

TARIFFS AND TRADE

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WORKING PARTY ON PARAGRAPH 4 OF THE PROTOCOL  
FOR THE ACCESSION OF SWITZERLAND

Draft Report of the Working Party

1. The Working Party on Paragraph 4 of the Protocol for the Accession of Switzerland was established by the Council on 11 November 1987, with the following terms of reference:

"To conduct the seventh triennial review of the application of the provisions of paragraph 4 of the Protocol for the Accession of Switzerland, and to report to the Council".

2. The Working Party met on 12 February and 16 March 1988 under the chairmanship of H.E. Ambassador Manuel Tello (Mexico). It had before it the annual reports by the Government of Switzerland under paragraph 4 of the Protocol covering the years 1984, 1985 and 1986 (documents L/6101 and L/6229).

3. In his introductory comments the representative of Switzerland noted that his authorities had explained in detail the operation of their system of quantitative restrictions in document L/6101, which contained the reports for 1984 and 1985. As in previous reports, they had also described briefly the objectives of Swiss agricultural policy, of which food security in times of crisis was a central element. The information contained in the two documents needed no additional explanation. However, the Swiss representative offered some general remarks on Switzerland's agricultural trade.

4. During the period covered by the three annual reports, agricultural products accounted for about 10 per cent of total Swiss imports by value. Their value (in Swiss francs) increased by 11.5 per cent between 1983 and 1986, a more rapid growth than imports as a whole. This growth was set out in more detail in the supplementary statistical table provided by the Swiss authorities and issued as document L/6229/Add.1. The figures showed that even though population growth and real demand were stagnant, Switzerland offered an open and active market. Per capita the Swiss were (apart from Iceland) the largest net importers of agricultural products in the OECD. Switzerland's net self-sufficiency (i.e., without imported feedgrains) was some 55-60 per cent in calorie terms. With feedgrain imports added, it was about 63 per cent in 1986. This rate had shown a slight increasing trend in the first half of the decade, with a break in 1984.

5. The representative of Switzerland emphasized that:

- firstly, the legal basis for the restrictive measures applied by Switzerland to agricultural products had not been modified in any way during the reference period;
- secondly, the quantitative restrictions affected the same products as in the three previous years; and
- thirdly, neither the systems of restrictions nor the foundations for their operation were modified, with the exception of the globalization of quotas for red wine in casks.

The trends in trade in agricultural products also reflected major efforts made by the Swiss authorities in domestic agricultural policy with a view to controlling the volume of production. These measures were beginning to have a definite impact on Swiss agricultural trade.

6. The overall aim of domestic agricultural policy was to strike a better balance between supply and demand on the Swiss market. The most restrictive and most important measure was quotas for milk production, which accounted for a third of farmers' incomes. Since 1977, each farm had an individual milk-production quota at an officially guaranteed price. Over-production in excess of the individual quota was penalized by an 85 per cent reduction in the guaranteed price. The quotas granted for 1986/87 were slightly lower than for the period 1985/86.

7. With regard to meat, which also accounted for a large part of farm incomes, a set of measures had been introduced to guide production and adapt it better to demand. Thus, on several occasions the Swiss Government had allowed meat prices to fall below the floor of the target price set by the Federal Council. Furthermore, there were ceilings limiting herd sizes; from 1992 onwards, a prohibitive charge would be levied on surplus animals. Finally, a strict system of permits for the building of cowsheds was in force.

8. Other production control measures had been taken for beetroot (quantity limited to 850,000 tons per year), rape (cultivated area limited to 17,000 hectares), tobacco (taking-over of production restricted to 1,000 hectares) and wine (viticultural land register, area of about 14,000 hectares).

9. Furthermore, it should be noted that, in parallel with the measures taken to control and even reduce the volume of production, there had been a rise in direct payments to farmers. This was the result of a shift in emphasis in Swiss agricultural policy, which should continue in the future.

10. Finally, an analysis of the decisions taken by the Federal Council concerning agricultural prices in recent years indicated that prices had increased less steeply than in the past, if not remained stable or even

declined. This was further evidence of the desire, as regards pricing policy, to give greater importance to market-economy factors to back up the efforts to orient production.<sup>1</sup>

11. The Swiss representative underlined that the political and indeed ecological climate regarding agricultural problems had undergone some changes, in Switzerland as in other countries. Swiss agricultural policy was and would continue to be pursued increasingly in a context that went beyond domestic production objectives alone. By way of example, he mentioned the vote of September 1986 in which the Swiss people rejected an amendment to the Decree Concerning the Sugar Economy which would have provided among other things for an increase in domestic sugar-beet production.

