

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

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

#### 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 6 February 1991, with the following terms of reference:

"To conduct the eighth 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 8 May and 12 July 1991 and on 27 February and 2 July 1992, under the chairmanship of Mr. Janusz Kaczurba (Poland). It had before it the annual reports by the Government of Switzerland covering the years 1987, 1988 and 1989 (documents L/6454, L/6632 and L/6802).

3. In his introductory comments the representative of Switzerland expressed his willingness to respond to questions and to provide additional information to complement the three reports which were the basis of the review. Switzerland would, as in the past, approach this review in a spirit of pragmatism.

4. By way of complementary information two points deserved particular mention. The first was political; the very narrow rejection at a referendum in June 1989 of the "small farmers' initiative", despite the Federal government's clear stand against it. Had this initiative been accepted, the Federal authorities would have been obliged to apply stricter measures of border protection on agricultural products, in particular extending the "prise-en-charge" system to products whose import was at present free. 80% of Switzerland's agricultural imports faced no quantitative restrictions, he added. This episode showed a political environment in which the need for reform of agricultural policies had emerged as an issue.

5. The second point was purely technical and of less significance, but should be mentioned for the sake of transparency in the spirit of the Protocol. The Federal Council had put in force from 31 March 1989 a decree concerning the "prise-en-charge" of domestic poultry meat by poultry importers. This decree gave specific effect to the general principle of "prise-en-charge" in the poultry sector laid down in Article 31 of the general Decree on Agriculture, completing a system based on contracts between importers and producers. These measures ensured the marketing of Swiss-produced poultry at prices which covered costs in the context of an

import régime which remained liberal. The partial "prise-en-charge" established would have only a marginal effect on the flow of imports, given that the system was already in operation on the basis of private legal arrangements.

6. A member of the Working Party stated that the current exercise had to resolve issues which remained outstanding from the previous Working Party, such as: a conclusion without reservations on the question of minimum harm to the interests of other contracting parties; changes in the legal basis of the Protocol; and the relationship between the Uruguay Round negotiations and the Protocol. In this connection he noted Switzerland's commitment to the Round and to the objectives agreed in the Punta del Este Declaration - as well as Switzerland's high level of support to agriculture. He also indicated that his authorities would have more specific questions concerning, inter alia, the status of measures maintained under Swiss legislation not in existence at the time of the Protocol and the objectives of Swiss agricultural policy as set out in page 3 of L/6802.

7. Other members of the Working Party also felt that the Swiss responses to questions in previous exercises had been less than satisfactory. One member recalled the reporting obligations and transparency requirements which the Protocol involved. In response to requests in the 6th triennial review for extra information to be provided in Switzerland's annual reports, the 19th and 20th reports had been fuller but the level of information had since declined once more. It was thus difficult to assess whether or not the "minimum harm" criterion had been met or not. This member appreciated Switzerland's readiness to provide additional information, but noted that since 1986 there had been no information on new policy measures or their effects. Switzerland's reservation with respect to Article XI was only partial, and the member was concerned that its conditions might not be being met - there was not enough evidence to be sure.

8. Concerning individual products, the same member, together with others, noted a declining trend in imports (e.g. for feed grains and butter) and expressed scepticism concerning Swiss explanations of this trend. The primary reason was the obstacles to import set up by Switzerland. The burden of adjustment continued to be transferred to third countries, e.g., through import surcharges which were used to fund domestic programmes. These were contrary to Article III of the General Agreement, possibly to Article II as well, and were probably not covered by the Protocol of Accession. Likewise the "prise-en-charge" system was not justified under the Protocol, and so appeared to have no GATT basis. As a mixing regulation it was contrary to Article III:5.

9. This member went on to endorse the view that the linkage to the Uruguay Round was a legitimate one. There were two possible grounds for reconsidering the terms of the Protocol; if the legal basis of the measures detailed in paragraph 4 changed, or if the rules of the GATT changed. If the Uruguay Round succeeded in its objectives there would be every reason to look again at the Protocol. The member was seeking

confirmation that Switzerland would apply all the agreements resulting from the Uruguay Round, and that this partial exemption would thus be terminated.

10. A member who saw no change or progress in the system maintained under the Protocol since 1966 asked what action Switzerland might be contemplating to remedy this situation. Another member stated that while there might have been some modification in Swiss policies the effects of their quantitative restrictions still weighed upon his trade. The operation of the Protocol could be greatly improved as it affected his country, and he endorsed the call for greater transparency made by other members.

11. Other members found the Swiss reports generally satisfactory. One noted that they met the formal expectations of paragraph 4 of the Protocol. The review process was of a contractual nature, and some of the concerns set out above were not appropriately addressed in this forum. Another agreed that the main point of the exercise was to take stock of the fulfilment of Switzerland's contractual obligations. He judged that Switzerland had applied its laws as far as possible within the spirit of the Protocol.

12. In response, the Swiss representative said that questions relating the Uruguay Round were better answered in the course of that negotiation than in this body. Noting the concern of several members about declining imports, he nonetheless pointed to products where imports had increased. Furthermore some products (e.g. pip fruit) were free of import restrictions. The same went for meat, and sheepmeat imports had increased in the 1987-89 period. He undertook, however, to pass on these concerns to his authorities. Additional information was subsequently provided by Switzerland concerning the evolution of its imports of products under Chapters 1-24. This was circulated to members of the Working Party as document Spec(91)66, and is attached as Annex A.

13. Concerning the annual reports, he observed that their presentation was much the same as in previous years because the régime they covered had not changed. There was thus no need for a more generally descriptive report. Regarding the point about legislative changes, he would agree that if the legislation cited in Paragraph 4 of the Protocol had undergone material change - which was not the case - the Working Party should examine whether there had been a change in the parameters established in 1966. The only formal change was that set out in the annex to L/6658. Speaking as it were in parentheses and outside the scope of the current exercise, he was pleased that some members had noted Switzerland's constructive participation in the Uruguay Round, which would continue. In the case where the participants in the Uruguay Round agreed to change the Article's of the General Agreement, this could have an effect on the Protocol. But it was not within the mandate of this group to decide on the Protocol's future.

14. Written questions to the representative of Switzerland were submitted by two members of the Working Party. These were circulated as document

Spec(92)24 and, together with the responses of Switzerland (Spec(91)69), are attached as Annex B. Supplementary written questions and answers (Spec(91)75 and Spec(92)3) are attached as Annex C.

15. Introducing his answers to the first set of written questions (Annex B) the Swiss representative stated that these answers were focused on matters related to his country's quantitative restrictions on certain agricultural products. They could, likewise, have been limited to measures maintained during the reference period for this Working Party's examination (1987-1989), but out of concern for transparency, Switzerland had chosen to go outside the strict limits of the mandate in order to explain fully the working of certain policy instruments. Lastly, he noted with satisfaction that the two delegations which had put questions had not raised any concrete problems experienced by their traders on the Swiss market.

16. In preliminary reactions to Switzerland's replies to the first set of written questions, members expressed disappointment that Switzerland had treated certain questions as outside the mandate or the reference period of the Working Party, since they had taken pains to keep their questions within the scope of Paragraph 4 of the Protocol. It was also not correct that the questions did not focus on specific trading problems. They reflected not only specific problems but also missed opportunities for trade as a result of the Swiss measures.

17. Among other specific comments on individual Swiss responses, one member did not accept the reply that Question 1 from Australia was outside the time-frame of the Working Party. He queried why the *prise-en-charge* system (Question 4 from Australia refers) was claimed to be more liberal than quantitative restrictions, and repeated his doubts about its legal basis in the light of Article III. Likewise he was not sure that the argument that import measures on wine (Question 7 from Australia refers) were known at the time of Swiss accession to GATT was a sufficient justification for them.

18. Specific aspects of the Swiss answers on which another member commented included the status - still unclear - of the *prise-en-charge* system in relation to Article XI and the level of information provided on the evolution of self-sufficiency ratios and on meat trigger prices. In the latter case it was not enough to refer to International Meat Council documents. Those questions and this information were relevant and necessary to the present Working Party, which could not come to conclusions under its terms of reference without it.

19. A member who found the Swiss answers satisfactory suggested that members should look at possible ways in which the information-gathering aspect of this Working Party could be assisted by the current Trade Policy Review of Switzerland.

20. The representative of Switzerland, reaffirming that he could not go beyond the mandate of the group, welcomed the suggestion noted above concerning possible co-ordination with the Trade Policy Review of Switzerland. Concerning the reactions to his responses to written

questions noted above he commented that sheepmeat had been chosen as an example of the prise-en-charge system because the two members posing the questions exported this product to Switzerland and because it was an area where the effects of a change in régime could be seen. As for establishing that measures under the Protocol did not have a negative effect on other contracting parties, it was hard to say more than Switzerland had already said in this and in earlier Working Parties. The same applied to the question of whether prise-en-charge was covered by the Protocol; but he recalled again that the legislation cited in Paragraph 4 of the Protocol contained the possibility of using prise-en-charge. Concerning the operation of the three-phase system for fruits and vegetables, he observed that geographical proximity to the Swiss market did confer some advantage on a supplier.

21. Other members of the Working Party rejected any suggestion that the Trade Policy Review exercise might be used to answer questions raised in this Working Party. The TPRM was a transparency exercise; this Working Party concerned GATT obligations, they noted. They could not accept that the TPRM review in any way relieved Switzerland of its obligations in the Working Party.

22. Switzerland's responses to supplementary questions (Annex C) were appreciated by members of the Working Party. But for some members they were still unsatisfactory concerning a number of issues which had been raised in this and in previous exchanges. These included the legal implications of changes since 1966 to the legislation on which the Protocol was based, and whether this amounted to a unilateral alteration of the terms of the Protocol - a question covered at length in the previous Working Party. These members also remained to be convinced that Switzerland had observed to the fullest extent possible the appropriate provisions of the General Agreement in implementing measures under Paragraph 4 of the Protocol; the Swiss answer in this respect (1/8) was a flat assertion which they rejected. The answers concerning self-sufficiency targets were not enlightening (1/9, 1/10) - once again it was not established that minimum harm was being done to the interests of other contracting parties, or that Switzerland was providing acceptable conditions of access and a steadily expanding market in line with the preamble to the Protocol. The concerns which had previously been expressed about the prise-en-charge system also remained; could Switzerland confirm that it saw this system as equivalent to a non-tariff measure and hence as covered by Article XI?

23. One of these members noted that a Swiss assertion that there was no prise-en-charge in the three-phase system had been contradicted by a further response. (Question 1(c) from New Zealand refers.) The system was obviously not transparent, which disadvantaged exporters. He also sought confirmation that the prise-en-charge ratios given in Switzerland's reply to New Zealand's question 1 (e) were set out in the order domestic production: imports.

