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INTERHANDEL

With all the problems resulting from an "overheated" economy, the Swiss have been made aware of the importance of foreign companies at home during these recent years.

Back in 1939, the economy was by no means overheated, but there were already hundreds of foreign corporations, banks, insurance companies and holdings registered in Switzerland. The place was made attractive by its tax structure, its political and financial stability. The war came and many of these international organisations cracked or disappeared. Some outlasted the war thanks to the favour of fortune or the foresight of their management. One of them was *IG Chemie*, later to be known as *Interhandel*. The name of this company is associated with one of the longest and most intricate legal suits of history.

The "Greutert-Sturzenegger Circle"

The story begins just before the first world war when two executive officers, one Hermann Schmid and one Eduart Greutert, were working in the large nonferrous metal company of Metall AG in Frankfurt.

In 1920, Greutert, who was of Swiss nationality, returned to Basle to open a bank called "Greutert & Co." Its starting capital had been almost entirely supplied by his former employer. The bank was entrusted with the foreign business of Metall AG.

Hermann Schmid, a man with an uncanny financial knack, became head of a Badische Anilin, a large German dyestuffs firm. Sometime between 1922 and 1924 he was approached by his former colleague Greutert and accepting his services, began to make business through the Greutert Bank. The following year Herman Schmid, in the way of some pre-war Weinstock, put together a vast chemical conglomerate and Greutert really hit the big time. Six large companies — Bayer, Griesheim-Elektron, Weiler-ter-Meer, Agfa, Badische Anilin, Hoechst — were shaped into the largest chemical empire of the world and a pillar of the Reich's economy: *IG Farben*.

Herman Schmid was an early

Nazi supporter, a deputy at the Hitler Reichstag and a *Geheimrat*. He was fully aware of the Nazi's monetary and foreign exchange policy and wanted to keep money and foreign business abroad. There were many compelling reasons why he like other German industrialists should have wanted to channel his business abroad. As the international climate deteriorated, the image of Germany worsened till it became an imperative to hide the ownership of IG Farben companies and licences abroad. These companies had to be administered and funded by dummy corporations whose task was to cover the real sources of control at a time when anti-German feelings were becoming a serious problem. IG Farben controlled innumerable important chemical companies across the world. Their nominal owners came to be the dozen "desk drawer corporations" registered in Basle and holding some 60 accounts with the Greutert Bank. Through the weird maze of transactions going on at Greutert's bank, the set-up came to be known as the "Greutert-Sturzenegger Circle" (after the two main associates). A circle it was indeed because none of the registered companies disclosed their real assets on the day the books were audited. A Greutert company with assets of 100 million francs would for example be showing assets of a million francs on the right day, the money having been circulated to one of the other companies of the circle.

IG Chemie, a cover for Farben's American activities

Hermann Schmid, the financial wizard behind all this financial juggling, was creating and unwinding corporations at his leisure. In 1928 he added a new company, IG Chemie, to the circle. Its sole purpose was to hold controlling interests in Basle of Farben enterprises abroad. It was a perfectly regular Swiss company which was launched with an original capital of 20 million francs. It was only in 1945, when the Swiss Government investigated into Nazi-held property in Switzerland, that the extent of IG Farben and IG Chemie connections were offi-

cially established. At the time of the creation of the company however, Farben's hand was active in the statutes, which were such that voting power was always held by the Greutert associates of the Board, that IG Chemie dividends were equal to those of and guaranteed by IG Farben, that IG Farben had an option to buy IG Chemie shares at book value.

At the same time Hermann Schmid decided to group his American companies into one complex. These companies were the Bayer Company of New York, General Anilin Works, the Winthrop Chemical Company and Agfa Ansco Corporation. The new group was registered in Delaware under the name of General Aniline and Film Corporation (or GAF) in late 1929. Hermann Schmid reorganised its capital structure through an issue of shares by the National City Bank, a large chunk of which immediately went to Greutert & Co. The other shares went in the hands of GAF officers, Farben-connected men and Greutert trusts across Europe. No one knows the whole series of share transactions between the German-held American companies and Greutert, and no one knows what intricate paths GAF shares had to travel before the Interhandel suit was filed. No one ever will as long as Bank Secrecy lasts.

American records have however disclosed a maze of astonishing deals between Farben companies, such as takeovers where the price of a company was actually lower than its profit, all of which pointed to fake transactions and muddled book-keeping. Farben's presence behind the stage brought Farben men on the Board of Greutert Bank (called the Sturzenegger Bank after Greutert's death in 1939) and of the General Anilin and Film Corporation. What was the most surprising was that, as shown during the Interhandel enquiry, no member of the GAF Board actually knew who were the owners of the company.