12. Numerous members of the Working Party raised questions concerning the wider political significance of the Swiss exemption under Paragraph 4, particularly in the context of the Uruguay Round negotiations. Several wanted to know what the Swiss Government's intentions were concerning the future of this exception to the GATT. More general questions were also asked concerning the Swiss attitude to agriculture in the Uruguay Round, and what their participation might mean given the existence of the Protocol of Accession. Some members noted that another contracting party which enjoyed a waiver from provisions of Article XI in respect of agriculture had stated it was "on the table" in the Uruguay Round, and they sought a

<sup>1</sup>Price rises for some agricultural products

	<u>1981-1983</u>	<u>1984-1986</u>
Milk (ct/kg.)	+ 12	+ 6
Heifers and bullocks IA (francs/kg.)	+ 0.65	+ 0.25
Pigs (francs/kg.)	+ 0.30	+ 0.10
Wheat, class I (francs/100 kg.)	+ 9	- 1
		(Arina)
Sugar beet (francs/100 kg.)	+ 0.50	-
Potatoes (Bintje, francs/100 kg.)	+ 4	+ 3

similar indication from the Swiss authorities. One member said that in effect Switzerland was hiding behind the Protocol as far as the negotiations were concerned, on the assumption that it was a permanent fixture. The member's authorities did not see it that way. The preamble to the Protocol of Accession made a clear link, this member stated, to the then-current MTN (the Kennedy Round), full Swiss participation in which had been an important premise for the granting of the exemption. The situation was similar now, the member maintained. Switzerland had accepted the Punta del Este mandate; within the Negotiating Group on Agriculture assurances had been sought that the achievement of new GATT rules and disciplines would allow termination of the Swiss exemption. There had been no response so far, and the member wanted to put the question again.

13. Noting in reply that comment on the Uruguay Round negotiations was not in the Working Party's mandate, the Swiss representative nonetheless agreed with the Chairman that it was understandable and legitimate that the subject should be raised in this forum. However, he certainly would not accept the claim that his country was hiding behind its Protocol of Accession in the MTN, for agriculture or for any other sector. The Swiss role in GATT was defined by existing rules. The provisions for the Protocol which concerned agriculture stemmed not from any reservation by the Swiss Government but from an exemption given, through negotiation, by the CONTRACTING PARTIES; it was part of the GATT rules and hence not temporary. Switzerland had agreed to discuss in the Uruguay Round possible changes in the rules. At the end of the negotiation, when the rules had been revised, Switzerland would draw the logical conclusions and see whether, on the basis of the new rules, the Protocol should remain as it was or whether adjustments would be necessary. The representative of Switzerland re-emphasized his country's commitment to the Punta del Este Declaration and to the revision of certain rules on agriculture; Switzerland would be making a new contribution to the discussions in the Negotiating Group on Agriculture in the near future.

14. The foregoing points elicited some further comment from members of the Working Party. In particular, clarification was sought as to whether Switzerland envisaged a two-stage negotiation on agriculture in the Uruguay Round, i.e., a stage of modification of the general rules, applicable to all, and then as a second stage, the decision whether Switzerland could thus modify or end its special regime under the exemption. Recalling the Punta del Este Declaration, a member said that other contracting parties needed to know that Switzerland would fully accept the new rules, in whose framing they would have a say, not simply hope to live under them with a general exemption.

15. The representative of Switzerland said the inference (concerning a two-stage negotiation) was not fundamentally wrong, but it was premature. In negotiating the Protocol of Accession the Swiss had certain fundamental objectives under the existing rules of GATT. The question of how these fundamental concerns (e.g., food security) could be handled in future could not be decided on a purely theoretical basis. It would have to be examined when there were new rules agreed (or old rules improved) - which Switzerland would participate actively in drafting. The fundamental objectives of Swiss agricultural policy had not changed, but the aim was to make these compatible with the better functioning of the GATT.

16. Addressing the Working Party's mandate more specifically, members expressed a range of views concerning Swiss compliance with the terms of the Protocol. Some were satisfied that Switzerland had fulfilled its obligations; it was seen as important that Swiss imports had risen, despite the restrictions. For some other members, the issue was not so clear. They stated that deficiencies in the Swiss reports made it difficult to reach conclusions in the absence of further information. Aspects about which they were concerned were identified as having been prominent in previous working parties, e.g. the minimization of harm to other contracting parties and whether the requirements of Article XIII were being met. One member stated that the conditions on import access maintained by Switzerland were difficult to accept in the current

international environment. The member cited discriminatory charges on imports, monopoly purchases, and general uncertainty (e.g. the 3-phase import system) as examples of the conditions she referred to. Few concessions had, she noted, been made by Switzerland since 1966. And while the total trend of imports remained more or less stable, this member stated, there had in fact been a decline in imports of many important products, for example feedgrains, meat and butter. The increasing domestic production and stagnant consumer demand which this decline reflected was attributed to excessively high levels of support. The member found it difficult to be satisfied that minimum harm was having done to the interests of other contracting parties when their access to the Swiss market was examined.