24. The Swiss representative confirmed that this was correct. On the other points raised above, he noted a divergence in approach to the Working

Party's mandate. As he understood it, the mandate was to see if the operation of Swiss régimes exempted from provisions of the General Agreement caused injury to trading partners - to seek concrete solutions to concrete problems. Some members, on the other hand, seemed bent on a sort of academic exploration which might not be of much relevance to trade. An example was the formal change in Swiss legislation which was alleged to have affected the basis established in 1966. He asked other members to show how this purely formal change - in a law which had never been applied - could cause concrete harm to the interests of other contracting parties.

25. Concerning prise-en-charge and the three-phase system, he acknowledged that there had been a possible contradiction in the documentation supplied by Switzerland. They had therefore sought to remove any misunderstanding. Prise-en-charge was a measure (though it could be a system,). Within the three-phase system Switzerland sometimes made use of the technique of prise-en-charge, but the two systems remained distinct. Turning to the point which had been raised concerning the 1966 preambular phrase and the subsequent lack of import growth, he noted that the phrase had become more or less a dead letter because there had not been the growth in demand which might have been hoped for. More generally, he repeated that the fact that no concrete complaints had been brought before this group must mean that its work was leading to improved comprehension of the Swiss system.

26. A member of the Working Party took issue with this point, observing that there was no more effective way to harm the interests of efficient exporters than to maintain quantitative restrictions at the border. Their existence was already a prima facie case of harm to the interests of other contracting parties. Another member saw it as an effort to shift the burden of proof from that established in the Protocol. The first member also found the Swiss reply regarding legislative changes confusing. The question was a legal one; had the basis on which the Protocol was granted been changed? The GATT was, after all, a legal instrument. Other members agreed that any legal change, even if not enforced, had an effect.

27. The Swiss representative reiterated his commitment to transparency, and recalled that exporters had known since 1966 that there would be import restrictions - but these applied to only 20% of Swiss agricultural imports. There were perhaps other reasons why imports from some members of the Working Party had not been as significant as they would have wished, including consumer preference.

28. Another member of the Working Party felt that the Swiss argument concerning the unforeseeable circumstances which had prevented continued growth in agricultural imports in line with the preamble to the Protocol was inconsistent with their assertion that exporters should, on the other hand, have been able to foresee the pattern of trade after 1966. A further member added that while it was true that other contracting parties knew what they were agreeing to in 1966, they also knew the obligations which the Swiss undertook. As he had often repeated, transparency was only part of these undertakings. A third member recalled that the 1966 agreement had been reached in the context of the then current Kennedy Round, and with certain criteria and requirements which gave it a dynamic sense - yet the

Swiss representative had said certain parts of it were effectively a dead letter. He invited other members to reflect on what this meant for the Protocol.

29. This member found the Swiss reply (para. 25 above) on prise-en-charge and the three-phase system made a fine, if not sophisticated, distinction which did not help the work of the Working Party. With other members, he rejected the Swiss suggestion that lack of import growth was due to consumer preference, transport costs or other such factors. Where markets were open, their products sold.

30. The Swiss representative observed that consumption of some of the products in question - e.g. butter - had also declined. Concerning the other points above, he repeated that: there had been no material change in the relevant legislation; the explanation concerning prise-en-charge and the three phase system might be complicated but it was in answer to questions that had been raised; and that Switzerland was in line with the understandings of 1966, as it had not intensified or extensified its measures under the Protocol, despite considerable internal pressure to do so.

31. A member emphasized that the Working Party was charged with conducting a thorough review, and that this should look both backward and forward in time (not just at 1987-89). The 1966 partial reservation was an important piece of unfinished GATT business: its acceptance had been conditional upon Swiss participation in, and acceptance of the results of, multilateral trade negotiations. There was a Uruguay Round agriculture package on Agriculture on the table, as part of the Draft Final Act. Swiss intentions in the Uruguay Round regarding the measures for which they claimed cover under the Protocol were pertinent here; did Switzerland see Paragraph 4 of the Protocol of Accession as affecting its commitments in the Uruguay Round? Another member recalled that in the previous Working Party Switzerland had acknowledged that it was understandable and legitimate that the Uruguay Round connection should be raised in this forum. He saw the dynamic aspect of the 1966 agreement as the basis of the link to the Round. Switzerland could not use the Protocol of Accession to avoid application of the results of the Uruguay Round, since these would involve fundamental changes in GATT rules and obligations. Other members endorsed the importance of the link with the Uruguay Round, and expected that the Round's outcome would include the tariffication of the measures maintained under the Protocol, along with other exceptions legal and illegal.

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. According to the principle that nothing is conclusive until everything is decided, the future treatment of the Protocol, as well as the notion of comprehensive tariffication, 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.

ANNEX A

Additional information from Switzerland: Imports Under  
Chapters 1 to 24 in Terms of Value, at Constant Prices  
(1970 = 100), and Quantity

	Sw F Million	Index	Value in Sw F Million at constant prices (1970 = 100)	Million tons
1966	2,983.5	-	-	3,969
1967	3,025.0	92	3,288.0	4,108
1968	2,934.7	91	3,224.9	3,915
1969	3,317.0	95	3,491.6	4,182
1970	3,904.3	100	3,904.3	3,667
1971	4,129.3	105	3,932.7	3,677
1972	4,358.8	106	4,112.1	3,623
1973	5,110.1	119	4,294.2	3,919
1974	5,542.8	136	4,075.6	3,879
1975	4,763.5	129	3,692.6	3,652
1976	4,751.4	122	3,894.6	3,862
1977	5,286.1	136	3,886.8	3,613
1978	4,707.1	118	3,989.1	3,778
1979	4,618.7	117	3,947.6	3,591
1980	5,268.3	127	4,148.3	3,747
1981	5,790.0	134	4,320.9	3,742
1982	5,659.1	130	4,353.1	3,791
1983	5,571.7	127	4,387.2	3,810
1984	6,107.9	136	4,491.1	3,692
1985	6,537.8	142	4,604.1	3,618
1986	6,212.5	131	4,742.4	3,652
1987	6,105.6	122	5,004.6	3,780
1988	6,273.5	122	5,142.2	3,539
1989	6,725.9	129	5,213.9	3,301

ANNEX B

Written Questions from Members of the Working Party  
and Responses from Switzerland

Questions by Australia

Question 1:

Australia has reservations as to whether Switzerland is fully complying with the requirements of paragraph 4 of the Protocol of Accession. As we have pointed out in previous reviews, our understanding is that programmes implemented under laws other than those listed in paragraph 4, or affecting articles other than Article XI, cannot be justified under the Protocol of Accession. We also note that the partial reservation applied only in respect of particular existing legislation and would not extend to changes made to that legislation. Therefore any measure taken under new or amended legislation is not justifiable under paragraph 4. However, there are Swiss agricultural programmes implemented under legislation that was not in existence at the time the Protocol came into force. The legislation includes:

- Federal Decree on External Economic Measures, 28 June 1972;
- Federal Law on External Economic Measures, 25 June 1982.

Could Switzerland explain the basis on which these Laws are considered to be justified under paragraph 4? We would also appreciate an indication as to which pieces of legislation, listed in paragraph 4, have been amended, and what impact these amendments might have.

Reply:

This question does not concern the period covered by our work. Moreover, we already replied to this question during the previous triennial review; the 1972 and 1982 laws concern the division of competence between the Swiss Federal Parliament and Government concerning external trade matters. They are the latest versions of legislation originating in 1920, which has to be renewed every ten years. Their effect is internal and administrative and they contain no measures outside the scope of the Protocol. All the quantitative restrictions on imports maintained by Switzerland are based on the other legal provisions specified in the Protocol and not on these laws, on the basis of which no restrictive measure is in force. The above-mentioned legal texts were annexed to the last triennial report (L/6658). Changes made in the legislation since 1966 concerned provisions other than Article XI, which was the Article cited in paragraph 4 of the Protocol of Accession. Article XI as repeated in these successive laws had not been amended; it had simply been reconfirmed each time the Federal Decree was renewed. The only change affecting Article XI since 1966 had been the conversion of the Federal Decree into a Federal Law in 1982. Thus the substance of Article 11 of 1956 and 1962 mentioned in paragraph 4 of the Protocol remains unchanged. The change in the status of

the texts simply signifies that the duration of a law is unlimited while a Federal Decree is in force for a specified time. With the exception of this purely formal change, the special provisions of the legislation related to the Protocol of Accession have not changed since 1966.

Question 2:

We note that in Switzerland's 1991 notification pursuant to Article XVI:1 (L/6630/Add.11), several agricultural support programmes having a bearing on trade in agriculture are described as operating under legislation not listed in the three annual reports. Some of these laws:

- Dairy Economy Order of 16 December 1988;
- Federal Act of 15 June 1962 on the sale of cattle;
- Federal Act of 21 December 1960 concerning goods at protected prices and price equalization fund for eggs and egg products;
- Federal Order of 22 June 1979 instituting measures in favour of viticulture;
- Federal Law of 13 December 1974 on the import and export of processed agricultural products.

Could Switzerland indicate whether any of these laws affect Switzerland's compliance with Article XI, or other articles of the GATT? What is the relationship between these laws and the laws listed in the 1989 annual report?

Reply:

1. Of the legal texts mentioned in question 2, only the Ordinance on Viticulture and the Disposal of Vine Products (Wine Statute) of 23 December 1971, governs imports of wine. It is based on Articles 23, 25, 31, 42, 44 and 117 of the Federal Law on the Improvement of Agriculture and the Maintenance of the Peasant Population (Agriculture Act) and on Articles 6 and 20 of the Federal Order of 22 June 1979 instituting measures in favour of viticulture (Viticulture Order). The import régime is the same as that in force in 1966.

2. The other legal texts cited are all based on the Federal Constitution. They have no bearing on Article XI of the General Agreement:

- The "Dairy Economy Order" of 16 December 1988 (AEL 1988) (RS 916.350.1) is based on Article 31 bis, third paragraph, sub-paragraph (b) and Articles 32 and 64 bis, of the Federal Constitution.
- The "Act on the sale of cattle" of 15 June 1962 (RS 916.301) is based on Articles 31 bis, 32 and 64 bis of the Constitution.
- The "Federal Act concerning goods at protected prices and the price equalization fund for eggs and egg products" of 21 December 1960 (RS 942.30) is based on Article 31 bis, third

paragraph, sub-paragraphs (a) and (b), and Articles 32 and 64 bis of the Federal Constitution.

- The "Federal Order instituting measures in favour of viticulture of 22 June 1979 is based on Article 31 bis, third paragraph, sub-paragraphs (a) and (b) and Articles 32 and 64 bis of the Federal Constitution.
- The "Federal Law on the import and export of processed agricultural products" of 13 December 1974 is based on Articles 28, 31 bis, second paragraph, sub-paragraph (b) of the Federal Constitution.

