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Committee on Regional Trade Agreements

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TRADE AGREEMENT BETWEEN SWITZERLAND AND THE UNITED KINGDOM, GOODS

QUESTIONS AND REPLIES

Revision

The following communication, dated 7 September 2022, is being circulated at the request of the delegations of the United Kingdom and Switzerland.

Questions from Brazil

Tariff rate quotas

1.1. Regarding paragraph 3.24 of the factual presentation, could the parties please clarify which method they are applying to administer tariff rate quotas? Could they also please comment if these quotas are being fully used by the parties?

Response from the United Kingdom

The vast majority of the TRQs made available to Switzerland by the UK under the agreement will be administered on a first-come first-served (FCFS) basis. The others will be administered using a licence system.

Guidance on quota administration can be accessed through the UK government's website at: [CLAIMING TARIFF QUOTAS TO REDUCE IMPORT DUTIES - GOV.UK \(WWW.GOV.UK\)](https://www.gov.uk/government/publications/claiming-tariff-quotas-to-reduce-import-duties) for FCFS quotas, and at: [NOTICE TO TRADERS - GOV.UK \(WWW.GOV.UK\)](https://www.gov.uk/government/publications/notice-to-traders) and [NOTICE 40/20 - CHANGES TO LICENCES MANAGED BY WTO AND PREFERENTIAL IMPORT TARIFF RATE QUOTAS IN THE UK FROM 1 JANUARY 2021 - GOV.UK \(WWW.GOV.UK\)](https://www.gov.uk/government/publications/notice-40-20-changes-to-licences-managed-by-wto-and-preferential-import-tariff-rate-quotas-in-the-uk-from-1-january-2021) for quotas administered through licenses.

Information relating to the utilisation of quotas administered by the UK and available to Switzerland can be found on the UK government's website.

Rules of origin

1.2. Could the parties please explain how they have been conducting procedures of origin verification? Do they include, for example, visits to the premises where the good is produced? Also, considering that the agreement establishes extensive accumulation of origin and considers materials originating in a number of countries as originating in Switzerland and the UK (in accordance with articles 3 and 4 of the New Protocol No 3 referred to in paragraph 3.35 of the Factual presentation), how do the parties verify the origin of these materials?

Joint response from the Parties

Origin verifications are conducted by the customs authorities of the exporting party. The form of verification depends on the nature of the case. They can include visits at the premises of the

exporter concerned but can also be made in writing. Upon completion of the verification, the customs authority of the exporting party shall send a written report to the requesting party. This report shall state whether the goods in question qualify as originating and whether the proof of origin is valid.

In case of accumulation with materials originating in a country with whom accumulation is applicable according to Articles 3 and 4 of the New Protocol No 3, the verification can indeed be extended to the material used. In order for an exporter to accumulate with, for example, materials of EU origin, he must be able to prove this origin by means of a proof of origin issued by the EU supplier. In the event of an extension, this proof of origin is then sent to the relevant customs authorities in the EU with a request for verification. With this system, the goods and input materials can be checked with regard to their origin. And this is independent of whether input materials of another party were used or those of another country with which accumulation is applicable.

Question from Canada

Government procurement

1.3. Paragraph 4.15 provides: [...] While it [the "Accord sur les marchés publics"] provides for the granting of additional market access opportunities for the authorities of the sub-central districts and communes, it also opens up, for both Parties [...] to private providers of public services [free translation, emphasis added in underline].

Could the Parties please provide examples of "private providers of public services"?

Response from the United Kingdom

The original English text of paragraph 4.15 of the Factual Presentation reads as:

"While it provides additional market access to sub-central districts and municipalities, it also opens, for both Parties, procurement by railway operators, entities active in the field of energy (excluding electricity), and private utility providers. The Joint Declarations, made in 1999 by Switzerland and the EU, on procedures for the award of contracts and on challenging procedures, and on the monitoring authorities, apply, with the same legal effect, to the Parties."

Response from Switzerland

When referring to private utility providers on page 35, paragraph 4.15, the parties to the agreement ensure reciprocal access to procurement by the private entities operating on the basis of exclusive or special rights granted by a competent authority and in the area of drinking water, energy/electricity, airports, ports, railways, and urban and cable transport.

In the case of Switzerland, an example could be architectural services for the construction of a terminal for a private airport, which operates on the basis of special or exclusive rights.

Questions from Mexico

Provisions on Trade in Goods

Tariff rate quotas

1.4. Paragraph 3.24: The incorporated provisions on TRQs are silent on the method to be applied by the Parties to administer their commitments. However, Article 8 of the incorporated AA establishes that the Parties shall exchange all relevant information regarding the implementation and application of the incorporated AA.

Could the Parties please explain how TRQs will be administered?

Response from the United Kingdom

The vast majority of the TRQs made available to Switzerland by the UK under the agreement will be administered on a first-come first-served (FCFS) basis. The others will be administered using a licence system.

