orders.
- (4) It shall prepare requests for assistance not directly related to criminal proceedings.

Art.79 Cantonal Authorities

- (1) Cantonal authorities shall decide whether assistance shall be granted and questions of international procedure, unless a Federal authority has exclusive authority to do so.
- (2) If direct contact between the competent Swiss and foreign prosecuting authorities is stipulated, Cantonal authorities shall deal with the merits of the request if the conditions of Art. 78, para. 1, are met.
- (3) Arts. 6, 26 and 27 of the Federal Administrative Procedure Act shall also apply to the inspection of records in a Cantonal proceeding. Any person entitled thereto may examine the request for assistance and the accompanying documents as far as this is necessary for the protection of his interests. A defendant who is not personally affected by the assistance to be rendered may invoke this right only if his usual residence is in Switzerland, and only in the interest of protecting his rights of defense in the foreign criminal proceeding.
- (4) The Federal Office, in its capacity as supervising authority, may in accordance with Art. 23, challenge decisions of Cantonal authorities by means of appeals provided by Cantonal law.

Art.80 Investigations in Several Cantons

If the execution of a request requires investigations in several Cantons, the Federal Office may charge the competent authority of one of these Cantons with the execution of the request. Arts. 352 - 355 of the Penal Code apply by analogy.

Art.81 Police Requests

- (1) The highest police authorities of the Confederation and of the Cantons may make requests in accordance with Art. 63 on their own, and may grant such requests issued by foreign authorities.
- (2) The Federal Council shall promulgate rules on methods and procedures.

Section 3: Special Provisions

Art.82 Safeguarding of Secrecy

- (1) If in the execution of a request the parties to a proceeding would gain knowledge concerning information which falls within the legally protected sphere of privacy of a person who does not appear to be

involved in the offense which is being prosecuted abroad, the parties shall be excluded from the investigation until such time as the conditions for the disclosure of the secret have been met.

(2) Information about such facts, which is contained in papers or decisions which are to be released under Art. 74, or which are to be furnished for inspection to the parties or to the foreign authorities, shall be removed if the conditions for disclosure are not met.

(3) The forwarding of information which forms part of the sphere of privacy shall be subject to appeal in accordance with Arts. 23 and 25.

Art.83 Conclusion of the Assistance Proceeding

(1) When the executing authority considers the assistance proceeding concluded, it shall forward the files to the competent Cantonal or Federal authority. That authority shall determine whether the request has been executed correctly and, if necessary, return the files to the executing authority for amplification.

(2) The documents of execution may be delivered to the requesting authority:

(a) if no appeal was filed in the course of the execution of the request;

(b) if the determination under para. 1 shows that no right of privacy of third persons is affected and that there are no questions regarding the propriety of granting of assistance.

(3) If the conditions of para. 2 are not met, an appealable order shall be issued which shall state if and to what extent or in what form the documents of execution shall be transmitted.

Art.84 Costs

The requesting State shall bear the costs for:

(a) experts;

(b) surrender of objects for return to the owner.

Part Four: Transfer of Proceedings

Chapter 1: Conditions

Section 1: Assumption by Switzerland

Art.85 General Principles

(1) Switzerland may, upon request, exercise its jurisdiction in lieu of the State within whose territory the offense was committed if:

(a) extradition is not available;

(b) the fugitive sought has been charged in Switzerland with other, more serious, offenses, and

(c) the requesting State gives assurance that it will not prosecute the offender for the same offense should he be acquitted or should he be sentenced in Switzerland.

(2) The prosecution of an alien who has his usual residence in Switzerland may be undertaken if his extradition cannot be justified and if assumption of prosecution seems expedient with regard to his personal circumstances and social rehabilitation.

(3) These rules shall not apply if the offense is subject to Swiss jurisdiction on other grounds.

Art.86 Applicable Law

(1) The offense shall be tried according to Swiss law as if it had been committed in Switzerland.

(2) Foreign law shall be applied if it is more lenient. The court may impose only such penalties as are provided by Swiss law.

(3) Proceedings in the absence of the defendant shall not be permitted.

Art.87 Venue

If the venue in Switzerland is not otherwise laid, it shall be determined according to Art. 348 of the Penal Code.

Section 2: Transfer to a Foreign State

Art.88 Conditions

Another State may be requested to assume the prosecution of an offense subject to Swiss jurisdiction if its laws allow prosecution and judicial penalties for the offense, and if the offender:

(a) has his residence in such other State and his extradition to Switzerland would be inappropriate or impermissible, or

(b) if the offender is being extradited to such other State and the transfer of the prosecution would lead to the expectation of a better social rehabilitation.

Art.89 Effects

(1) If another State assumes prosecution, Swiss authorities may not take further measures against the offender on account of the same offense:

(a) as long as the requested State has not given notice that it is not in a position to conduct the prosecution, or

(b) if according to the decision rendered in that State the conditions of Art. 5, subparas. (a) or (b), are met.

(2) The running of the Swiss statute of limitations shall be tolled for such period as the prosecution, including execution of the sentence, is pending in the requested State.

(3) If the offender was extradited to a requested State for other offenses, that State need not observe the conditions for extradition according to Art. 38 if it grants the request to assume the prosecution.

Chapter 2: Procedure

Art.90 Documents

In addition to the documents specified in Art. 28, para. 3, the record of criminal proceedings as well as exhibits shall be attached to the request.

Art.91 Decision on the Request

(1) The Federal Office shall after consultation with the prosecuting authorities, decide whether a foreign request will be accepted.