Question 3:

At the last triennial review, Australia had requested the provision of a broader range of information relating to Swiss legislation (e.g. including interpretative notes or legal commentaries) so that participants could judge for themselves whether the terms of the Protocol were being respected (L/6658, paragraphs 18, 20). We would again request that such materials be made available to the Working Party.

Reply:

This question goes beyond the Working Party's terms of reference. Documentation on the review of Swiss trade policy contains further details on this matter.

Question 4:

Australia is concerned that some of the measures affecting agricultural trade, justified under paragraph 4 of the Protocol of Accession, do not only affect Switzerland's compliance with Article XI, but other articles as well. This applies especially to breaches of Article III, as a result of the operation of the "prise en charge" system which constitutes a mixing regulation. This issue was raised at the last triennial review and we do not regard Switzerland's response as having been adequate.

We therefore request from Switzerland details of how the "prise en charge" system is reconciled with the requirements of Article III and an explanation of how measures affecting Switzerland's obligations under Article III of the GATT can be justified under paragraph 4 of the Protocol of Accession.

Reply:

As we have already explained, inter alia in the course of the previous review by the Working Party, the "prise en charge" system is covered by paragraph 4 of our Protocol of Accession. It offers greater flexibility than a system of quantitative restrictions in the strict sense. The

application of this system shows that Switzerland uses it proportionally to the means it is entitled to implement under its Protocol of Accession.

Article XI, which is referred to in paragraph 4 of the Protocol of Accession, specifies in paragraph 1: "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."

The provisions of Article 23 of Chapter II of the Agricultural Act prescribe inter alia:

1. "If imports jeopardize the sale of agricultural products at reasonable prices according to the principles of this Law, the Federal Council may, taking into account other economic sectors:

- (a) Limit the volume of imports of similar products;
- (b) ...
- (c) Oblige importers to acquire similar products of domestic origin and merchantable quality, in an acceptable proportion in comparison with imports, and for this purpose take the necessary measures and prescribe the conditions".

We have always considered that the "prise en charge" system is covered by the reservation contained in paragraph 4 of the Protocol of Accession. Furthermore, it is generally agreed that this system is more liberal than a straightforward quota system; it is not therefore related to Article III. Where "prise en charge" does apply, it may be replaced inter alia by paying a substitute tax or other charge which, in our view, are covered by the Protocol in view of their optional nature and substitution of the measure itself.

Question 5:

The arrangements affecting meat imports described in the 1984-85 annual reports (L/6101), while not strictly a "prise en charge" system, do have similar elements in the requirement that importers contribute, in proportion to their imports, to a reserve fund to facilitate market stabilization operations. We would appreciate responses to the questions in 4 above as they apply to arrangements affecting beef.

Reply:

Detailed explanations regarding imports of meat are given in paragraphs 50-58 of document L/6658, which also refers to explanations given previously. To summarize, imports are subject to quotas and when market prices can no longer be maintained within the limits of the target

price, importers may be obliged to acquire surplus slaughter animals in a reasonable proportion in comparison with their imports of similar animals. Payments made by importers to the reserve fund to facilitate the market stabilization operations and disposal of surpluses do not come under application of paragraph 4 of the Protocol of Accession and are therefore outside the terms of reference; these import charges were notified within the framework of the International Arrangement Regarding Bovine Meat.

Question 6:

Australia is concerned that Swiss beef and veal imports have been declining significantly in the period under review. We also note that Australian exports have fallen by nearly 50 per cent.

Do variations in Swiss subsidies in total and on a per unit basis account for this decline in imports? Could Switzerland comment on whether the greater variability of imports from non-European countries compared with European countries can be attributed to the practice of fixing quotas every fortnight? If so, how does this affect Switzerland's compliance with the requirement in paragraph 4 of the Protocol of Accession to "apply all restrictions ... in accordance with the principle of non-discrimination"? We would appreciate further statistics on the beef and veal sector, including production levels, self-sufficiency ratios, and the indicative target for self-sufficiency ratios. We would also appreciate an explanation of why the target price for beef was increased in 1989 when the cattle herd was increasing and imports falling.

Reply:

Apart from a significant increase in the import of slaughter animals in 1988, the trend in total imports of cattle and meat shown in document L/6802 for the period under review is noticeably stable, contrary to what is stated by Australia. If one looks at the situation by product, for bovine meat it is necessary to take into account the changes that occurred as a result of the introduction of the Harmonized System (cf. our explanation on the bottom of page 10 of document L/6802; this means that out of the total amount of 6,213 tons of beef and veal imported in 1987, 557 tons were imported from Australia, in 1988 imports amounted to 12,155 tons, of which 428 came from Australia, and in 1989, out of a total of 9,778 tons, 267 tons were imported from Australia). It should be emphasized that importers are subject to market forces and they acquire supplies in the light of criteria such as price, quality, etc.

With regard to the comment concerning respect for provisions on non-discrimination in regard to imports from non-European and European countries, as far as bovine meat is concerned (headings 0201.10-12, to which must be added for 1987 heading 0201.20), imports from the EC amounted to 1,236 tons in 1987 out of a total of 6,213 tons, while Brazil exported 1,502 tons and Argentina 1,713 tons; in 1988, Switzerland imported 1,814 tons from the Community out of a total of 12,155 tons, while 4,123 tons came from Brazil and 3,802 tons from Argentina; in 1987, 1,837 tons were imported from the Community out of a total of 9,778 tons



with 2,031 tons from Brazil and 3,895 tons from Argentina. We would therefore enquire of the person asking this question where he sees discrimination? We can take another example to illustrate this aspect: imports of sheepmeat. In 1987, total imports of sheepmeat amounted to 5,470 tons, of which 2,606 tons were imported from the Community, 878 tons from Australia and 1,687 tons from New Zealand; in 1988, out of a total of 5,890 tons, 2,515 tons came from the EC, 1,243 tons from Australia and 1,835 tons from New Zealand; in 1989, total imports amounted to 6,686 tons, with 2,119 tons from the Community, 1,381 tons from Australia and 2,190 tons from New Zealand. In other words, in 1987 the EEC had 47.6 per cent of the market, Australia 16.1 per cent and New Zealand 30.8 per cent; in 1988, the EEC had 42.7 per cent, Australia 21.1 per cent and New Zealand 31.2 per cent. For 1989, the Community had 31.7 per cent, Australia 20.7 per cent and New Zealand 32.8 per cent. During the period under review, exports from Australia to Switzerland increased by 54.3 per cent.

Australia also asked about the increase in the target price for beef in 1989 when the cattle herd was increasing and imports falling.

The Swiss Government increased the guaranteed price for milk in 1988 and therefore increased target prices for beef in order to meet pressure by producers. By taking this course, the Federal Council chose the least restrictive measure taking into account the purely indicative nature of such prices.

Question 7:

We have concerns relating to discriminatory quotas on wine. Our understanding is that wine import restrictions are placed pursuant to the Wine Statute of 1971, which legalized the practice followed before Switzerland's accession to the GATT (L/6101, page 30) of concluding contracts with traditional suppliers. We do not consider that this can be justified under paragraph 4 of the Protocol of Accession, since the legislation that permits the continuation of discriminatory quotas was not listed in that paragraph, and the partial waiver related only to specific legislation and not existing practices that may subsequently have been legislated for.

We would appreciate an explanation from Switzerland as to how the wine quotas are justifiable under paragraph 4, bearing in mind the requirement therein for import restrictions to be applied in a non-discriminatory manner, and Switzerland's general obligations under Article XIII.

We would also request Switzerland to indicate whether there is a likelihood that the trend towards globalization of quotas could be further encouraged in relation to red wine in casks, and a similar system introduced for white wine.

Reply:

With regard to wine import régime, we would draw attention to the reply given to Question 2. As far as traditional quotas are concerned, their existence was known in 1966 at the time of Switzerland's accession to GATT. There was partial liberalization in 1986 as a result of the globalization of autonomous quotas in respect of 231,800 hl., as stated in document L/6658. Changes to the import régime for red wine in casks are currently being studied.

Question 3:

In our statement to the Working Party on 8 May 1991, Australia made a number of observations which are repeated below for ease of reference.

- ° Paragraph 4 of the Swiss Protocol of Accession requires that Switzerland should, in implementing the laws listed in that paragraph, "observe to the fullest possible extent the appropriate provisions of the General Agreement". It is our view that, judging from the stated objectives of Swiss agricultural policy, most if not all of these objectives could be met in ways that are more GATT consistent and less trade-distorting than at present. Indeed, the reliance on trade-distorting measures could jeopardize the achievement of these objectives.
- ° For instance, one stated aim of agricultural policy is the "assurance of an equitable income" (L/6802, page 3). However, it is generally recognized that attempting to support farm income through guaranteed minimum prices and other production-based incentives has unwelcome income distribution effects within agriculture, reducing the likelihood that small farms or farmers in marginal areas could benefit significantly from Government support.
- ° Similarly, the aim to protect the soil or the environment generally, is ill-served by a system of import controls and domestic production incentives that rewards the intensive use of land. The same applies to the aim to "ensure supplies of wholesome foodstuffs of high quality and at accessible prices", where as is acknowledged in the 1989 annual report, "imports play a part by increasing the range of products available and helping to maintain reasonable prices".
- ° Several Swiss agricultural programmes have been justified on the grounds of food security. It is a justification we have not found convincing. Nevertheless, since the last triennial review there have been dramatic changes in Europe which have led to a reduction in security concerns. Our hope is that this should allow Switzerland to reduce the importance it has placed in the past on food security, and so provide greater scope for expanded food imports. We also note that Switzerland has surpluses of several commodities and is a net exporter of cheese, preserved milk products, and potatoes. This seems to indicate that in some commodities, Government support and protection is producing surpluses that may not be justifiable under food security. We are also concerned that several items subject to trade restrictions cannot realistically be considered as justifiable for

reasons of food security. The commodities that fall into this category include wine and fresh flowers.

In light of these considerations, we invite Switzerland to indicate what steps are being considered to liberalize trade in the agricultural sector.

Reply:

This question goes beyond the Working Party's terms of reference. Documentation on the review of Swiss trade policy contains further details on this matter.

Question 9:

An issue related to 8 above, and one that has not been resolved from the last review, concerns self-sufficiency targets. The questions we have, which have not been addressed in the three annual reports covered by this review, include:

- how are indicative self-sufficiency targets determined?
- are these targets published for individual commodities?
- are they adjusted regularly, and do these changes take into account changes in the security environment?
- how are the interests of contracting parties taken into account and how does Switzerland ensure that minimum harm is done to other contracting parties?
- does Switzerland have in place mechanisms to cap production once self-sufficiency targets for particular commodities have been achieved?

In relation to this last question, we would appreciate a description of how production controls might be applied to bovine meat, eggs and pigmeat, if production of these items has reached, or might reach, the indicative self-sufficiency level.

Reply:

This question goes beyond the Working Party's terms of reference. Documentation on the review of Swiss trade policy contains further details on this matter.