But eventually IG Chemie, closely allied to the Greutert-Sturzenegger Circle, took control of 89 per cent of GAF. The war became imminent and it became necessary for IG Farben in Germany to strengthen its cover in

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America. Hermann Schmid contacted the Reichswirtschaftsministerium (the Nazi Board of Trade) and told them that he would "americanise" Farben's American assets by giving back to GAF a portion of its shares, now held by IG Chemie in Basle. He would also "degermanise" IG Chemie (which, remember, was a Swiss holding company not officially tied to IG Farben) by cancelling its dividend-guarantee agreement with IG Farben, and by reducing German ownership of IG Chemie and by resigning as its Chairman. As a last step to "degermanise" GAF, all the Farben patents which GAF was using and which made the strength of the firm were to be "sold" to it for a lump sum of \$500,000. The Reichswirtschaftsministerium agreed.

Unfortunately the strategem failed because the General Aniline and Film Corporation was seized by the American Government as suspected enemy property in 1942. When the Americans entered Germany in 1945, they occupied the Farben headquarters and fell on complete records of the correspondence with the Reichswirtschaftsministerium, and as a result the General Aniline and Film Corporation was held under the control of the American Government for 20 years.

Interhandel, a Swiss or a German company?

At the end of the war, the Swiss Compensation Office inspected IG Chemie and determined its German and Farben ownership. IG Chemie was still in existence and still firmly under the control of the Sturzenegger Bank. But to brighten its image the German members of the Board were evinced and its name was changed to French. The firm's official name became "Société Internationale pour Participations Industrielles et Commerciales", this translated into "International Industrie und Handelsbeteiligung" in German-speaking Basle, or Interhandel, the

name by which it became better known.

In 1948, a minority of Interhandel shareholders filed a suit against the Attorney General of the United States, for the return of 89 per cent of GAF, amounting to \$102 million.

Interhandel lawyers first filed an administrative claim, which was refused. The suit was then pressed in the United District Court for the District of Columbia.

The American point of view was that Interhandel was the creation of a "conspiracy to conceal, cloak and camouflage the ownership, control and domination by IG Farben of properties and interests in many countries of the world, including the U.S.". Interhandel was then considered as a fictitious holding company created for convenience by an enemy conglomerate, and there was no evidence that the suitors were entitled to the shares of GAF ownership which they claimed. The only way in which this evidence could be obtained was by finding out which individuals were actually in possession of Interhandel shares. But this would have involved a disclosure of the dealings of the Sturzenegger Bank, a step clearly prohibited by the Bank Secrecy Law of 1934. And to make quite sure that Law would not be breached, the Federal Government had all the Sturzenegger files impounded.

For the Swiss, a Swiss Corporation was a Swiss Corporation whoever its shareholders were. Interhandel was a Swiss company and the shareholders, who had paid their money without being in a position to know whether they were staking in a Farben company, had a right to see it back.

The American Department of Justice was then wanting to make sure that Interhandel suitors were really the rightful owners of Interhandel (and consequently of GAF) whereas the Swiss were maintaining that there were no reasons to fuss over ownership when Interhandel was a Swiss company: the case was a clear clash of Swiss and American law.

The suit

U.S. law claimed that the records of suitor and defendant were to be mutually disclosed. Thus Interhandel lawyers were allowed to photocopy the 20,000 documents held by the Department of Justice. But Interhandel was only able to produce 41,000 documents, 9,828 short of the total recorded by the Swiss Compensation Office in 1945. Interhandel lawyers eventually produced 5,000 more and a series of Interhandel books. U.S. attorneys quickly found that these were false as the books had been produced many years after the supposed entries which they contained.

After lengthy proceedings, the District Court dismissed the case in 1953 on the grounds that Interhandel had refused full disclosure and shown itself unable to comply with fundamental rules of U.S. jurisprudence. Inter-

handel then went to the Court of Appeal of Washington, which upheld the decision of the District Court. Interhandel took the case to the Supreme Court, which refused to review but sent it back to the District Court, which granted Interhandel an extension of time in which to produce the records. The records were not forthcoming and the case was dismissed. This dismissal was appealed.

Back in Basle, Interhandel was polished up as well as it could. Its stock was converted and the Sturzenegger Bank was cleaned of its war-time associates. A former president of the Bankers Association became its Chairman and the chairmen of the Big Banks sat on the Board. 25 per cent of Interhandel stock was registered in the name of the Union Bank, whose manager, Dr. Alfred Schaefer, was a man of outstanding integrity. He eventually became Chairman of the Sturzenegger Bank.

But this was not enough for the Department of Justice, who just wanted the complete Interhandel records held by the Sturzenegger Bank which would reveal the name of Interhandel shareholders.

The Federal Council's concern and the happy ending

By that time the Swiss authorities were getting deeply concerned by the affair. In unmasking the whole Greutert-Farben-Interhandel mess and in the refusal of a powerful government to respect what were, in international law, "legal" Swiss rights, it had hurt them and the banks on a soft spot. The Federal Government offered to arbitrate in the case, which the Americans now considered closed. This offer was rejected and the Swiss brought the case to the International Court in Le Hague, which remanded the case once again to the District Court of Columbia on the grounds that an appeal against dismissal was still pending.