(2) If it accepts the request, it shall transmit the file to the prosecuting authority and notify the requesting State and the person concerned.

(3) Such decision shall not create an obligation to institute criminal proceedings.

(4) The Federal Office may decline to assume the prosecution for weighty reasons or if the significance of the offense does not justify it.

Art.92 Foreign Investigative Acts

Any investigative act carried out by the authorities of a requesting State under its law shall be considered equal to a corresponding Swiss act of investigation in a prosecution here.

Art.93 Costs

(1) The costs of the proceedings incurred by a requesting State shall be added to the costs of the proceedings in Switzerland and collected. They will not be refunded to the requesting State.

(2) The Cantons shall dispose of fines, confiscated objects or forfeited monies.

(3) A requesting State shall be notified of the costs of the proceedings incurred in Switzerland if it assumes prosecution. No reimbursement shall be claimed.

Part Five: Execution of Criminal Judgments

Chapter 1: Conditions

Section 1: Assumption by Switzerland

Art.94 Basic Principles

(1) Final and enforceable criminal judgments of another State may be executed upon its request if:

(a) the convicted person has his usual residence in Switzerland or has been charged here with a serious offense;

(b) the subject of the conviction is an offense committed abroad which if similarly committed in Switzerland, would be punishable here; and

(c) execution in Switzerland is appropriate on any of the grounds specified in Art. 85, paras. 1 and 2, or appears to be precluded in the requesting State.

(2) Penalties imposed abroad shall be executed to the extent that they do not exceed the maximum penalty provided by Swiss law for a corresponding offense. Penalties that are less than penalties provided by Swiss law may be executed.

(3) These provisions shall not apply if the Penal Code either prohibits (Art. 6 P.C.) or explicitly mandates (Art. 5 P.C.) the execution of a penalty imposed abroad.

(4) Fines as well as costs arising from procedures according to Art. 63 may also be collected if a convicted person whose usual residence is

Art.95 Inadmissibility of a Certificate of Execution

(1) A certificate of execution (Exequatur) shall not be accepted if:

(a) the conviction took place at a time when, under Swiss law, the prosecution would have been clearly barred by the statute of limitations;

(b) the penalty imposed would have been time-barred under Swiss law if a Swiss authority had imposed it contemporaneously; or

(c) the offense is subject to concurrent Swiss jurisdiction and if according to Swiss law a penalty could not be imposed for other reasons.

(2) Decisions regarding costs shall be executed only if the costs are payable to the State.

Art.96 Denial of Execution

A court shall deny execution in part or in whole if:

(a) the convicted person was sentenced and incarcerated in Switzerland because of other offenses and if the requested execution would result in a manifestly more severe punishment than if the offenses, taken as a whole, were tried in Switzerland, or

(b) the execution of a subsidiary penal measure in Switzerland is forbidden, or

(c) it determines that the convicted person had good cause to challenge the execution of a judgment or sentence rendered against him in absentia but that the review or appeal period under the law of the requesting State has expired.

Art.97 Binding Force of Foreign Findings of Fact

When judging punishability and amenability to prosecution under Swiss law, the court shall be bound by the findings of fact on which the [foreign] decision is based. If these are inadequate, the taking of additional evidence may be ordered.

Art.98 Effects of Assumption

If Switzerland assumes execution, domestic criminal proceedings against the convicted person for the same offense may not be instituted or continued.

Art.99 Utilization of Swiss Penal Institutions
by Foreign States

(1) If the conditions of Art. 94, para. 1, cannot be met, sentences of incarceration which have been imposed against non-Swiss nationals in another State may be executed in Switzerland under Swiss law if the other State is unable to execute them.

(2) A final and enforceable foreign decision shall constitute a legal basis for the incarceration of the convicted person in such cases.

(3) Persons who are surrendered to Switzerland under para. 1 may not be prosecuted, punished or extradited to a third State by Swiss authorities for offenses committed before their surrender and which

did not serve as basis for their conviction unless there are arrangements to the contrary made with the competent authorities of the surrendering State. This effect ceases 10 days after the conditional or final release of the offender from a penal institution.

(4) The Federal Council shall issue regulations implementing this Article.

Section 2: Transfer to a Foreign State

Art.100 General Principles

A foreign State may be requested to assume the execution of a Swiss penal judgment if:

- (a) finality of the judgment within the meaning of Art. 97 is guaranteed, and
- (b) the transfer of the execution leads to a reasonable expectation of better social rehabilitation of the convicted person, or if Switzerland cannot obtain his extradition.

Art.101 Conditions of Transfer

The convicted person who is incarcerated in Switzerland may be transferred with a view to execution under Art. 100 only if he agrees, and if the requested State can be expected to observe the conditions set by the Federal Office.

Art.102 Effects of Transfer

- (1) If another State assumes the execution of a criminal judgment, the Swiss authority shall not execute it as long as the requested State has not signified that it will be unable to complete the execution.
- (2) The convicted person may be taken into custody to ensure his transfer.
- (3) Art. 89, paras. 2 and 3, apply by analogy.

Chapter 2: Procedure

Section 1: Request

Art.103 Documents

In addition to the documents required under Art. 28, para. 3, the following shall be attached to a request:

- (a) the original or an officially authenticated copy of the sentence, with a certificate attesting that it is legally enforceable;
- (b) a certificate attesting to the period of detention in the requesting State;
- (c) if the requested State so requests, the original or officially authenticated copy of the penal file.