Question 10:

Australia would also appreciate a description of the measures that Switzerland has in place to limit surpluses more generally, including for commodities not subject to self-sufficiency targets.

We are particularly concerned with what appears to be an unfortunate deterioration in the supply/demand balance in relation to bread grains and feed grains. Imports of these items have fallen significantly. According to the OECD (Agricultural Policies Markets and Trade: Monitoring and Outlook, 1990, page 133) average production of wheat for the three years till 1989 is 40 per cent larger than the average in 1979-81, while unit market price support increased between the two periods by more than 30 per cent. In total, support to wheat producers, as measured by the total PSE, in 1989 reached its highest level since 1979, and internal prices are now at three times the border price. This sort of unchecked growth in production and support levels causes us concern as it indicates that Swiss policies do not appear to be aimed at minimizing the harm caused to other contracting parties.

Reply:

This question goes beyond the Working Party's terms of reference. Documentation on the review of Swiss trade policy contains further details on this matter.

Questions by New Zealand

Question 1(i) and (ii):

"Prise en charge" system: New Zealand understands that this system is used extensively to control imports of a range of agricultural products, and is considered by Switzerland to be covered by paragraph 4 of its Protocol of Accession.

- (i) How does Switzerland consider the "prise en charge" system to be consistent with Article III of GATT, in particular Article III.5? Does Switzerland consider the system to fall within the purview of Article XI? If so, on what basis?
- (ii) Does Switzerland consider that the exemption granted it under paragraph 4 of its Protocol extends to any provision of the GATT other than Article XI? If so, please elaborate on the provisions concerned, and the basis for such an interpretation.

Reply:

See the reply to Question 4 by Australia.

Question 1(iii)

What is the range of products to which the "price en charge" system is or may be applied? What are the current ratios between domestic production and import levels for these products? Please provide a copy of the obligations attaching to the right to import.

Reply:

Article 31 of the General Ordinance on Agriculture of 21 December 1953, which is based on the Federal Law of 3 October 1951 (Agriculture Act) provides the following:

Obligation of "prise en charge". Principle:

1. When the conditions specified in the first paragraph of Article 23 of the Law are fulfilled, importers of seeds of oats, barley, maize or field beans, as well as stone fruit, berries, fresh vegetables, onion sets, bees' honey, dead poultry, horses, acid casein and whole milk powder may be obliged to acquire over a specified period similar domestic products of merchantable quality in a proportion compatible with their imports.
2. After having heard a consultative commission, the Federal Council establishes for each group of goods the maximum quantities of domestic products to be acquired in proportion to imports for specified periods during the current year or, where this is not possible, in proportion to imports in the preceding year. In the case of fresh fruit and vegetables, as well as onion sets, the decision is taken by the Federal Department of the Public Economy after having heard commissions of experts or interested circles.
3. Importers of seeds of oats, barley, maize and field beans, as well as apricots, berries and racehorses, may be dispensed from this obligation of "prise en charge" by paying a substitute tax.

Question 1(iv):

New Zealand notes that a form of "prise en charge" may operate for certain products under certain conditions. This appears to be the case for bovine meat (if prices stray beyond the target price limits set); for fruit and vegetables covered by the "three phase system" (i.e. either quotas or an obligation to take over domestic production applies during Phase II); and for wine (a system of "compulsory take over" exists, which, it appears, has not been enforced). Please indicate whether requirements to take over these products have been enforced since 1966. If so, when and on what basis were imports controlled (i.e. proportion of imports to domestic production, and how was this established)?

Reply:

In the case of bovine meat, the general principle when domestic prices exceed target prices (range) is that import is open. When domestic producers cannot find buyers for their animals on the market, they may sell them to the Coopérative Suisse pour l'approvisionnement en bétail de boucherie et en viande (Swiss Co-operative for supplies of slaughter animals and meat) at prices fixed by the latter ("prise en charge" price). When a market is subject to strong pressure, importers may be obliged to acquire domestic slaughter animals in a reasonable proportion to their imports of similar products.

With regard to the three phase system for imports of fruit and vegetables, we would emphasize that its application is subject to the supply and demand situation. If domestic supply is zero or quite insufficient, imports are unrestricted (1st phase), if before or after the main harvest supply is sufficient in part, a quota is set (2nd phase) and imports are prohibited during the period of the main harvest (3rd phase). There is no "prise en charge" in the three phase system.

As far as wine is concerned, Article 28 of the Wine Statute, which is based on the 1951 Agriculture Act, provides for an obligatory "prise en charge" for domestic wine: "If the market situation so warrants, the Federal Council or, on its instructions, the Department may order the "prise en charge" when the available volume of local wine (commercial stocks on 30 June and the year's harvest), taking into account an appropriate reserve, exceeds consumption requirements. In such cases, importers shall be required to acquire wine grapes, grape must or local wine of merchantable quality, in proportion to their imports of grape must falling within headings 2009.6011, 2204.3000 of the customs tariff and natural wine falling within headings 2204.2111/2119, 2911/2914. Notwithstanding, the share of each importer shall not exceed a total of 25 per cent of the average of such imports over the preceding two years for which the necessary data are available and for white wine 15 per cent of this average."

"Prise en charge" is decided upon and the quantities of wine grapes, grape must or wine to be acquired are fixed before the end of each year. Importers who trade exclusively in quality wines may be dispensed from the "prise en charge" of white wine upon payment of a discharge not exceeding Sw F 30.-/hl. of grape must or wine which they should ordinarily have acquired.

When the disposal of harvests from specific vine-growing regions is jeopardized within the meaning of Article 23 of the Agriculture Act, a "prise en charge" may be decreed even if the available volume referred to in the first paragraph is not reached.

When a "prise en charge" is decreed, import permits are issued on the condition that the importer acquires wine grapes, grape must and local wine under the conditions laid down in Article 30 or pays the discharge mentioned in the second paragraph.

If the conditions concerning the "prise en charge" are not fulfilled, the Department may block individual quotas for a specified period. It should be noted that the last time that a "prise en charge" was decreed for wine grapes, grape must or wine was in 1964, i.e. prior to Switzerland's accession to GATT.

Question 1(v):

New Zealand further understands that the "prise en charge" system has been expanded since Switzerland's accession to GATT (e.g. for sheepmeat). What products have been affected by such changes, and what was the

legislative basis for expanding or amending the "prise en charge" system?  
To what products was the "prise en charge" system applied in 1958 and 1966?

Reply:

Products are subject to the "prise en charge" system pursuant to Article 23 of the Agriculture Act of 3 October 1951 and the General Ordinance on Agriculture of 21 December 1953. In the case of imports of sheepmeat, the latter were initially subject to quotas and the transition to a "prise en charge" system was carried out on 1 January 1967; this system makes the import régime more flexible to the benefit of the suppliers concerned.

Ratio between Domestic Production and Imports (Sheepmeat)  
(in tons)

	<u>1987</u>	<u>1988</u>	<u>1989</u>
Imports	5,470	5,890	6,686
Production	4,093	4,398	4,110
Rate of self-sufficiency	42.80%	42.75%	38.07%

It should also be recalled that imports of sheepmeat exceeded 1,000 tons for the first time in 1964 with a total of 1,265 tons, which increased in 1966 to 2,417 tons and in 1989 to 6,686 tons.

In 1964, domestic production amounted to 2,278 tons, and increased to 2,435 tons in 1966 to reach 4,110 tons in 1989. Imports increased by 429 per cent from 1964 to 1989 while domestic production increased by 80 per cent during the same period.

The proportion of imports to domestic production in 1964 was 35 per cent to 65 per cent; in 1989, the share of imports was 62 per cent against 38 per cent for domestic production.

Question 1(vi):

The ratio of domestic products in relation to imports authorized for a number of items covered by the "prise en charge" system has altered in the years since Switzerland's accession (e.g. for eggs, WMP and sheepmeat). For products affected by the system, how has the ratio of domestic production/imports evolved since 1966? On what basis is the proportion set (e.g. self-sufficiency levels, price trends), and what is the legislative basis for proportions to be altered? Who is responsible for decisions to change ratios? In cases where the proportion of domestic production to be taken over has increased, how does Switzerland reconcile this with the terms of its accession protocol; in particular the requirement to cause "minimum harm" to the interests of contracting parties, and to provide a "steadily expanding market for exports of agricultural products"?

Reply:

With regard to eggs, the import of eggs in shell is subject to the obligation to acquire domestic eggs in a proportion of 40 per cent in relation to average imports in the past two years. The rate of self-sufficiency for eggs and egg products is approximately 50 per cent and has not increased significantly since the 1960s.

In accordance with this rate, imports of eggs increased in 1987 and 1988 and then fell in 1989 when demand was affected by health problems (salmonella).

1987	33,233 tons
1988	32,432 tons
1989	29,920 tons

As far as whole milk powder is concerned, authorization to import is subject to the obligation to acquire a proportion of domestic products in relation to the quantities imported. This proportion amounts to four parts of domestic products for one part of imported products.

We consider that the "prise en charge" system has advantages, as can be seen in the trend in imports of sheepmeat (c.f. Question 1(v)).

Question 1(vii):

Switzerland has argued that the "prise en charge" system provides better opportunities for imports. How can this be reconciled with the fact that, in the case of sheepmeat, where consumption has increased significantly, imports have at best remained stable?

Reply:

See the reply to Question 1(v).

Question 2(i)(a):

New Zealand notes that Switzerland's overall level of food self-sufficiency has been increasing steadily since the 1950s (48.7 per cent in 1956 to 66 per cent in 1989).

- (a) Could Switzerland please supply details of self-sufficiency levels for the products covered by paragraph 4 of the Protocol, since 1966. While information on imports has been provided in annual reports, information on domestic production trends in like products has been sporadic and incomplete. Could the information on self-sufficiency levels be supplemented by details of domestic production for the products concerned, for the decade since 1980.



Reply:

This question goes beyond the Working Party's terms of reference. Documentation on the review of Swiss trade policy contains further details on this matter.

Question 2(i)(b):

Switzerland has introduced production controls for a number of products in recent years (e.g. for dairy products, meat, beetroot, rape, tobacco, wine, [eggs, poultry and fruit]). What explanation can Switzerland give for the need to introduce such controls? This suggests to New Zealand that more than minimum harm is being caused to the interests of contracting parties, since the same policy objectives could be achieved at reduced levels of support and protection: current high levels are clearly stimulating over-production.

- How effective have production controls been on the products for which they have been introduced? We note that, for dairy products, production has tended to increase, despite the introduction of controls in 1977, and their progressive tightening since.
- How has Switzerland justified further increases to support prices for products subject to production control (e.g. milk, base price raised to Sw F 1.07 per kg. in 1989), since such increases insulate farmers from market signals and have a dampening effect on consumption (and hence imports).