17. A number of the Working Party also noted that the text of paragraph 4 of the Swiss Protocol of Accession referred to specific Federal legislation in framing the exemption which Switzerland was granted in 1966. Yet in document L/6101 reference was made, under "Legal Basis of the Swiss Restrictions" to legislation of 1972 and 1982 - i.e., after the date of the Protocol. To his mind this was a variation of the Protocol; he asked the Swiss representative to explain how it related to the terms of the original decision. The representative of Switzerland replied that the 1972 and 1982 laws concerned the division of competence between the Swiss Federal Parliament and government concerning external trade matters. They were the latest versions of legislation originating in 1920, which had to be renewed every ten years. Their effect was internal and administrative; they contained no measures outside the scope of the Protocol. All the quantitative restrictions on imports maintained by Switzerland were on the basis of the legal provisions specified in the Protocol, not these laws.

18. The member who had raised the question expressed himself more concerned than satisfied by this response. He commented that any possible change in national competence, e.g., between federal and cantonal authorities, could be very relevant to the GATT. He found it worrying that Switzerland could make unilateral changes in the application of the Protocol, whether or not these were described as only administrative. It was incumbent on the Swiss authorities, in his view and that of another

member, to provide the Working Party with the means (i.e., legal texts, commentaries) of examining how the 1972 and 1982 legislation translated that noted in 1966, so members could judge for themselves whether the terms of the Protocol were being respected.

19. The Swiss representative emphasized that external economic relations were exclusively the province of the Federal administration; the shift of competence he had referred to was between Federal Government and Federal Parliament. He repeated that no changes affecting the terms of the Protocol had been made. However, he undertook, in response to members' requests, to provide the legal texts in question to the secretariat for circulation to members of the Working Party.

20. Comments on the contents of the reports divided along similar lines to those noted in paragraph 16 above. There was general acknowledgement that improvements had been made following comments in the previous Working Party. However, some participants thought that the improved information presented in document L/6101 only partially put right the deficiencies identified previously. They found Swiss measures on imports as revealed by the reports to be lacking in transparency. One member said that additional information sought by members of the previous Working Party on the systems for allocating and administering import quotas and licences had still not been provided. This lack of transparency made an assessment of compliance under Article XIII difficult, it was claimed. One member described the reports as generally satisfactory, but in need of some supplementary information. He requested the Swiss authorities to supply, for all the years under report, figures on domestic production of the products covered. This would enable the Working Party to see what the state of self-sufficiency of the Swiss market was for each product and what the variations had been over the three years. Other members endorsed this request and asked for consumption and export data to be provided as well. He put two additional questions:

- (a) Were import quotas all allocated on an annual and global basis?



(b) On what economic basis were quota levels decided - e.g., on the shortfall between domestic production and demand, as a percentage of production, on historical levels, or in some other way?

21. There were also members of the Working Party who rated the transparency of the Swiss information as good, and for whom the reports overall were satisfactory as presented, especially when compared to those before Working Parties on other subjects.

22. In reply to these comments, the representative of Switzerland stated that his country's policies were transparent. All the data on production was publicly available in government statistical publications. But there was no limit to how far transparency could go; the Working Party could be swamped in detail. The representative noted that even the most critical members of the Working Party had acknowledged that there had been an improvement in the reports. If exporting countries were experiencing problems they had only to contact the relevant import agencies. His authorities were ready on a case-by-case basis to remedy any misunderstanding. He also recalled that the figures had shown that the Swiss market for imports had indeed been expanding except for the period of economic difficulty from 1974-76.

23. The Swiss representative discerned a misunderstanding that all agricultural imports were under quota; in fact 80 per cent were quota-free. He described the system of quota administration in response to the above queries. Feedgrains, seed potatoes, red wine in cask, white wine in bottles, cut flowers, some meat, breeding livestock and horses were subject to quota. These were established, in line with basic policy objectives, through a commission which took into account the interests of all economic sectors. Quotas were set at the beginning of each year but released in phases, to take account of market developments. For meat the amounts were fixed by an advisory panel every two weeks. Within this overall structure, the system was specific for each product, and Switzerland was willing to discuss the individual details with any interested member of the Working Party.