When Robert F. Kennedy became Attorney General of the United States, Interhandel was part of his inheritance. It was the second longest case which left to him, a case which had used a generation of lawyers. The General Aniline and Film Corporation was still under government control. It was not doing badly and the government had interfered as little as possible with its management.

There were various courses left open to Kennedy, but he chose the simplest one, and one which he was in a position to adopt as brother of the President. He realised that another 10 years would not bring a solution to the case. Nazism was a long way past and its spectre had faded. This weakened the American case. There were also pressures from various circles to end the case and in 1962 Bob Kennedy ignoring the strong opposition from the Department of Justice, decided to settle the matter outside the courts: he would sell the General Aniline and Film Cor-

poration to the highest bidder among American investment and underwriting houses. The District Court of Columbia and Interhandel approved the idea, an American advisory committee took the auction under study and made recommendations on the terms of sale, and thus the case ended after 20 years of wrangling in March 1965, at the biggest auction of Wall Street history. A 225-firm underwriting syndicate bought the company at \$329,141,926, a sum beyond the wildest dreams of the Department of Justice. According to the preliminary agreement with Interhandel and the District Court, Interhandel was to receive 89 per cent of the "nominal" value of GAF and the American Government the remaining 11 per cent. What the auction would bring above this value was to be shared by the underwriters, the American Government and Interhandel. The bid price of each GAF share was \$29.476 and as the underwriters reoffered them at \$30.60 they made a cool profit of \$12.5 million. They made much more in the end because GAF shares sold very well (now called Sweet Aniline) and climbed to high prices because everybody was convinced that the company would thrive now that it was no longer under government control. The American government received \$189.2 million and the anonymous stockholders of Interhandel \$120.9 million.

They and the Swiss government were pleased at the way it all turned out.

(adapted by the Editor from "The Gnomes of Zurich", by T. S. Ferenbach)

COMMENT

SHOULD THERE BE MORE FEDERAL COUNCILLORS?

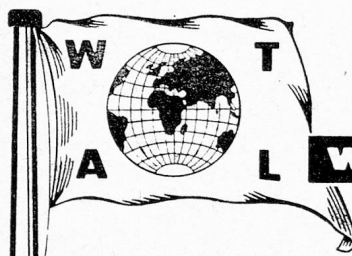
This question was debated at the last Nouvelle Société Helvétique meeting. It figured in the "Questionnaire" which was addressed to the Swiss Abroad in relation with the proposed Total Revision of the Federal Constitution. The consensus was that, although Federal Councillors killed themselves at work, the Biblical number of seven was there to stay. Besides, we were not sure that we were competent to decide on this particular issue. Federal Councillors are overtaxed, true, and Mr. Schaffner, former head of the Department of Economy, who had to give up his job prematurely because of sickness, is a glaring example. Federal Councillors have in fact ministerial responsibilities, but there are far more than seven ministers in the British Government. Besides this, they are burdened with numerous representative chores and there is very little family life and time for relaxation left for them. Therefore it is advisable, on plain human grounds and out of consideration to our worn-out federal councillors, to strengthen their effectiveness. But this would entail complicated administrative and departmental reorganisation, a reason why Mr. Von Moos, one of the seven Stakhanovs, asked that the motion introduced in the National Council to augment the number of Federal Councillors should be transformed into a Postulate, thus losing its character of urgency.

But the independent deputy from Zurich, Mr. von Tobel, who tabled this

motion, not only had the tiredness of federal councillors in mind. There were more subtle arguments. Mr. Von Tobel wanted the 96th Constitutional article, forbidding two or more Federal Councillors from belonging to the same Canton, abrogated. At the same time the Supreme College should be enlarged to nine, or perhaps eleven members, and the new post of Secretary of State created. The reasons for these changes were that five out of 25 cantons and half cantons had never been represented in the Federal Council, and that three cantons had only produced one federal councillor. On the other hand, the larger cantons have often been prevented from presenting their best candidates for the simple reason that they already had a candidate in the Federal Council. The new scheme would give the aspiring politicians from the small and forgotten cantons a chance for the highest office. Mr. Von Tobel's was a typically fair and federal solution.

A parliamentarian who has the good fortune of being elected to the Federal Council does not, of course, only assume a higher position in the Executive and the right to issue new regulations in execution of Federal laws delegated to the Council by the ordinary legislative. He assumes the grinding task of being the Managing Director of one of seven giant bureaucratic departments. These departments are the Political, Interior, Public Economy, Justice and Police, Military, Finance and Customs, Post and Railways Departments. It's a technical job which, because of its complexity, he cannot handle in detail and must delegate. The law does in fact delegate a number of administrative matter from the Federal Council anyway, but the

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