Art.104 Decision on the Request

(1) The Federal Office, after consultation with the authority which will execute the request, shall decide whether to accept the request. If it accepts, it shall transmit the file and its opinion to the executing authority and inform the requesting State. Art. 91, para 4, applies by analogy.

(2) If there is Swiss jurisdiction, and if a penalty more severe than that provided by Swiss law was imposed abroad, prosecution may be assumed instead of execution of the existing judgment if the requesting State so requests.

Section 2: Procedure of Exequatur

Art.105 Competent Court

A court competent under Art. 348 of the Penal Code shall advise the convicted person as to the procedure, hear him and his attorney in the matter, and decide on the execution.

Art.106 Certificate of Execution

(1) A court shall examine ex officio whether the conditions for execution are met and gather the necessary evidence.

(2) If the conditions are met, the judge shall declare that the sentence can be executed and take the measures necessary for execution.

(3) The decision shall be rendered in the form of a judgment, giving reasons. Cantonal law shall govern appellate remedies.

Section 3: Execution

Art.107 Execution of the Penalty

(1) The penalty imposed by the court shall be executed according to Swiss law.

(2) Execution shall be terminated if the sentence is no longer enforceable in the requesting State.

(3) If a judgment of costs only was executed, the amount collected, after deduction of the costs resulting from the execution, shall be transferred to the requesting State if it guarantees reciprocity.

Art.108 Costs

In addition to the costs for the execution of a penal judgment, costs for the procedure of exequatur and other measures of execution shall also be considered as taxable costs according to Art. 31.

Part Six: Final Provisions

Art.109 Repeals and Amendments of Existing Law

[omitted]

Art.110 Transitory Provisions

(1) The procedural provisions of the Federal Act of 22 January 1892 on Extradition to Foreign States shall remain applicable to extradition proceedings which are pending on the day of the entry into force of this Law.

(2) The prosecution and execution of sentences in accordance with Parts Four and Five of this Law may be assumed only if the offense to which the request refers was committed after the entry into force of this Law.

(3) Requests for extradition or other assistance on account of offenses, which, under Art. 75 of the Penal Code or Art. 56, as amended, of the Military Penal Code are not subject to the statute of limitations, may be granted by the Federal Council even if, upon the entry into force of these provisions, the prosecution or the sentence has become time-barred.

Art.111 Implementation

(1) The Federal Council shall promulgate implementing regulations.

(2) It may establish a permanent commission to examine the question whether the gravity of an offense justifies the release of information protected by the right of privacy. The members of the commission shall be bound to secrecy to the same extent as civil servants of the Confederation.

Art.112 Entry into Force and Referendum

(1) This Law shall be subject to the optional referendum.

(2) The Federal Council shall establish the effective date [of this Law].

Council of States

20 March 1981

National Council

20 March 1981

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APPENDIX L

ORDINANCE OF 24 FEBRUARY 1982 ON
INTERNATIONAL MUTUAL ASSISTANCE IN PENAL MATTERS

I. ORDINANCE ON INTERNATIONAL MUTUAL ASSISTANCE IN THE PENAL SPHER
E
(Ordinance on International Penal Assistance [OEIMP]
of 24 February 1982

The Swiss Federal Council,
considering Article III of the Federal Law of 20 March 1981 on
international penal assistance,
Decreets:

Chapter I: General Provisions

Section I: Sphere of Application: Applicable Law

Art. 1: Reciprocity

Reciprocity is also believed to be guaranteed if assistance from
another state can be obtained without its authorities getting
involved.

Art. 2: Protection of Secrecy

1--If a written document contains, in addition to the information
which can be passed on to a foreign country, some facts which
cannot be revealed in accordance with Article 10 of the Law on
International Penal Assistance, the executory authority will make
a copy or a photocopy deleting the information which must be kept
secret.

2--It will mention in the document that something has been
omitted, indicating where and why it was done, and will certify
that the rest of the document is otherwise a true reproduction of
the original.

3--If so requested, the Federal Office of Police (the Federal Office) receives, for its information, the unaltered full text.

4--The preceding provisions also apply to other supporting documents.

Section 2: Procedure

Art. 3: Supervision

The Federal Office is in charge of supervising the application of the law. In cases assuming political importance, it seeks advice from the competent directorate of the Federal Department of Foreign Affairs.

Art 4: Procedure to be followed in cases falling under federal penal jurisdiction

1--In criminal cases which fall under the jurisdiction of the Federal Criminal Court and are not delegated to a cantonal authority (Art. 18 of the federal penal procedure), the Attorney General of the Confederation or the federal examining magistrate sends to the Federal Office the request dealing with an extradition (EIMP, Part 2) and to the other state those requests which concern "other acts of assistance" (EIMP, Part 3).

2--The Attorney General of the Confederation drafts the request asking another state to assume a penal prosecution or an execution (EIMP, Part 4 and 5).

3--The cantonal authorities, in agreement with the Attorney General of the Confederation, rules on the execution of requests dealing with "other acts of assistance" (EIMP. Part 3) received from a foreign country.

4--The Federal Office, in agreement with the Attorney General of the Confederation, rules on the matter of accepting foreign requests to delegate the penal prosecution and the execution.

Art. 5: Notification to the Federal Office

Judicial and cantonal decisions of last resort issued concerning international penal assistance are notified to the Federal Office.

Art. 6: Consent

If the act of assistance is contingent on the consent of the person concerned (Art. 7, 54, 70 and 101 of the EIMP), that person must be informed of the fact that it can withdraw its consent and told how much time he is allowed to do so. That information must be entered in the official statement.