Reply

Switzerland applies production control measures in various forms on the following products:

- milk;
- bovine meat and pigmeat;
- sugar;
- rape;
- soya beans;
- tobacco;
- wine;
- eggs;
- poultry.

These measures were introduced because of the constant rise in productivity in recent years and the need to act at the production level in order to avoid being faced with situations of over-production.

Switzerland considers that limitation of production is more effective than price reduction for restoring market equilibrium, and that it contributes to ensuring minimum harm to the interests of other countries.

Clearly, the effectiveness of production controls largely depends on the degree of severity of the measure concerned. In the case of milk for example, one may see from the figures below that the quota restriction on milk has had a stabilizing effect on production notwithstanding the increase in productivity.

<u>Year</u>	<u>Milk production</u> ( '000 tons)	<u>Milk marketed</u> ( '000 tons)
1984	3,875	3,169
1985	3,867	3,076
1986	3,867	3,088
1987	3,783	2,986
1988	3,797	3,040
1989	3,911	3,116

Question 2(ii):

New Zealand notes with concern that, despite the understanding on which the terms of Switzerland's Accession Protocol were based, imports of products covered by paragraph 4 have tended to decrease overall since 1966, while any increases in import levels have been moderate at best. Decreases have been particularly apparent for grains, bovine meat, dairy products and apples. What steps is Switzerland prepared to take to reverse this trend and allow for increased market access opportunities?

Reply

Looking at the trend in agricultural imports as a whole, one can see stabilization in general and in some case a reduction that can be explained by temporary weather conditions or by changes in utilization or consumption:

	<u>1987</u>	<u>1989</u>	<u>In %</u>
Bread wheat	209,333	181,664	-13.2
Flour	28	23	-17.9
Feed grains and feeding stuffs	688,467	469,919	-31.7
Cereal seeds	4,935	2,806	-43.1
Breeding and dairy cattle (head)	3,425	5,143	+50.2
Cattle for slaughter (head)	5,587	5,428	-2.8
Meat and animal fats	21,331	21,769	+2.1
Meat preparations and preserves	6,988	7,333	+4.9
Fresh butter	11,525	3,088	-73.2
Whole milk powder	2,620	3,132	+19.5
Acid casein	177	81	-45.8
Eggs	33,233	29,920	-10.0
Fresh vegetables	160,405	151,019	-5.9
Food potatoes	5,020	4,986	-0.7
Potato products	437	349	-20.1
Seed potatoes	1,024	5,958	+481.8
Small onions for planting	16	34	+211.5
Apples and pears	11,981	10,247	-14.5
Stone fruit	17,933	14,480	-19.3
Fresh berries	16,800	22,671	+34.9
Apples and pears for cider and perry	42	125	+197.6
Pectin	374	405	+8.3
Fresh flowers	3,862	4,179	+8.2
Wine in casks (hl.)	1,474,000	1,513,000	+2.6
White wine in bottles	41,000	50,000	+22.0
Grape juice	50,000	82,000	+64.0
Ethyl alcohol	217,551	259,206	+19.1

Question 3(i):

Cattle and meat: - L/6101 notes herd ceilings should be reached by 1992. Since the ceiling is established in terms of a maximum number of animals per farm, what is meant by this comment? What proportion of farms is likely to reach or exceed the herd ceilings? Is the 1992 "target" date still accurate? What effect has the denial of cow shed building permits since 1980 had on beef production?

New Zealand asked questions concerning the nature and operation of quotas on beef imports during the seventh triennial review. These questions have not been answered in any detail, and we reiterate them. In addition, we wish to know what specific products, in what form, are subject to which quotas (i.e. annual, quarterly or fortnightly).

Reply

The Ordinance fixing ceilings for the production of meat and eggs, which entered into force on 15 September 1981, determines the maximum herd authorized for a farm.

Under one provision of that Ordinance, however, farmers whose animal numbers exceed the authorized herd ceiling are allowed a legal transitional period expiring on 31 December 1991 to bring down those numbers either to the authorized herd ceiling or to the levels set in a special authorization.

In all, 464 farms were affected by the Ordinance when it entered into force. At the end of September 1990, in Switzerland as a whole there were still 177 farms in excess of the authorized herd ceiling and which must therefore bring their animal numbers it down to the authorized level by 31 December 1991.

The measures establishing ceilings for the production of meat and eggs and the introduction of a permit system for farm buildings has had an effect at the level of production in the pig meat and poultry sectors. At the level of bovine meat, their effect is certainly less appreciable but these measures have nevertheless had an inhibiting effect on production.

Question 3(ii):

Dairy products: Switzerland has reported that its policy is to encourage cheese production rather than butter, and that imports of butter "are to be encouraged". Nevertheless, cheese production has decreased; butter production has continued to increase, and imports have fallen dramatically. To what does Switzerland attribute this failure to meet stated policy objectives?

The report of the Working Party conducting the first triennial review of Switzerland's Protocol of Accession noted the existence of agreements with Denmark and the EEC concerning minimum shares of the Swiss market for butter imports (45 per cent for the former, 20 per cent for the latter). Are these agreements, or others like them, still in existence? If so, have the percentage shares involved changed? How can such agreements be reconciled with the provisions of Article XIII?

Reply:

We feel it appropriate to recall that in 1977 Switzerland introduced milk production quotas that have stabilized production. As already mentioned, there has been a temporary increase in domestic butter production, since markets for cheese exports are limited and domestic consumption, already at a high level, is increasing only relatively slowly; one may also note that cheese imports (not subject to quota) are rising steadily. As regards butter, I would draw your attention to document L/6802, page 14, which allows a more detailed analysis of the flow of butter imports into Switzerland.

As may be seen from the table below, Switzerland's cheese production has not declined in recent years, but has remained stable or even progressed slightly.

<u>Year</u>	<u>Total cheese production</u> (100 tons)
1984	1,295
1985	1,264
1986	1,309
1987	1,279
1988	1,301
1989	1,330

The valorization of milk in Switzerland is characterized by a predominance of cheese manufacture and by butter production that is relatively low in comparison with other countries.

In order to valorize the volume of milk marketed at the least possible cost for the dairy balance sheet, a milk/cheese/butter plan has been in operation for some years. Sales of fresh dairy products (liquid milk, cream, yoghurt) are actively encouraged, since these products can be sold at prices covering production costs without charge to the dairy balance sheet. Cheese manufacture comes before butter production. Indeed, it is more advantageous to export our cheese specialities and cover the shortfall in our butter supply by imports.

While butter production has indeed increased in recent years, this is due to the fact that consumption of low-fat products is rising in Switzerland so that a larger quantity of butter remains available.

The decline in butter imports is attributable to (1) the increase in Swiss production of this product and (2) the decline in consumption.

Question 3 (iii):

Fruit: L/6101 refers to measures "designed to stabilize production and attenuate year-to-year fluctuations". What are these measures, and how successful have they been?

Reply

Fruit cultivation has been the subject of structural transformations in recent years: progressive elimination of traditional or unfavourably situated orchards; establishment of modern orchards (intensive cultivation in the most suitable regions). During the period 1970 to 1980, the share of field-scale orchards diminished by 26 per cent and this trend has continued in the last decade. Since the federal fruit-tree census is currently under way, it is not possible to give precise figures concerning this decline.

Question 3(iv):

Fresh flowers: Reports provided by Switzerland give details of imports for the period under quotas (1 May-25 October). What have total imports of fresh flowers been for the years covered by this review? What quantities are covered by basic as opposed to supplementary quotas? What are the requirements for marketing of domestic flowers that determine eligibility for supplementary quotas? Given that import levels are now well above those specified in remaining bilateral quotas, what is the justification for their continuation? Are quotas allocated in a fully global manner?

Reply:

The quantities of fresh flowers imported from 1 May to 25 October are reported in document L/6802. The quantities of fresh flowers imported free of quota between 26 October and 30 April have been as follows: for 1987, 7,374 tons; for 1988, 8,034 tons; and for 1989, 7,935 tons.

During the quota period, the amounts that may be imported are determined in such a way that, having regard to the supply of domestic flowers, supplies for the domestic market are assured. As the supply varies considerably, import quotas are fixed from month to month. A distinction is made domestically between basic quotas and supplementary quotas: basic quotas are allocated to the various importers on the basis of their share in total imports during a reference period (previous year) whereas supplementary quotas are allocated to them on the basis of their participation in the marketing of domestic flowers. In this way it is easier to cope with any excess supply of the domestic product and therefore to be more generous in according basic quotas. In determining the amount that may be imported, the authorities generally follow the views expressed by a committee of experts consisting of representatives of the import, wholesale and retail trade as well as of producers. This committee meets regularly about the middle of each month, when it decides upon quotas for the following months as well as possible supplementary quotas for the current month. Months during which large amounts are imported (May, June) are generally divided into two parts and quotas fixed for each part so as to ensure that the amount allocated is not used up during the first days of the month. Quotas valid throughout the quota period (1 May to 25 October) may be fixed for small florists who import small quantities.

Country quotas, which are allocated in the light of bilateral agreements establishing minimum quantities, are not of major importance. In parallel with rising sales of cut flowers in Switzerland, imports have expanded considerably. Consequently imports have risen well above the levels specified in bilateral agreements so that actual imports now considerably exceed the amounts laid down in trade agreements. For this reason, cut flower import quotas have, since 1980, in fact been allocated in a global manner. This simplified administrative procedure appears to

have proved its worth, but of course the authorities see to it that the bilateral commitments taken on by Switzerland are not affected thereby. Should this happen during the quota period, the authorities would allocate import quotas by country. At present there are contractual quotas in two cases. For the Community, the seasonal quota is 700 tons, having been raised to that level from 650 tons on 1 March 1986, to take account of Spain's entry into the Community; prior to that date, a quota of 50 tons was allocated to Spain. During the past three years, imports during the summer period have fluctuated around 4,000 tons, reaching 4,179 tons in 1989. For Colombia, the seasonal quota is 45 tons of carnations. Imports of these flowers from Colombia during the summer period have fluctuated between 167 and 247 tons over the past three years.

Imports from developing countries during the quota period have followed the general trend; it should be noted that a portion of the exports of developing countries is handled through the Netherlands. Purchased at Netherlands flower exchanges by Swiss importers, these products - although initially originating in developing countries - appear in statistics as Netherlands exports.

Question 3(v):

Wine: What measures is Switzerland taking to reduce and eliminate the quantitative restrictions on white wine in bottles, applied as an emergency safeguard measure under Article XIX since 1975?

What plans does Switzerland have to globalize further bilateral quotas which continue to exist for both red wine and white wine in casks? What proportion of supplementary quotas has been made available to new suppliers in recent years? What bilateral agreements has Switzerland entered into or extended since its accession? In reviewing import details for wine provided in Switzerland's annual reports, it is apparent that virtually no new suppliers have entered the market (with the exception of such traditional wine-producing countries as Korea and Canada). Given that Switzerland's wine trade has historically been dominated by bilateral contracts with established importing networks what are the opportunities in fact for new suppliers to develop wine exports?