Importers understood the system, and knew that at the beginning of each year there was a given market requirement; what they had to consider was marginal quantities from week to week. The Swiss representative added that as very few traders exported directly to the Swiss market - most goods were trans-shipped via European Community entrepôts - special shipments over long distances were not involved. (He noted that this trans-shipment also affected Swiss statistics on import origins.)

24. Concerning the products mentioned in paragraph 12 as showing import declines, he stated that:

(a) Feedgrain imports had declined as domestic productivity had risen. Surplus production of breadgrains had been going into animal feed. The Swiss authorities had lowered the guaranteed price for breadgrains, which had reduced production, but some productive capacity had been switched to feedgrains. As consumption of the latter was stable or declining, imports had dropped.

(b) Meat production had tended to increase as dairy quotas were reduced. There were also measures to restrict herd size and meat production. Consumer preferences had also changed, which had encouraged an increase in imports of sheep meat and poultry, shellfish and fish. Domestic production of all types of meat had stagnated or increased very slightly (2.6 per cent) - but there had been an increase of 9.6 per cent in total meat imports.

(c) Butter; given their basic production constraints, producers could vary the form in which they marketed their quota-limited milk. Production of raw milk and butter had stagnated, but that of cheese had actually been declining with growing demand for imported types. Therefore, producers were switching to butter. Imports controlled by the central butter monopoly, which acted on purely commercial criteria, were subject to major fluctuations from year to year in quantity and source. Import possibilities were also conditioned by consumer taste, which was against salted or yellow butter.

25. Members of the Working Party commented further on these statements and made specific requests for additional information or clarification. One said that the effects of high Swiss domestic price support should be judged against the Protocol obligation to cause minimum harm to other contracting parties. In general, production controls might relieve short-term pressures but not the fundamental causes of over-production. Another expressed concern at the Swiss replies in paragraphs 15-17 above; information on production might well be available in various publications, but he had asked for it to be included in the reports before this Working Party. He also noted that there was very little concrete information on what import restrictions were applied and how they functioned; there were some examples, but only in L/6101. His concern, which other members shared, was that because his country did not always get enough detail to assess how the quotas worked (and also because of their short duration in the case of beef) its opportunities to supply Swiss markets were restricted. He wanted to know in detail how import performance measured up against quotas, and the process by which quotas were filled. Therefore he and other members of the Working Party asked the Swiss authorities to provide further written information for a representative recent year - 1986 - which would enable the Working Party to see how quotas were set, i.e., when, how, to whom and in what quantities - how tenders operated, and what imports actually took place. Beef was requested as the sample product.

26. A member asked whether the Swiss government established target levels for self-sufficiency - this could have an effect on quota size, it was suggested. He asked, for example, why a high support price had been established for soybeans. This member also pointed out a drop in import value and volume in 1987. High producer support prices and import restrictions not only increased production, he added, but also depressed consumption, hampering the operation of comparative advantage in agriculture. In this context it was hard to see how import restrictions on cut flowers contributed to national security goals. Could the declared objectives of Swiss agriculture not be met in some other ways (e.g., through lower producer prices with decoupled income payments, greater reliance on storage, etc.)? Another delegation endorsed these comments.

27. The Swiss representative replied that he would see if it was possible to supply the information requested on the operation of quotas on meat. On the reports themselves, he said that the arguments so far had not convinced Switzerland of the need for more statistics. Those they had provided were adequate, and they had indicated where more could be found. Soybeans were outside the scope of this Working Party, as they were not under import restrictions. And, concerning the orientation of Swiss agricultural policy, the voters could always decide to change it if their interests as consumers prevailed over their interests as citizens. The use of other policy instruments was always on the federal government's mind - as the increasing use of direct payments, already cited, bore out.

28. Concerning individual products, another member posed several further questions, to wit:

- (a) Did a quota on bread grains still exist?
- (b) What were the price ceilings on beef, and did they trigger import quotas?
- (c) How were the dairy import quotas determined (i.e., on what proportional relationship to domestic production)?
- (d) What was the degree of import limitation under Phase II of the 3-phase system for fruit and vegetables?
- (e) What sort of programmes and subsidies existed for the improvement of domestic wine quality?
- (f) Why was a discriminatory quota still applied to white wine in cask?
- (g) Was there any justification for the red wine quota, given that the historical reasons for the bilateral contractual quotas presumably no longer applied?