Guidance on quota administration can be accessed through the UK government's website at [CLAIMING TARIFF QUOTAS TO REDUCE IMPORT DUTIES - GOV.UK \(WWW.GOV.UK\)](https://www.gov.uk/government/guidance/claiming-tariff-quotas-to-reduce-import-duties) for FCFS quotas, and at [NOTICE TO TRADERS - GOV.UK \(WWW.GOV.UK\)](https://www.gov.uk/government/guidance/notice-to-traders) and [NOTICE 40/20 - CHANGES TO LICENCES MANAGED BY WTO AND PREFERENTIAL IMPORT TARIFF RATE QUOTAS IN THE UK FROM 1 JANUARY 2021 - GOV.UK \(WWW.GOV.UK\)](https://www.gov.uk/government/guidance/notice-40-20-changes-to-licences-managed-by-wto-and-preferential-import-tariff-rate-quotas-in-the-uk-from-1-january-2021) for quotas administered through licenses.

Response from Switzerland

The Federal Office for Customs and Border Security FOCBS distributes most of the bilateral tariff rate quotas on a "first come first served" basis ([Etat des contingents \(douane.swiss\)](https://www.douane.swiss/etat-des-contingents)). Some quotas in the meat and sausage sector are subject to auctioning.

Bilateral safeguards

1.5. Paragraph 3.59: Article 24 of the incorporated FTA addresses the situation when an increase in imports of a product originating in a Party is, or is likely to be, seriously detrimental to any production activity carried on in the other Party and where this increase is due to the implementation of the tariff elimination programme and that customs duties levied by the exporting Party on raw materials or intermediate products used in the manufacture of the product in question are significantly lower than the corresponding duties or charges levied by the importing Party. Safeguard measures could also be taken if serious disturbances arise in any sector of the economy of a Party or if difficulties arise which could bring about serious deterioration in the economic situation of a region. In that case, the Party concerned may also eventually take appropriate measures under the conditions and in accordance with the procedures laid down in Article 27 of the incorporated FTA. [...]

- a. Could the Parties please explain in what way a production activity could suffer serious detriment? What factors would be taken into account when conducting the relevant analysis? Might there be a case in which domestic producers do not suffer serious injury, but the production activity does? If so, could the Parties explain how this would occur?**
- b. Could the Parties explain whether there is any percentage threshold, or other type of threshold, to define whether the customs duties levied by the exporting Party are "significantly lower" than the corresponding duties or charges levied by the importing Party?**
- c. Could the Parties also explain what is meant by "serious disturbances" and provide an example?**
- d. In addition, could the Parties explain, in general terms, which variables are taken into consideration to determine the existence of "serious disturbances"?**

Joint response from the Parties

The incorporated FTA replicates the trade remedies provisions in the EU-Switzerland FTA agreed in 1972.

In its 50 years of existence, the Joint Committee under the EU-Switzerland FTA never examined difficulties arising from the situation referred to in that Article 24, so there is no established practice concerning these provisions.

Switzerland and the UK intend to enhance their bilateral trade relations and are pursuing a modernised and enhanced trade agreement, as mentioned in the Joint Statement signed in London on 28 April 2022. Trade Remedies are specifically listed as an area to be considered in such a modernisation process (Article 8 of the Switzerland-UK Trade Agreement).

Countervailing measures

1.6. Paragraph 3.63: The Agreement does not contain any specific provisions related to countervailing measures. However, Article 27 of the incorporated FTA provides for safeguard measures to deal with trade distorting public subsidies that are deemed incompatible with the proper functioning of the incorporated FTA under Article 23 of the incorporated FTA.

Could the Parties please indicate whether the Joint Committee referred to in Article 7 of the incorporated FTA has any procedure to determine whether a particular practice is incompatible with the proper functioning of the Agreement and, if so, explain what this procedure entails and which variables would generally be taken into account?

Joint response from the Parties

Paragraph 2 of Article 23 of the incorporated FTA provides for any Party to take appropriate unilateral measures under the conditions and in accordance with the procedures laid down in Article 27. The provision regulates "public aid" similar to the EU state aid provisions (EU primary law). The incorporated FTA does not create a common institution responsible for the monitoring of "public aid". Monitoring is done on an autonomous basis by both parties independently.

Article 27 formulates some obligations of the Parties to provide the Joint Committee with all relevant information and to give it the assistance it requires in order to examine the case. Apart from Article 27, the examination of the case by the Joint Committee is not regulated further in the Agreement. The Joint Committee acts by mutual agreement (Article 30 Paragraph 2), therefore any binding outcome of such examination would need to be approved by all Parties.

Question from the United States¹**Labour**

1.7. Paragraph 4.25 states "there is no specific provision concerning labour in the Agreement. However, it is identified as an area for exploratory discussions between the Parties with the aim of replacing, modernising or developing the Agreement (Article 8 of the Agreement)."

Could the Parties please elaborate on the timing of these exploratory discussions? Also, how does "replacing, modernizing and developing the Agreement" translate into protection for workers in this trade agreement?

Joint response from the Parties

As part of preparations for negotiations, we look forward to discussions with Swiss counterparts to discuss our ambitions for an enhanced FTA. We expect exploratory discussions to take place this autumn.

¹ Question was submitted to the Parties on 29 August 2022 (three weeks, three days before the meeting).