Reply

As regards imports of white wine in bottles, the emergency measure taken under Article XIX in 1975 has been notified as a quantitative restriction since 1976, as indicated in our submission in document L/6101, page 29. Imports of white wine in bottles increased from 7,410 tons in 1987 to 9,168 tons in 1989. As regards the question concerning quotas, see the reply made to Australia.

ANNEX C

Supplementary Written Questions and Answers

Supplementary Questions from New Zealand

Introduction

New Zealand wishes to thank the delegation of Switzerland for the replies provided to written questions it had submitted to the Working Party (document Spec(91)69 refers) and to express appreciation for the attempts made to furnish detailed information on a range of important issues. Having now had time to analyse the responses in detail, it is evident that much of the information requested has been only partially provided, or has been omitted entirely. New Zealand, therefore, wishes to raise a number of follow-up questions, and has been obliged to repeat many of our original questions, to clarify outstanding issues which are relevant to the examination of Switzerland's agricultural trade policy in accordance with the procedures established in paragraph 4 of the Protocol of Accession.

Question 1: Prise en Charge System

1(a) While some information is provided in response to the questions on the "prise en charge" system, a number remain unanswered. Specifically, how does Switzerland consider the "prise en charge" system to be consistent with Article III of GATT, in particular Article III:1 and Article III:5? Does Switzerland consider that the exemption granted it under paragraph 4 of its Protocol extends to any provision of the GATT other than Article XI?

Reply

Switzerland considers that the "prise en charge" system is covered by paragraph 4 of the Protocol of Accession and that it has no relation whatsoever with Article III. Explanations have already been given in this connection in earlier reports (report of 6 June 1986, L/6003, paragraph 16, and report of 21 March 1990, L/6658, paragraph 59, in particular).

Switzerland reiterated its position in the replies circulated to the Working Party at its meeting on 12 July 1991.

In order to make this position quite clear, we repeat that the "prise en charge" system is an import restriction that applies to foreign products on their entry into the Swiss market. On the other hand, the system has no impact on the marketing of the products concerned once they have been introduced into Swiss territory. As we have already pointed out many times, this system is more flexible than quantitative restrictions, including those applied on a seasonal basis, as the case may be. It reflects Switzerland's concern to use the most appropriate tools in order to attain its agricultural policy objectives.



Question 1(b)

In answer to New Zealand's question about what range of products "prise en charge" may be applied to, Switzerland replied that "Article 31 of the General Ordinance on Agriculture ... provides ... importers of seeds of oats, barley [etc.] may be obliged to acquire ... similar domestic products ...". The products listed by Switzerland do not include three of the products - eggs in shell, sheep and goats - listed by Switzerland in L/6658, paragraph 60 as the products to which the system "is applied at present". It therefore appears that either Switzerland is applying "prise en charge" to three products without legislative basis, or that the list in Switzerland's reply to Question 1(iii) is not exhaustive. New Zealand therefore, once again, asks Switzerland for a list of those products to which "prise en charge" may be applied and the legislative basis for the products.

Reply

In addition to the products listed in the General Ordinance on Agriculture of 21 December 1953 as mentioned in Switzerland's reply of 11 July 1991 to New Zealand's Question 1(iii) for which the "prise en charge" system may be, but is not necessarily, applied (see also reply to Question 1(b)), the following products are currently subject to the system:

- eggs in shell, under the Order concerning the market for eggs and the supply of eggs of 15 August 1990, on the basis of the Federal Agriculture Act of 3 October 1951;
- sheep and goats for slaughter as well as meat of such animals, under the Order on the import and disposal of sheep and goats for slaughter of 27 December 1966, on the basis of the Federal Agriculture Act of 3 October 1951;
- red grape juice under the Order of the Federal Department of the Public Economy concerning the import of red grape juice, on the basis of the Wine Statute of 18 December 1953, which is itself based on the Federal Agriculture Act of 3 October 1951.

It should also be pointed out that "prise en charge" may also be applied as a secondary measure to the following products (see reply to Question 1(c)):

- cattle and butcher's meat;
- potato plants;
- certain fruit and vegetables (see reply to Question 1(c) below);
- wine, for which the "prise en charge" requirement is exceptional and has not been applied since the end of the 1960s.

Question 1(c)

In paragraph 2 reply to Question 1(iv) Switzerland says that "With regard to the three-phase system for imports of fruit and vegetables ... There is no "prise en charge" in the three-phase system". However, the excerpt from Switzerland's General Ordinance on Agriculture, quoted in reply to Question 1(iii), states that "... importers of ... stone fruit, berries, fresh vegetables ... may be obliged to acquire over a specified period similar domestic products ... in a proportion compatible with their imports. New Zealand recalls that its question referred to "certain products" and would be grateful if the Swiss delegation could clarify to the Working Party how these statements are compatible in respect of the products in question.

Reply

In view of the manifest lack of understanding of its régime, Switzerland has tried to give a systematic explanation of the various instruments of its import régime, including the "prise en charge" system and the three-phase system. Having said this, it is true that in the implementation of the three-phase system, "prise en charge" is applied in the cases mentioned.

Question 1(d)

Switzerland's reply to Question 1(iii) by New Zealand, paragraph 2, suggests the "prise en charge" system might only operate for part of the year, or alternatively that the ratio of imports to domestic products to be taken over might vary during the course of the year. Which interpretation is correct? Could Switzerland also please explain why maximum (rather than minimum) quantities of domestic products are set. What would happen if the maximum quantity were not reached?

Reply

Under the three-phase system, and only in the case of fruit and vegetables, the "prise en charge" system can be applied only for some of the year during the second phase, and the ratio of imports to domestic products may vary during the course of the year.

More broadly, a maximum quantity is not really set. Importers are obliged to take over part of the domestic production in proportion to their imports. This is in fact a distribution formula (see also the reply to the next question).

Question 1(e)

In connection with this, New Zealand had asked what the current import ratios for products subject to the "prise en charge" system were, and how these had evolved since 1966.

Reply

The situation for the individual products under Article 31 of the General Ordinance on Agriculture is as follows:

Imports of oats, barley and maize seeds are subject to the "prise en charge" system. For the years 1987, 1988 and 1989 the ratios were as follows:

<u>Year</u>	<u>Barley</u>	<u>Oats</u>	<u>Maize</u>
1987	Summer barley 4:1	Summer oats 2:1	1:2
	Winter barley 15:1	Winter oats 25:1	
1988	Summer barley 3:1	Summer oats 3:1	1:2
	Winter barley 25:1	Winter oats 25:1	
1989	Summer barley 25:1	Summer oats 25:1	1:3
	Winter barley 25:1	Winter oats 25:1	

Fresh kernel (stone) fruit, berries and vegetables and onion sets are subject to the three-phase system, with application of "prise en charge" during the second phase; bee honey is not subject to "prise en charge".

With regard to imports of dead poultry, this question has already been answered in our initial statement.

With regard to imports of horses, under the "prise en charge" system as a rule one local horse must be taken over for every four imported.

Imports of acid casein are subject to the requirement to take over a certain proportion of domestic products to imported quantities. Since 1 July 1985 the ratio has been two of the former to one of the latter.

Imports of whole milk powder are subject to the requirement to take over a certain proportion of domestic products to imported quantities. Since 1 May 1979, this proportion has been four of the former to one of the latter.

Question 1(f)

New Zealand noted with interest that "prise en charge" obligations may be dispensed with by payment of a substitute tax. Reply to Question 1(iii) (paragraph 3) lists a number of products in this connection, but reply to Question 1(iv) suggests the same facility is available to wine importers. Is the payment of a substitute tax an option for importers of any products subject to "prise en charge" obligations? At what level is the substitute tax set? How frequently, in practice, do importers opt for payment of the tax rather than meeting domestic purchasing obligations? How does the "optional nature" of these taxes make them covered by the Protocol? (See reply to Question 4 by Australia.)

Reply

Payment of a substitute tax is not an option for importers of any products subject to the "prise en charge" system. A substitute tax has been used very exceptionally only for poultry. This system has not been used for other products for many years.

Question 1(g)

With regard to reply to Question 1(iv), concerning bovine meat, how do the Swiss authorities determine that "a market is subject to strong pressure"? Switzerland now claims there is no "prise en charge" system for imports of fruits and vegetables: information provided in Switzerland's Third Annual Report (document L/3214, paragraph 7 refers) suggested a form of "prise en charge" sometimes operated during the second phase. Has this subsequently changed?

Reply

The "prise en charge" system is applied when (1) imports jeopardize the marketing of domestic slaughter cattle and (2) the measures taken in Switzerland by the CBV do not succeed in keeping market prices within the range of indicative prices.

With regard to the use of the "prise en charge" system for imports of fruit and vegetables, see reply 1(c) above.

Question 1(h)

In Question 1(v) New Zealand asked what products were affected by the "prise en charge" system in 1958 and 1966, and whether the system had been expanded to cover other products since the time of Switzerland's accession to GATT. Switzerland, in its reply, commented on sheepmeat (which New Zealand had provided as an example of such a product), but otherwise has not responded to these questions.

Reply

Since 1966, the "prise en charge" system has been extended to cover only sheep and goats for slaughter as well as the meat of such animals, owing to the elimination of the quantitative restrictions initially in force for these products.

Question 1(i)

Similarly, for Question 1(vi), Switzerland has not provided information on how the import ratios are set (e.g. with respect to self-sufficiency ratios, price trends), on the legislative basis for altering import ratios, and on how Switzerland considers it is meeting the

terms of its Protocol (requirement to cause "minimum harm" and to provide a "steadily expanding market for exports of agricultural products") in cases where the proportion of domestic production to be taken over has been increased. The "advantages" of the "prise en charge" system alluded to by Switzerland are not, in New Zealand's view, relevant to an assessment of whether these criteria are being met. Despite any claimed "advantages", New Zealand wonders why (e.g.) sheepmeat imports have remained relatively stable despite significantly increased domestic consumption.

Reply

For Swiss agriculture to be able to carry out its multiple functions, it has to have appropriate production possibilities. With a total level of self-sufficiency of 65 per cent, in terms of calories, Switzerland provides appreciable import possibilities.

Under the "prise en charge" system, the determination of the distribution formula as between local products and imports is a political decision that takes account of various factors such as market situation, comparative advantage and disadvantage of the product and financial and trade considerations. It is often the result of a compromise that takes into account the interests of the various parties concerned. The legislative basis for modification of this distribution formula is Article 23 of the Agriculture Act of 3 October 1951 whereby the Federal Council may require importers to take over products of the same kind, of local origin and of merchantable quality, in an acceptable ratio to imports, and to that end take the necessary measures and establish requirements.