Art. 7: Transfer to the federal authorities

The authorities entrusted with the execution will transfer the file to the competent federal authority, if a ruling is required on one of the points listed under Article 17 of the Law on International Penal Assistance.

Art. 8: Selection of the procedure

1--The selection of the procedure (Art. 19 of the EIMP) must be made on the basis of:

- a) the relations between the accused and the state to which the request has been sent as well as between the accused and Switzerland;
- b) the chances of an expulsion from Switzerland;
- c) a rational approach to administering justice;
- d) an overall judgment in the case of several offenses.

2--If the extradition of a foreigner is requested of Switzerland and the conditions set to agree with the proceedings and with the execution are fulfilled (Art. 85, paragraph 2 and Art. 94 of the EIMP), the Federal Office issues a ruling taking into consideration the elements listed under paragraph 1 and in agreement with the cantonal authorities. Before that, the accused is allowed a hearing.

◀ Art. 9: Address to send the notification

The interested party living abroad or his attorney must indicate an address in Switzerland where the notification can be sent. If they don't, notification can be omitted.

Art. 10: Statement of facts

1--The facts can be stated in the request or in its annexes.

2--The statement of facts must indicate at least the place, date and manner in which the offense was committed.

Art. 11: Swiss requests

1--As long as the state to which the request is sent has no other requirements, Articles 27 to 29 of the Law on International Penal Assistance apply by analogy to Swiss requests.

2--The requests and their annexes must not contain any information:

◀ a) likely to have an aggravating effect on the plight of an individual due to his political views, his membership to a specific social group, his race, religion or nationality;

◀ b) or which can lead to complaints from the state to which the request is sent.

Art. 12: Costs charged to the foreign country

1--The Swiss authorities can ask the petitioning state to reimburse all the costs incurred in the execution of the request.

2--They can bill for the time spent dealing with it, if it amounts to more than one working day and if Switzerland cannot obtain assistance free of charge from the petitioning state.

3--Costs adding up to less than 200 francs are not billed.

Art. 13: Allocation of expenses between the Confederation and the cantons

1--The federal and cantonal authorities do not demand from one another any outlay or compensation for the time spent or work done to deal with the cases covered by the Law on International Penal Assistance.

2--When the detention has been ordered by a federal authority, the Confederation assumes the expenses derived from the following measures:

a) detention (Art. 47. 72 paragraph 2 and 104, paragraph 2 of the EIMP);

b) transportation of the prisoners and their escort;

c) naming of a court-appointed attorney in the assistance proceedings (Art. 21, paragraph 1 of the EIMP);

d) necessary medical care required by the prisoner.

Art. 14: Preliminary review

If the conditions established for cooperation with a foreign country must be reviewed by the Federal Office (Art. 78, paragraph

1 and Art. 91, paragraph 1 of the EIMP), the acceptance or the transfer of the request to the executory authority cannot be tacked separately.

• Chapter II: Extradition

• Section 1: Repatriation of persons under 20 years of age

• Art. 15

1--The competent agencies (Art. 33, paragraph 1 of the EIMP) are, of course, the authorities appointed by the cantons under Article 369 of the Penal Code.

2--When the cantonal authorities receive, directly from a foreign authority, a request for the repatriation of a foreign person under 20 years of age, knowing that because that person has committed a crime or an offense, criminal proceedings have been opened against him abroad, or that he has been sentenced but the punishment has not been executed yet, these authorities will notify the Federal Office immediately.

3--If the repatriation takes place in accordance with Article 33 of the Law on International Penal Assistance, the Federal Office notifies the petitioning state.

• Section 2: Procedure

• Article. 16: Communication with foreign consular offices

• Any foreigner who is arrested is told immediately that he has the right to ask that the appropriate consular office of his country of origin be notified and the right to communicate with that office (Art. 36 of the Vienna Convention of 24 April 1963 on consular relations).

Art. 17: Right to a hearing

At the hearing, the accused is handed a statement on the extradition procedures in a language which he understands. The Federal Office has statements available in German, French, English and Spanish.

Art. 18: Official report

1--The hearing is recorded in an official report which must indicate:

- a) The appointment of an attorney or an interpreter when needed;
- b) The documents and legal provisions which have been read to the accused (Art. 52, paragraph 1 of the EIMP);
- c) The explanations he was given and the language in which this was done (Art. 52, paragraph 2 of the EIMP);
- d) The statements he made regarding his personal circumstances and his objections to the warrant of arrest or to the extradition (Art. 52, paragraph 2 of the EIMP);
- e) His consent to be extradited in accordance with Article 7 or to be handed over without formality in accordance with Article 54 of the Law on International Penal Assistance (Art. 6);
- f) A note saying that the accused has the right to communicate with a representative of his country of origin (Art. 16).

2--If the accused refuses to sign it, the fact must be mentioned in the report which must also state the reason for his refusal.

Art. 19: Arrest leading to extradition

The Federal Office can also order an arrest leading to extradition by telex or by phone. That order must be immediately confirmed by

a written warrant of arrest (Art. 47 of the EIMP) which is presented to the accused.

Art. 20: Execution of the detention

1--As a general rule, the detention takes place under the stipulations set by the cantons. If the circumstances so require, the Federal Office can order other measures in agreement with the cantons. Easier conditions of detention can be granted without prior consent from the Federal Office.

2--In agreement with the canton, the Federal Office appoints the authority responsible for controlling the prisoner's mail.

