

# GENERAL AGREEMENT ON

RESTRICTED

Spec(92)9/Add.1

21 July 1992

## 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

##### Addendum

The text below follows on from paragraph 31 of Spec(92)9 and should be read as forming an integral part of the draft report set out in that document. In line with the procedure agreed at the meeting of the Working Party on 2 July 1992, any further comments concerning the draft report should be transmitted to the Secretariat before 31 July 1992. If no such comments are received by that date the report will be considered to be approved for submission to the Council.

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32. Replying to the points noted in paragraph 31 (above), the representative of Switzerland rejected the claim that Paragraph 4 of the Protocol of Accession was a piece of unfinished GATT business. Switzerland had paid for its accession to the GATT. He traced the drafting history of Paragraph 4 of the Protocol of Accession and noted that the situation when Switzerland acceded to the GATT in 1966 could not be compared to that of today, even if there was an MTN in progress whose results could not then be known, because a link existed then between the bilateral access negotiations involved in the accession process and the then-current MTN which is reflected in the preamble to the Protocol of Accession. But there was no legal or economic link established between the relationship of Switzerland to the other contracting parties and that MTN, nor any such link between Switzerland's participation as a contracting party in multilateral trade negotiations and the examination of the use of Paragraph 4 by this Working Party. These points applied also to the questions concerning implementation of the Uruguay Round, which in any case was not finished. Its results could be influenced by the willingness of Switzerland's partners to take into account Swiss difficulties with the Draft Final Act; their attitude could contribute to Switzerland's ability to put the results into place. It would therefore not be until the end of the negotiations that full replies could be given to the questions which

were raised in paragraph 31, which were in any case outside the group's mandate. Switzerland had always respected its international obligations and would continue to do so, but it was likely that its Uruguay Round commitments would have to be put before the people in a referendum.

33. Several members of the Working Party reaffirmed the validity and the importance of considering Switzerland's position concerning implementation of the Uruguay Round's results in this body. It was an integral part of the concerns of the Working Party, one noted. The issues raised arose from the Protocol itself - the link, as Switzerland had acknowledged, was the preamble. This did constitute unfinished GATT business. It established a link between the grant of the partial exemption and full Swiss participation in multilateral trade negotiations. This was part of the contract between Switzerland and the CONTRACTING PARTIES, and the "active and positive rôle" to which Switzerland was committed was not limited to any particular Round. (A member added that it was not clear that Switzerland had observed the preamble's terms concerning access to its markets, either. These had applied irrespective of the results of the Kennedy Round, and were indeed a piece of unfinished GATT business). The situation today was equivalent to that in 1966, a member stated, and the same expectations existed for Switzerland's GATT partners - namely that, in accepting the Punta del Este mandate, Switzerland would participate in, accept and fully implement the results of the current Round. This expectation was not an extraordinary one, nor was it limited to Switzerland alone; it applied to all GATT members equally. The member stated his concern that Switzerland had not provided a direct affirmative response on this question. He recorded his country's view that there was no scope for Switzerland to use its Protocol to diminish, or qualify in any way, the commitments that it and all other participants would be required to undertake as a result of a Uruguay Round agreement on agriculture. Other members endorsed this view, one emphasizing in this context that comprehensive tariffication was the key to the Round. Another rejected any linkage between the attitude participants might take towards Switzerland's particular problems and its obligation to implement the results of the Round.