- (h) What were the charges on imports of eggs, wine and dairy products?

All these points were put forward as examples of lack of transparency in the Swiss reports.

29. The Swiss representative replied that:

- (a) there was no import quota for breadgrains. Mills had to take up domestic production; imports of wheat and grains were covered by a State monopoly which issued licences which were virtually automatic in character. The justification for this monopoly - if one were needed - was the need to provide for a war economy;
- (b) for beef there was an upper and a lower price limit; when the domestic price reached the upper level, imports (of high quality beef) entered automatically. When the price reached the lower level the government started stockpiling;
- (c) milk; there were no fresh milk imports allowed except from the "free zone" area around Geneva, where French producers could deliver milk to Geneva dairies. The origins of this arrangement went back to the 16th century, and it had been taken into account when Switzerland acceded to GATT. Cheese imports continued to be free of quotas;
- (d) he recalled that the three-phase system for fruit and vegetable imports worked as follows:
- first phase: no import restrictions;
  - second phase: imports partially limited when domestic production was increasing but not sufficient to meet market demand;
  - third phase: quotas imposed when Swiss production was out its peak

Embassies in Bern were notified 8 days in advance of each changeover from one phase to another.

- (e) Wine quality promotion: the Swiss representative described the measures involved. An important indirect measure was the establishment of a land survey of wine-growing areas under which the area to be planted in wines was limited to that suitable for higher-quality production. Quality standards were also applied directly; payment for grapes depended on their quality, and the main wine-producing cantons (Valais, Vaud, Geneva and Neuchatel) had to fix minimum sugar content for grape must. Wines made from must which did not meet this standard were declassified, i.e., they could not be marketed under regional or varietal appellations;
- (f) white wine: bulk imports were only permitted when there was a domestic shortfall, or for industrial purposes;
- (g) red wine: not all the quotas for import in cask had been globalized, only some of the contractual ones;
- (h) concerning import charges on eggs (etc.), the Swiss representative stated that as there were no quantitative restrictions on these products they were not within the scope of this Working Party.

30. The member who had asked the foregoing questions sought further clarification of some points, i.e.:

- (a) What were the trigger price levels for beef imports?

- (b) Was it correct that the permitted ratio of milk powder imports to local production was 50/50?
- (c) Fruit and vegetables: in the second phase, what were the level and type of quotas?
- (d) Red wine: what proportion of import remained under bilateral quota?

Lastly, the member considered that discriminatory charges on imports also came under Article XI, and hence within the scope of the Working Party.

31. The representative of Switzerland replied as follows:

- (a) Average indicative prices for beef were used - these involved a dozen categories.
- (b) Milk powder: the proportions of the total "taken over" to supply demand were 75 per cent domestic, 25 per cent imported.
- (c) The details of the three-phase fruit and vegetable import system varied from product to product and year to year; but it should be noted that for products covered by the system Switzerland's self-sufficiency level had decreased.
- (d) red wine in cask: contractual, bilateral quotas covered 1,177,000 hectolitres and the global quota 231,000 hectolitres - but additional global quotas were granted as domestic production warranted. These had amounted to around 200,000 hectolitres annually in the early 1980's.

Concerning the status of import charges on eggs (etc.), he noted that there was obviously a divergence of views.

32. On this last point the Swiss representative was asked which GATT provisions be considered these changes fell under, if not Article XI. It was noted that they had been notified by Switzerland as an NTM in previous GATT submissions). In reply he sought first of all to make it clear that the quantitative restraints on eggs were indirect, by means of the "prise en charge" system which also applied to milk powder. This meant that in order to be allowed to import, importers had also to buy domestic product in a given ratio to their imports. For eggs this system applied only to the products of traditional peasant family farms, not to 'industrial' egg production. Concerning Article XI, he noted that the direct border measure on eggs in shell was an import charge, not a quantitative restriction - and hence it was outside the scope of the Working Party. It was a charge bound in the Swiss customs tariff in GATT, and this was its GATT basis. Strictly speaking, what had been notified under the Protocol was the "prise en charge" system; but reference had also been made to the border charges, which were not to be understood as falling under the Protocol, in the interests of transparency and fuller information. The member who had made the original inquiry commented that if the border charges were indeed outside the scope of this Working Party there might be other possibilities for looking at them in the GATT.

33. Another member stated that the "prise en charge" system for eggs and milk powder (which he believed also applied to casein) appeared to be a "mixing" arrangement, which was prohibited under Article III(5). The Swiss representative replied that his government's application of different policies in this respect was known at the time of Switzerland's accession and was covered in the Protocol.