Question 2: Policy Objectives and Import Trends

2(a) Switzerland has not replied to Question 2(i)(a), on the grounds that it goes beyond the Working Party's terms of reference. New Zealand notes that information on domestic production of products covered by the Protocol has been provided sporadically by Switzerland in its annual reports. New Zealand considers information on production trends for these products to be necessary in order for Working Party members to make an accurate assessment of the extent to which Switzerland is fulfilling the terms of its Protocol - e.g. causing minimum harm to the interests of contracting parties and providing a steadily expanding market. Statistics on quantities imported, in isolation, do not give an accurate picture of the evolution of the Swiss market for agricultural products.

Reply

We have already replied to this question and stated that it exceeds the Working Party's terms of reference.

For the convenience of the reader, we refer to the information in the secretariat's report for the Trade Policy Review of Switzerland (C/RM/S/17A, page 115), which will furnish New Zealand with information on this subject.

Question 2(b)

New Zealand takes little comfort from Switzerland's reply to Question 2(ii)(b) which suggests that "limitation of production is more effective than price reduction for restoring market equilibrium". Production limitations are no substitute for longer-term structural adjustment, and are likely to be undermined by conflicting signals given to producers by means of continuing price increases. The fact that Switzerland's production of milk has generally continued to increase since controls were instituted in 1977 suggests support prices are too high to counteract the disincentives to over-produce and/or that price penalties on over-quota milk are insufficient to prevent farmers from recovering marginal costs.

Reply

We do not share New Zealand's view that these measures are likely to be undermined by price increases.

Over recent years, the trends for total milk production and milk marketed in Switzerland were as follows:

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Year	Total production (thousands of tonnes)	Domestic milk marketed (thousands of tonnes)	Number of farms
<hr/>			
1985	3,867	3,076	119,731
1986	3,867	3,088	
1987	3,783	2,986	
1988	3,797	3,040	
1989	3,911	3,116	
1990	3,862	3,020	108,296

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This production is therefore relatively stable and would certainly have increased if production quotas had not been introduced. On quantities exceeding his individual quota, the Swiss producer pays a high individual tax of 90 cts. per kg., representing 84 per cent of the guaranteed base price. This tax has been raised over the years and may be increased still further in future if necessary.

Question 2(c)

Switzerland has not replied to Question 2(ii), indicating what steps it is prepared to take to reverse the trend towards significantly decreased imports of agricultural products covered by the Protocol. We note that

Switzerland has indicated percentage import changes over a three-year period only. While this is the period covered by the review, it does not give an accurate picture of the import evolution over time. New Zealand had identified a number of core products for which significant falls in imports had occurred over a number of years. The figures provided by Switzerland confirm this is the case for 1987-89 period.

Reply

This question goes beyond the Working Party's terms of reference; on the other hand, it was the subject of considerable discussion at the recent review of Switzerland's trade policy. At that time, the Swiss delegation summarized the main objectives of its agricultural policy reform, already partly achieved or under preparation, as follows:

- a more restrictive pricing policy. For some years, there have been only moderate price increases, if any. In some cases, prices have even been reduced (sugar, grains). In any event, some real producer prices have declined significantly in recent years.
- On 21 June 1991, the Swiss Parliament approved a reform of the Agriculture Act and the Wheat Act so as to curb any future expansion and intensification of production of cereals. The following measures are currently being carried out:
  - Financial incentives for the cessation of farming on land under crop rotation (ecological compensation surface-areas, fallow rotation periods);
  - Financial incentives for the extensive use of usable agricultural land (e.g. extensive cereal production);
  - Compensatory payments as a substitute for production-related support in regions with difficult farming conditions.
- The Swiss Government will shortly submit to Parliament proposals for the introduction of direct compensatory payments. It is proposed to include in the Agriculture Act the legal basis for the following two kinds of direct payments:
  - Direct supplementary payments of a general nature, not linked to output, primarily for income-policy purposes supplementing a more market oriented-pricing policy and also to remunerate activities that are of public interest;
  - Direct payments for forms of production and farming that are particularly friendly to the environment (on the basis of a voluntary contract), i.e. compensatory payments for ecological purposes.

This new policy orientation seeks to compensate in a more targeted way those agricultural activities that are recognized as being of public interest and also to take better account of market conditions, international developments and ecological requirements.

- With regard to border measures, in its Uruguay Round, agricultural offer of 24 October 1990 Switzerland proposed substantial tariff reductions and a partial tariffication of non-tariff measures, including a number of tropical agricultural products. This offer is still on the table. It already constitutes a specific step towards meeting the requests addressed to us by many partners. In addition, the tariffication of red wine in casks has already been scheduled for next year.

### Question 3: Specific Products

3(a) Cattle and meat: New Zealand repeated a range of questions, which were raised in the context of the last triennial review, concerning mechanisms and procedures for the import quotas governing beef (see Question 3(i)). Once again, Switzerland has not made any response.

#### Reply

Switzerland replied on 11 July 1991 to Question 3(i) from New Zealand. With regard to the meat import régime, Switzerland described it in detail in document L/6658 of 21 March 1990, paragraphs 50-58.

### Question 3(b)

New Zealand appreciates Switzerland's reply to the question concerning herd ceilings and cowshed building permits. On herd ceilings we would appreciate information on how ceilings were set (i.e. are herd numbers per farm set in relation to the size of each holding?). What is the resulting total herd size for Switzerland as a whole? Are the "levels set in a special authorization" higher or lower than the authorized herd ceiling?

#### Reply

Under the Ordinance fixing ceilings for the production of meat and eggs, the following ceilings have been set per farm regardless of size:

- 200 calves for fattening (by means of whole milk or substitutes);
- 200 calves for rearing for fattening of full-grown cattle (up to 120 kg. live weight);
- 250 cattle for fattening (over 120 kg. live weight);
- 150 sows (which have had at least one litter);



- 1000 gilts mated for the first time (gilts) or young male and female breeding pigs (young breeding pigs, of over 30 kg. live weight);
- 1000 piglets or young pigs (up to 30 kg. live weight);
- 1000 pigs for fattening or young pigs for fattening (over 30 kg. live weight);
- 12,000 layers;
- 12,000 breeding hens of layer breeds;
- 12,000 pullets for rearing;
- 12,000 broilers;
- 6,000 turkeys for fattening (rearing period of up to six weeks);
- 3,000 turkeys for fattening (fattening).

Each of the above ceilings represents the maximum herd size (100 per cent) a farm is allowed to have. If a holding has several categories of animals, the combined herd numbers together may not exceed 100 per cent.

It is impossible to extrapolate the actual total herd numbers in Switzerland on the basis of these ceilings per farm.

Special authorizations are granted to farms for a total herd size over the authorized ceiling.

#### Question 3(c)

Dairy products: New Zealand has analysed the trend in Switzerland's butter imports over a number of years, and notes that (with the exception of 1987), quantities imported have been declining steadily since 1982. How "temporary" is the increase in butter production being experienced in Switzerland currently? Switzerland suggests that butter production has increased because consumption is declining, in favour of low-fat products. What is the trend in butter production in absolute terms? Has it continued to increase while, at the same time, consumption has decreased?

#### Reply

Domestic milk for butter production is the most costly use of the product: it continues to represent a stable percentage of total milk marketed in relation to the other groups of products, cheese and fresh products, as shown in the table in Annex 1.

On the basis of the criteria of milk utilization already mentioned, domestic butter production thus also remains stable, although it is affected by the fluctuations in cheese production. This is shown in Annex 2.

As mentioned earlier, consumption is declining, as shown in Annex 3. Total consumption of fats by private households is also falling, as shown in Annex 4, where the table indicates a rise in consumption in low-calorie margarine with a parallel decline in consumption of butter and edible oils.

Question 3(d)

Fresh flowers: New Zealand asks again what proportion of imports are covered by basic as opposed to supplementary quotas? What is the proportion of domestic flowers to be marketed by importers which governs the amount of supplementary quota which may be available to them?

Reply

Measures affecting imports of cut flowers have already been described in detail in the replies contained in our contribution of 11 July 1991, circulated at the latest meeting of the Working Party on 12 July 1991. Further to those explanations, it may be added that the basic quotas and supplementary quotas in 1989 and 1990 were each in the order of 50 per cent of total imports.

Question 3(e)

Given that imports have comfortably exceeded the quantities set out in remaining bilateral quotas, what plans does Switzerland have to terminate these arrangements, in conformity with its obligations under Article XIII? New Zealand agrees with the comments by Australia to the effect that it is difficult to see an acceptable linkage between the maintenance of quantitative restrictions on flower imports and Switzerland's stated agricultural policy objectives. Does Switzerland have any plans to eliminate quotas on flower imports?

Reply

In its agricultural offer of 24 October 1990, Switzerland offered the tariffication of its quota system for cut flowers.

Question 3(f)

Wine: Switzerland has not replied to the questions raised by New Zealand, other than to note that "changes to the import régime for red wine in casks are currently being studied". What is the time-frame for this review? Are there plans to study the liberalization of imports of white wine? New Zealand reiterates the question raised concerning the allocation of quotas and the opportunities for new suppliers to enter the Swiss market.

Reply

Switzerland has decided to repeal as from 1 January 1992 the quantitative restrictions applied to imports of red wine in casks or containers of over one litre. From that date, imports will be subject

neither to the opening of quotas by country or group of countries nor to the grant of individual quota shares for importers. Current import opportunities are guaranteed by an annual global tariff quota of 1,600,000 hl. open to all importers without discrimination, for which the current tariff charges will remain unchanged. All suppliers will thus have an equal guarantee of access to the Swiss market. The global nature of the tariff quota will allow market forces to come into play better.

If the total quantity imported exceeds the tariff quota, the additional entries will continue to be authorized but will be subject to higher customs duties, corresponding to the tariff equivalent of the tariff and non-tariff measures currently in force.

On the entry into force of the new régime, the bilateral quotas hitherto opened for supplier countries will be suspended.

The adjustments that remain necessary for the tariffication of the import régime for red wine in bottles and the modification of the import régime for white wine in bulk and in bottles should subsequently be introduced by stages. No dates have yet been set. These reforms should be coordinated as far as possible with the implementation of the results of the Uruguay Round.

#### Question 3(g)

New Zealand notes that Switzerland now considers the import control measures on white wine in bottles, introduced as an emergency safeguard measure, to constitute a quantitative restriction. What was the legislative basis for these restrictions to be introduced?

#### Reply

We have already replied to this question during the review of Switzerland's trade policies. The quotas for white wine in bottles were introduced in 1975 as an emergency measure under Article XIX and have been notified as quantitative restrictions since 1976, as mentioned in our notification L/6101, page 29.

#### Supplementary Questions from Australia

##### Question 1

Australia appreciates the detailed answers provided by Switzerland to several of our initial questions (Spec(91)69). However, we are disappointed to note that in response to Questions 3, 8, 9 and 10 in that document, Switzerland has chosen not to provide answers, on the basis that the questions go beyond the scope of the Working Party's terms of reference.