34. Several other members supported Switzerland's view that questions related to the Uruguay Round were outside the mandate of the Working Party. One stated that the scope of the review provided for in Paragraph 4 of the Protocol of Accession was limited by the terms of that paragraph, i.e., its terms of reference related only to the application of measures maintained under the Swiss reserve concerning Article XI of the General Agreement. (He also noted that as a formal reserve Switzerland's position on Article XI had greater legal force than a derogation.) This did not mean he approved of the Swiss import restrictions, or that Switzerland might not legitimately be asked to make an extra effort in the Uruguay Round - but these were questions to take up in the negotiations and not in this Working Party. He recorded his opposition to any suggestion that the Working Party should accept the interpretation of its mandate put forward in paragraph 33. Another member, endorsing this view, reaffirmed that the scope of the examination was also limited in time, to the period 1987-89. Others added that it was in any case inappropriate to speculate on the possible attitude of Switzerland to implementation of the results of the Round since it was not yet concluded. On the principle that nothing is decided until everything is decided, the future treatment of the Protocol was also still to be negotiated. One member saw a question of principle here; a group on a particular subject should not become a Uruguay Round negotiating group. Another member took note of the continuing differences concerning the mandate of the Working Party and its relationship to the Uruguay Round. He considered that the discussion had been taken as far as was currently possible, and that Switzerland's responses to the comments and questions had been satisfactory.

35. A member sought clarification of the Swiss statements noted in paragraph 32 (above), in particular concerning the constitutional process for acceptance and implementation of the Uruguay Round results. The representative of Switzerland recalled in reply that the purpose of the exercise was to permit members to examine whether in 1987-89 Switzerland's measures under the Protocol had created concrete trading problems for its partners; he was pleased to note none had been registered. It was also to see whether Switzerland had carried out its obligations concerning

notification and transparency. On the notification point he saw that Switzerland had given satisfaction. On transparency Switzerland had received suggestions that it could do better, though no negotiator was ever satisfied on this point. He underlined once more the pragmatism of the Swiss approach. In this spirit he had replied to questions which were outside the Working Party's mandate or at its very margin, and in doing so he had not acknowledged any link with the Uruguay Round. As other members had shown, the Working Party's task was not linked legally to the Uruguay Round; what legal link could the measures used in 1987-89 have to the hypothetical results of a negotiation which was not yet finished? Likewise there was no economic link - 1987-89 import levels had no connection with the implementation of the results of the Round. Politically speaking, one could concede that the status of Switzerland in GATT, and that of certain other countries (waivers, low levels of tariff bindings, etc.), were matters of concern and that they were all linked. But (as noted in paragraph 12 above) he maintained that these matters were better handled in the negotiations than here. He reiterated the seriousness with which Switzerland was participating in the Round. It would do so all the way to the end in all fora to which it was admitted. The more the results took account of Switzerland's particular concerns the easier they would be to accept. The government would then present them to the parliament and, if necessary, the people. It was after this process that they would be implemented. This demonstrated that there was no direct link between it and the current Working Party on the application of the Protocol in 1987-89.

36. Two members noted their disagreement with the Swiss assertion that no concrete market access problems had been raised, pointing in particular to the detailed questions they had put which identified a number of specific problems. Important questions of transparency also remained outstanding. These members also repeated their rejection of the argument that the Working Party's scope was limited to the period 1987-89; the final sentence of paragraph 4 of the Protocol defined the frequency of the review process, not the time-frame of the report.

37. In concluding its review of the application of the provisions of paragraph 4 of the Protocol for the Accession of Switzerland, the Working Party took note of the reports and statements made. The Working Party expressed its appreciation for the additional information furnished by Switzerland and for its willingness to provide replies to questions raised by members of the Working Party. Certain members concluded that Switzerland had fulfilled its obligations under the terms of the Protocol, but certain others were of the view that responses given by Switzerland were insufficient to allow for a thorough review of the operation of the Protocol. These members could not, therefore, conclude that the measures implemented by Switzerland in pursuance of paragraph 4 of its Protocol of Accession had been applied in such a manner as to cause minimum harm to the interests of contracting parties. Differing views were also noted concerning the scope of the Working Party's mandate, and in particular whether this provided a basis for consideration of paragraph 4 of the Protocol in relation to the Uruguay Round. However, all members of the Working Party reaffirmed their commitment to the aims agreed by Ministers for the agricultural negotiations of the Uruguay Round.