3--The present article also applies if the detention for extradition has been ordered in addition to a preventive or repressive detention.

Art. 21: Handing over without formality

The authorization to hand over the accused without formality must include a reference to the conditions listed in Article 38 or the Law on International Penal Assistance.

Art. 22: Execution of the Decision

The effects of the person due to be extradited, as well as the objects and assets seized, can be handed over to the petitioning state even if there is no specific request to do so. The same applies to the objects and assets discovered after the extradition takes place or when the extradition cannot be executed.

Art. 23: Right to a bond as surety for the Internal Revenue

1--The right to impose a bond as surety for the Internal Revenue can be put forward if the objects which will be handed over:

- a) are likely to be confiscated by the petitioning state;
- ✓ b) belong to a petitioning state which, when the situation is reversed, does not relinquish its rights to impose a bond.

- ✦ 2--The General Customs Office decides if there is reason to relinquish the rights to impose a bond (Art. 60 of the EIMP).

Chapter III: Other Acts of Assistance

Section 1: Conditions

Art. 24: Tax Fraud

1--When it involves the use of coercive measures, the assistance described in Article 3, paragraph 3 of the Law on International Penal assistance is granted for acts which amount to tax fraud as defined in Article 14, paragraph 2 of the Law on Administrative Penal Law.

2--The request cannot be rejected merely on the grounds that the Swiss law does not levy the same type of taxes or does not have the same type of regulations applicable to taxes.

- ✦ 3--In the case of doubt regarding the characteristics of the taxes mentioned in the foreign request, the Federal Office or the cantonal authority of execution will seek the advice of the
✦ Federal Tax Department.

Art. 25: Official Act

Also considered as an official act (Art. 63, paragraph 1 of the EIMP) is the supervision of persons who have been sentenced or released on parole.

✓ Art. 26: Presence of foreign persons who participate in the procedure

1--The judge from the petitioning state or the official from that state who is in charge of conducting the investigation can also attend the execution of the request when his presence will make it considerably easier to carry out the execution or the penal proceedings.

2--The executory authority rules on the matter of the right of foreigners who take part in the procedure to ask questions and to request additional investigations.

3--The Federal Council's executive order of 7 July 1971--empowering the departments and the Federal Chancellor's Office to grant the authorization provided for in Article 271, section 1 of the Swiss Penal Code -- applies in the case of a foreign prosecuting authority which asks Swiss authorities to be allowed to carry out its own investigations in Switzerland. That authorization is granted after consultation with the cantonal authorities concerned.

✓ Art. 27: Testifying under special form

Taking an oath is also incompatible with Swiss law (Art. 65, c of the EIMP) if the law allows the witness or the expert to choose between taking the oath or making a solemn promise, or if he refuses to take the oath.

Art. 28: Exceptional cases where assistance will not be refused

The assistance is not refused (Art. 66 of the EIMP) if the proceedings initiated abroad are not solely directed against the accused person residing in Switzerland or if the execution of the request is likely to exonerate that person.

Section 2: Special Acts of Assistance

Art. 29: Attestation of Notification

As proof of notification, the executory authority must send an acknowledgment of receipt, dated and signed by the addressee or a statement from the official who served the notification in which he bears witness as to the method and date in which the notification was served and, if the case arises, to the fact that the addressee had refused to accept it.

Art. 30: Direct notification

Penal actions which originate in neighboring countries and deal with traffic violations can be notified by post directly to the person concerned in Switzerland.

Art. 31: Legal Attestation

1--In the case of Swiss requests for searches, seizures and handing over of objects, the attestation required for such measures to be admissible under Swiss law (Art. 76 c of the EIMP) can only be endorsed by an authority with power to order such measures in Switzerland.

2--The search and seizure order issued by the foreign authority, and attached to the request, confirms the legality of the measure.

Section 3: Procedure

Art 32: Prisoner's escort

While on transit, the prisoner is escorted by foreign officials.

Art.33: Handing over of valuable objects

The executory authority sees to it that objects of great value are protected before being handed over and are insured against any damage or loss during transportation.

Art. 34: Conditions

1--If the foreign petitioning authority has not given its guarantee, the competent Swiss authorities must draw its attention to the fact that:

a) the information provided cannot be used in proceedings where assistance is ruled out;

b) any other use of the information is contingent upon consent from the Federal Office.

2--The same applies when a foreign authority is given permission to consult a Swiss file outside the framework of a procedure of assistance.

Art. 35: Acts of assistance handled by the police

1--No assistance of the kind covered by Article 81 of the Law on International Penal Assistance will be given for requests:

a) Involving the use of means of constraint;

b) Aimed at obtaining information or ordering measures in

cases of extradition, delegation of the penal prosecution or execution of decisions (EIMP, Part 1, 4 and 5);

c) to hand over decisions or police files;

d) and requests from cantonal authorities concerning activities which fall under the jurisdiction of central offices of the Federal State Prosecutor.

2--The competent police authorities have contacts with foreign countries through the Swiss Central Police Department in Bern. They must abide by the statutes of the International Criminal Police Organization (ICPO-Interpol). Exceptions can be made in the case of an emergency or when frontier traffic is involved.

Chapter IV: Delegation of penal proceedings

Art. 36: Communications

1--The competent authority notifies the Federal Office:

a) whether or not it has accepted to initiate a penal procedure;

b) the sentence which was executed;

c) if the sentence was passed;

d) the interruption of a penal procedure;

e) the decision on the procedure to follow if the accused eludes penal prosecution.

2--The Federal Office notifies the foreign state.

Art. 37: Foreign official documents

The official documents issued by the state which requests the penal proceedings have the same effect, in the penal procedure, as similar Swiss documents.

Chapter 5: Execution of decisions

Section 1: Acceptance by Switzerland

Art. 38: Execution when the offense was committed in Switzerland

If the judgment passed in the foreign country covers several offenses some of which were committed in Switzerland, the decision can be executed in Switzerland:

- a) if the aggregate penalty has been pronounced;
- b) if Switzerland had asked the other state to take over the prosecution.

Art. 39: Ancillary effects of the conviction

Implementation of the ancillary effects of the conviction (Art. 96 b) of the EIMP) is not ruled out for the mere reason that, under Swiss law, these effects can only be implemented as administrative measures.

Art. 40: Judgment by default

The penal decisions issued in the country where the sentenced person has been convicted and which deal with his objections or appeal are not considered to be judgments by default.

Art. 41: Use of Swiss penal institutions by the foreigner

1--The use of Swiss penal institutions (Art. 99 of the EIMP) is contingent on permission given by the competent authority from the canton which manages such institutions. The authorization can have an overall scope or can apply to a specific case only.

2--The condition that another state be unable to execute the sentence is fulfilled when that state does not have an institution within its territory allowing it to execute the sentence handed down.

3--The authorities of the state which sent the convicted person on parole, on a trial basis or for good, his reincarceration in that institution as well as the cancellation of the execution.

4--The convict is handed over to the Swiss authorities at the border. At that time, the authorities receive a complete copy of the decision ordering his incarceration in the Swiss penal institution with attestation of the executory power.

5--If the prisoner escapes, the authorities of the canton where the institution is located take immediately whatever steps are required to arrest the fugitive in Switzerland and notify the authorities of the state which had ordered his imprisonment.

6--The costs of execution are charged to the State which ordered the imprisonment.

Section 2: Effects of the delegation to a foreign country

Art. 42:

If the person sentenced is already in Switzerland, the effects of the delegation (Art. 102 of the EIMP) start as soon as the competent cantonal authority receives notification that the state to which the request was sent has accepted the delegation.

Section 3: Procedure

Art. 43: Handling of the request by the Federal Office

1--The Federal Office can propose to the petitioning state to initiate penal proceedings instead of executing the sentence when that sentence goes beyond the limits set under Swiss law or when it is obviously more severe than the sentence which would be imposed in a similar case.

2--If the Federal Office does not accept the request or if the competent judge declares that the penal decision is not executory, the Federal Office looks to see if all the conditions for acceptance of the prosecution--as stipulated in Part 4 of the Law on International Assistance--have been fulfilled. If that is the case, the Federal Office proposes to the petitioning state to initiate proceedings instead of executing the sentence when it notifies that State that the request has been rejected or that acceptance had been revoked.

3--If the judge determines that the legal conditions set for the execution have not been fulfilled with regard to all the offenses, the Federal Office asks the petitioning state which part of the sentence applies to offenses where the conditions for execution have been fulfilled.

Art. 44: Determination of the sentence to be executed

1--If the judge declares that the decision can be executed (Art 106 of the EIMP), he sets the penalty which comes closest, under Swiss law, to the one imposed in the foreign country and converts the fine into Swiss francs based on the current rate of exchange.

2--The cantonal authority sends to the Federal Office two copies of the complete file on the decision of exequatur which has gone into effect.

Art. 45: Execution of the Penalty

1--The competent cantonal authorities notify the Federal Office that the execution is underway.

2--When the execution is completed, the competent authorities send an affidavit of execution to the Federal Office which passes it on to the petitioning state.

Chapter VI: Coming into force

Art. 46:

The present ordinance goes into effect on 1 January 1983.

24 February 1982

On behalf of the Swiss Federal Council:

The President of the Confederation, Honegg
The Chancellor of the Confederation, Buser

APPENDIX M

ORDINANCE OF 4 JULY 1984 ON
ORIGIN CERTIFICATION

Ordinance on Origin Certification (VUB)
of 4 July 1984 (946.31)

The Swiss Federal Council,
based on Article 7, Para. 2 of the Customs Act¹
and on Articles 3, 4 Para. 1 and 5 of the Federal Law of 25 June
1982² on Foreign Trade Measures,
in execution of Article 11 of the International Agreement of 3
November 1923³ on simplifying customs formalities as well as
Article 2 and Supplements D.1, D.2 and D.3 of the International
Agreement of 18 May 1973⁴ on the simplification and harmonization
of customs procedures,
ordains:

Section 1: General Provisions

Art. 1 Area of Validity

¹This ordinance applies to origin certification used in foreign
trade. Excepted from it is origin certification that is issued
on the basis of international treaties on the movement of goods

¹SR 631.0

²SR 946.201

³SR 0.631.121.1

⁴SR 0.631.20

or on the basis of the Customs Preference Resolution of 9 October 1981.¹

²The ordinance is in effect in Switzerland and its free zone.

Art. 2 Origin

An item has its origin in the state or group of states where it was either entirely manufactured or sufficiently treated or processed.

Art. 3 Origin Certification

¹Origin certification (certificate of origin, confirmation of origin, domestic certification) serves as proof of the origin, the value or the price of an item. It contains further information necessary for the identification of the item.

²The certificate of origin is an official document that is given using the form so established for it (Supplement 2). All parts of it must reflect the truth.

³The confirmation of origin is given on trade invoices and other documents.

⁴The domestic certificate is given on trade invoices or other documents for the attention of a certification office and is valid only within Switzerland.

Art. 4 Certification Offices

¹The certification offices listed in Supplement 1 issue origin certification to the persons and firms established in their area of jurisdiction.

¹SR 632.91

²In the interest of goods export, the certification offices can issue exceptional origin certification to persons and firms that are not established in their area of jurisdiction, if:

- a. the goods in question were produced in their area of jurisdiction and
- b. the certification office in accordance with Para. 1 is in agreement.

³The Federal Office for Foreign Trade (Federal Office) can stipulate other exceptions on a case-to-case basis for technical reasons.

Art. 5 Factual Certification

The certification offices can certify other provable facts with regard to an item in addition to origin, value or price, specifically, the state or group of states from which an item is being shipped.

Section 2: Origin Criteria

Art. 6 Swiss Origin

An item is of Swiss origin if it was entirely manufactured or sufficiently treated or processed in Switzerland.

Art. 7 Entirely Manufactured Goods

The following are considered goods entirely manufactured in Switzerland:

- a. mineral products extracted from the earth here;
- b. plant products harvested here;
- c. animals born or hatched and reared here;
- d. products obtained from living animals kept here;

- e. hunting and fishing booty gained here;
- f. products of Swiss deep-sea fishing and other products obtained by its ships from the sea;
- g. goods produced aboard Swiss factory ships exclusively from products according to letter f;
- h. second-hand goods that have been gathered here and can only be used for the exploitation of raw materials;
- i. waste products from a production activity;
- k. goods produced exclusively from products according to letters a through i.

Art. 8 Sufficient Treatment or Processing

¹An item is sufficiently treated or processed if:

- a. the value of all the material of foreign origin used in its production does not exceed 50 percent of its export price or
- b. the item is, because of its treatment or processing, to be placed under a different four-digit number in the Swiss Utility Customs Tariff¹ than the products of foreign origin used for its production, or it is considered an original product in keeping with Supplement 4.

²Not considered treatment or processing are activities that consist exclusively of one or more of the following processes:

- a. actions that are necessary for the maintenance of the goods during transport or storage;

¹SR 632.10 Supplement

- b. actions serving to improve the presentation or commercial quality of the goods or to prepare them for transport, such as splitting up or assembling packing units, assembling and arranging goods and repacking;
- c. simple assembly;
- d. the simple mixing of goods if the characteristics of the product are not significantly different from those of the mixed goods.

Art. 9 Accessories, Replacement Parts and Tool Kits

¹Accessories, replacement parts and tool kits have the same origin as the devices, machines, appliances or vehicles with which they are delivered as standard equipment.

²Essential replacement parts delivered at a later date have the same origin as the devices, machines, appliances or vehicles in question if:

- a. the country of destination so requires for import and
- b. the item is, because of its treatment or processing, to be placed under a different four-digit number in the Swiss Utility Customs Tariff¹ than the products of foreign origin used for its production, or it is considered an original product in keeping with Supplement 4.

³Para. 1 and 2 do not apply to goods whose import into Switzerland is subject to the Ordinance of 7 March 1983² on Import Supervision.

¹SR 632.10 Supplement

²SR 946.211

Section 3: Issue of Origin Certification

Art. 10 Issue and Revocation of Origin Certification

¹Origin certification may be issued only by certification offices.

²The certification offices are authorized to charge fees for the issue of origin certification.

³If origin certification was wrongly issued, the Federal Office orders its revocation.

Art. 11 Right to Origin Certification

¹Applicants established in the area of jurisdiction of the certification office who produce goods intended for export or trade in such goods have a right to origin certification if they:

- a. provide the necessary information (Art. 12);
- b. allow any and all inspections (Art. 13 and 14) and
- c. pay the fee established by the certification office.

²If the applicant is a company, then it must be entered in the Trade Register.

Art. 12 Obligations of the Applicant, Supplier and Producer

¹The applicant must apply for the origin certification on the prescribed form (Supplement 3) with the certification office.

²He must completely and truthfully provide all information necessary for the origin certification and prove this information with the appropriate documents.

³The applicant, the supplier and the producer must provide the persons so commissioned by the certification office with the

necessary information, as well as allow perusal of documents and access to operating premises.

Art. 13 Obligations of the Certification Office

¹The certification office checks the accuracy of the information attested to in the origin certification to the necessary extent.

²If there is well-founded suspicion or it is ascertained that provisions of this ordinance have been violated, the certification office notifies the Federal Office. It conveys to it the evidence.

³The bodies, employees and representatives of the certification office are subject to the Responsibility Act¹ and to confidentiality in accordance with Article 320 of the Swiss Criminal Code².

Section 4: Controls

Art. 14 Clarifications by the Certification Office and the Federal Office

¹The certification office can at any time check the information of the applicant through clarifications; it can demand information on the location and dispatch of goods, as well as samples.

²The Federal Office can order clarifications concerning information made in an origin certification before and after export.

³The applicant bears the expense of the clarifications.

¹SR 170.32

²SR 311.0

Art. 15 Cooperation of the Customs Entities

¹During the export of goods, the customs entities examine the origin certification that has been added to the accompanying documents according to instructions by the main customs office. This office acts in agreement with the Federal Office.

²The customs entities hold back a shipment or take samples from it if the certification office that issued the origin certification or the Federal Office so require.

³If there is well-founded suspicion that a criminal act according to this ordinance is in evidence, then the customs entities hold back the shipment and the origin certification.

⁴The customs entities make a report on the situation described in Para. 3 and have it signed by the party subject to customs duty or his authorized agent. If the party refuses to sign, this is noted in the report. The report is sent to the Federal Office, together with the origin certification and other evidence (samples, etc.).

Section 5: Supervision and Legal Protection

Art. 16 Duties of the Federal Office

¹The Federal Office exercises direct supervision over the certification office insofar as they are engaged in activities in accordance with this ordinance.

²It approves the fee schedules of the certification office.

³In case of doubt, the Federal Office can specify the origin of an item.

Art. 17 Legal Protection

Orders by the certification offices can be disputed by appeals to the Federal Office.

Section 6: Penal Provisions

Art. 18 Violations by Entities and Representatives of a Certification Office

1. Whoever, as an entity of a certification office falsely certifies the origin, the value or the price of an item or the identity of an applicant with the intention of inflicting damage to property or to other rights, or of giving another party an unlawful advantage,

whoever is responsible for clarifications of matters that are to be or have been certified in origin certification and in so doing furnishes a false statement or a false report with the intention of inflicting damage to property or to other rights, or of giving another party an unlawful advantage, is punished by imprisonment or fines.

2. If the perpetrator acts with negligence, then the punishment is fines of up to 20,000 francs.

3. If the representative himself reports the false statement or false report before the origin certification is used, then the judge can dispense with punishment.

Art. 19 Administrative Measures

¹The entity of a certification office that acts contrary to his duty despite warnings can be dismissed from his position by the certification office.

²The entity of a certification office against whom criminal proceedings for deliberate violation of this ordinance have been initiated is relieved of duties by the certification office for the duration of the proceedings.

³The entity of a certification office who has been convicted of deliberate violation of this ordinance is dismissed from his position by the certification office.

⁴If the certification office itself does not take the administrative measures according to Para. 1 through 3, the Federal Office can demand that they be taken.

⁵If an entity of a certification office has repeatedly issued false origin certification, the Federal Council can deprive this office of its function as a certification office.

Art. 20 Falsification of Origin Certification

1. Whoever forges or falsifies origin certification with the intention of using it or uses the genuine signature of a certification office in order to produce false origin certification, whoever forges or falsifies the statement or the report of a person responsible for the clarification of the origin, the value or the price of an item, or uses the genuine signature of such a person in order to produce a false statement or report, is punished by imprisonment or fines.

2. If the perpetrator acts with negligence, then the punishment is fines of up to 20,000 francs.

Art. 21 Procurement and Use of False Origin Certification;
Misrepresentation of Origin

1. Whoever acts such that the entity of a certification office issues false origin certification or such that a person responsible for the clarification of the origin, the value or the price of an item produces a false statement or report,

whoever uses or permits the use of origin certification, domestically or abroad, for goods to which it does not pertain,

whoever uses or permits the use of forged, falsified, untrue or revoked origin certification, domestically or abroad,

whoever in some other way misrepresents or allows misrepresentation of the origin of goods,

is punished with imprisonment or fines.

2. If the perpetrator acts with negligence, then the punishment is fines of up to 20,000 francs.

Art. 22 Unlawful Use of Equipment

Whoever makes or procures equipment for forging or falsifying origin certification in order to make unlawful use of it,

whoever uses origin certification equipment unlawfully,

is punished with imprisonment or fines

Art. 23 Foreign Origin Certification

¹Article 20 No. 1 Para. 1 applies to foreign origin certification as well.

²Article 21 No. 1 Para. 2 and 3 as well as Art. 22 apply to foreign origin certification if the perpetrator uses it or allows its use within Switzerland.

Art. 24 Misdemeanors

1. Whoever encumbers, impedes or obstructs the clarifications of matters certified or to be certified in origin certification, whoever acts in violation of a provision of this ordinance or of an individual order directed at him with reference to the penal provisions of this article,

is punished by fines of up to 5,000 francs.

2. If the perpetrator acts with negligence, then the punishment is fines of up to 2,000 francs.

3. The right to referral to the court judge based on Article 285 or 286 of the Swiss Criminal Code¹ remains reserved.

Art. 25 Administrative Criminal Procedure

¹The Federal Law on Administrative Criminal Law² is applicable.

²The administrative authority charged with prosecuting and sentencing is the Federal Office.

³The Federal Office can call in the customs administration or the certification office for the investigation.

Section 7: Final Provisions

Art. 26. Settlement of Details

After hearings with interested parties, the Swiss Department of Public Economy can settle details concerning the origin criteria (Section 2) insofar as they are of a primarily technical nature.

¹SR 311.0

²SR 313.0

Art. 27 Repeal and Modification of Previous Laws

1. The Certificate of Origin Ordinance of 9 December 1929¹ is repealed.

2. The Ordinance of 10 January 1972² on Foreign Trade Statistics is modified as follows:

Art. 8 Para. 2

...³

3. The Ordinance of 7 March 1983⁴ on Goods Export is modified as follows:

Art. 7 Para. 1

...³

4. The Ordinance of 8 December 1975 on the Import of Textiles⁵ is modified as follows:

Art. 11 letters a and b

...³

Art. 28 Effectiveness

This ordinance goes into effect on 1 January 1985.

¹[BS 10 525; AS 1974 1985, 1980 266]

²SR 632.14

³Text added in the ordinance in question.

⁴SR 946.221

⁵SR 946.213

Secret