Australia takes the view that the questions it has put are within the scope of the Working Party's terms of reference.

Question 3 requests certain basic legal information, the provision of which would greatly assist the Working Party. Switzerland's partial reservation applies only in respect of particular legislation existing at the time of accession. Some of this legislation has undergone change. This fact naturally raises questions of whether the changed legislation is covered by the partial reservation. For the Working Party to make an informed assessment, it clearly needs to have an understanding of the changed legislation. This would be facilitated if Switzerland were to provide the information requested. This request is therefore entirely reasonable and within the scope of the terms of reference of the Working Party.

Question 8 deals with a key issue that the Working Party should legitimately address, that is:

In implementing the laws listed in paragraph 4 of the Protocol of Accession, has Switzerland observed "to the fullest possible extent the appropriate provisions of the General Agreement"?

We have indicated why, in the light of possible alternatives to the existing Swiss agricultural programmes, an impartial observer might conclude that this question must be answered in the negative, and have invited Switzerland to inform the Working Party about what is being contemplated by way of movement toward liberalization of its trade régime (i.e. steps toward greater GATT consistency).

It is clearly incumbent on Switzerland to show why the conclusion implicit in our question (that its agricultural policies do not meet the requirement of paragraph 4) should be rejected. This is not a matter peripheral to, or beyond the proper scope of, the Working Party.

Questions 9 and 10 request information on the mechanics and certain details of Swiss agricultural policies.

Given that a primary aim of Swiss agricultural policies is the achievement of certain self-sufficiency targets, a knowledge of how these targets are arrived at, what happens if they are exceeded, etc., is basic information which should be provided to the Working Party. This information will help the Working Party make an assessment of whether Swiss policies are being implemented in a way which achieves the stated purposes of the laws listed in paragraph 4, whether Swiss policies are being implemented in a way which "causes minimum harm to the interests of other contracting parties", and whether they are serving purposes which may not be covered by the partial reservation. All of this clearly falls within the mandate of the Working Party.

Similarly, Question 10 asks Switzerland to justify, in terms of its obligation under paragraph 4 to "cause minimum harm", certain basic aspects of its policies relating in particular to grains.

The level of detail of the information we are requesting is entirely consistent with the call of paragraph 4 for a "thorough review" of the application of the paragraph's provisions.

In the light of these considerations we invite Switzerland to revisit and provide comprehensive responses to our initial Questions 3, 8, 9 and 10.

Reply

Question 1/3

Switzerland has already replied to this question. We would ask the Australian delegation to refer to the information and documents at its disposal. Moreover, we do not understand why this question should be repeated, since full replies have been provided on many occasions, most recently in our document of 11 July 1991, and the relevant legal texts were provided to the Working Party in a special document Spec(88)21 of 27 April 1988. These texts are explained in document L/6658, and also more recently in our written replies of 11 July 1991, answering Australia's original Question 1.

Question 1/8

The way in which this question is formulated means that it falls outside the Working Party's terms of reference. It is couched in the form of a flat assertion, starting from the idea that it is up to Switzerland to prove that that assertion is incorrect if it so believes. This reversal of the burden of proof is contrary to paragraph 4 of the Protocol of Accession, and Switzerland takes this opportunity to reaffirm that it considers that the measures taken under its Protocol of Accession are compatible with that Protocol and the conditions it contains. It is inherent in the nature of paragraph 4 of the Protocol that it covers measures that are not entirely consistent with the General Agreement.

Questions 1/9 and 1/10

It should be recalled that the objectives of Switzerland's agricultural policy are as follows:

- to supply the population with healthy and good quality food products at cheap prices;
- to ensure supplies at times when imports are disrupted, as well as a sound state of production preparedness;
- to protect and maintain cultivated areas, and contribute to the protection of the environment, plants and animals;
- to preserve a peasantry-based agriculture and promote decentralized settlement structures.

For the products subject to the "prise en charge" system, see the reply to question 1(i) from New Zealand.

For beef and pigmeat, the Order concerning slaughter animals stipulates that domestic production of slaughter animals should not cover more than 85 to 90 per cent of the country's needs for slaughter cattle and 95 per cent of veal and pigmeat needs. When these targets are exceeded, measures are taken to bring prices below the indicative price floor.

For all other products, the agricultural legislation does not set self-sufficiency targets.

#### Question 2

Australia does not consider Switzerland's response to our initial Question 7 to be adequate. Knowledge of the existence of a particular trade measure in 1966 does not, in itself, justify the continuation of that measure. To claim otherwise is to give a general grandfathering right to all Swiss agricultural measures existing in 1966, regardless of whether they were justified under paragraph 4 of the Protocol of Accession. This was not the intent of the Protocol. Indeed, if it had been, there would have been no need for paragraph 4 - Switzerland may have simply availed itself of the Protocol of Provisional Application of the GATT.

The whole point of paragraph 4 is that, by listing those GATT inconsistent measures that Switzerland could continue, it assumed that all other GATT inconsistent measures were not acceptable. One such measure is the traditional wine quota, which appears to be inconsistent with Article XIII of the GATT, and also with the specific requirement in paragraph 4, that the principle of non-discrimination be upheld.

Australia notes that New Zealand's initial question 3(v) contains five sub-questions relating to the wine industry, none of which have been adequately answered. We would be very much interested in having answers to these questions and also the following:

- How does the Swiss system of allocating increased imports between supplier countries ensure equity?
- How are consumer tastes and demand trends taken into account, given that the market is highly regulated and currently effectively excludes non-traditional suppliers?
- By what criteria does Switzerland balance the objectives of taking into account traditional trade patterns on the one hand and consumer tastes and demand on the other?
- What steps has Switzerland taken to enable it to lift its current emergency action on the imports of white wine in bottles?

Reply

See our reply to question 3(f) from New Zealand.

We wish to point out once again that consumer tastes and demand trends are taken into account through market forces; importers concentrate their purchases on products which respond to demand.

Question 3

On our initial question 4 relating to the "prise en charge" system, we do not consider that simply because the system may be more liberal than a quota system it follows that it is not related to Article III. Australia is of the view that the "prise en charge" system in its usual form constitutes a mixing regulation; where the substitute tax or other charges apply it would constitute an internal tax or regulation such as is prohibited under Article III:1 of the General Agreement.

The asserted greater liberality of the system compared to a straightforward quota system could be replicated by simply expanding existing quotas, or better still, replacing quotas with equivalent tariffs.

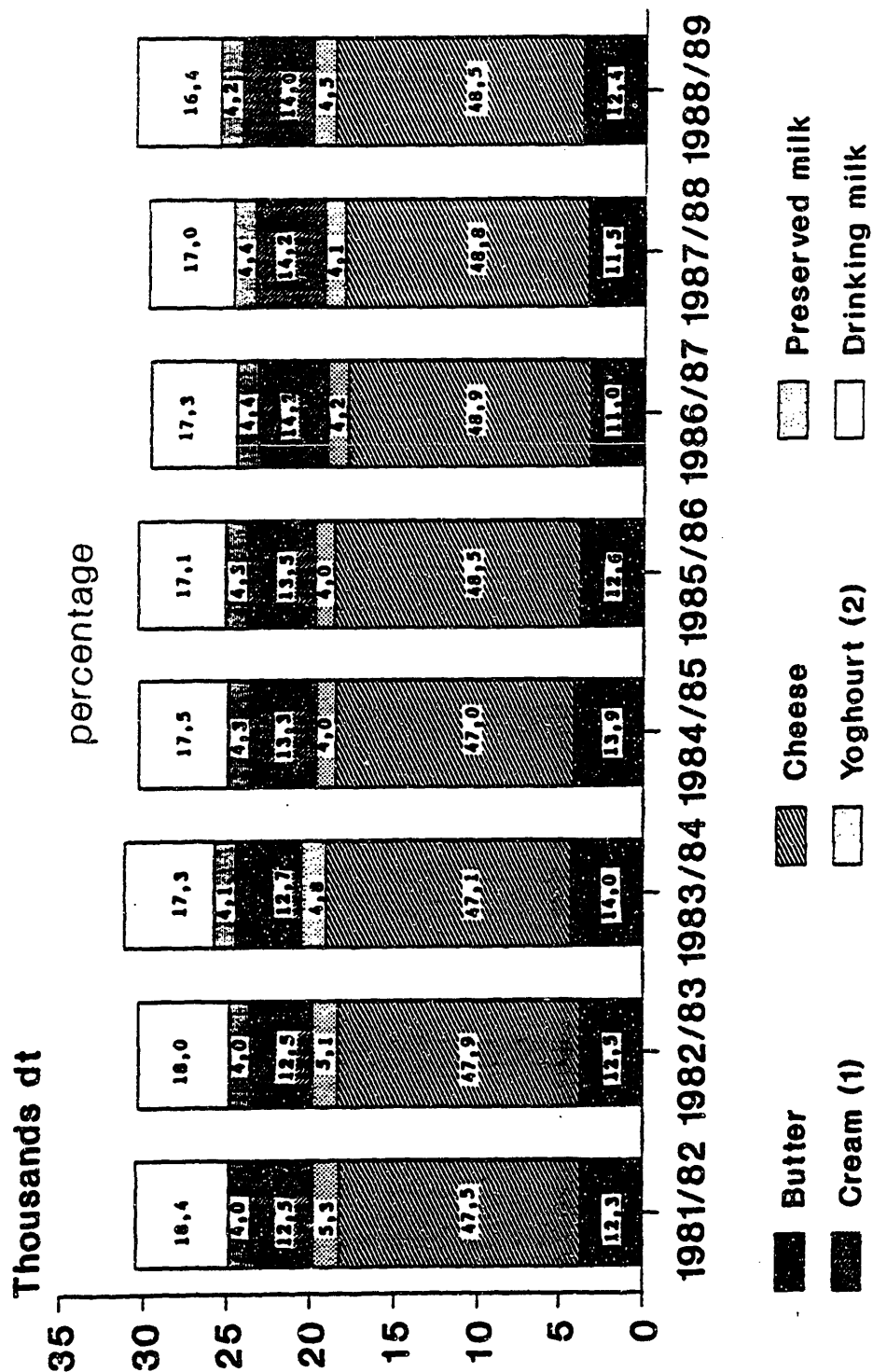
Australia also notes that the right to supplement the "prise en charge" system with a substitute tax is not uniform. It applies only to certain products and, in the case of wine, applies to importers of quality wines only. In certain situations this could discriminate against countries which do not specialize in exports of quality wines.

Reply

Please refer to Switzerland's replies to the questions from New Zealand concerning the "prise en charge" system.

ANNEX 1

Utilization of Milk Marketed from 1981/82 to 1988/89



(1) cream for consumption and cream for coffee  
(2) and specialties



ANNEX 2

Production of Butter by Accounting Year (1 November to 31 October)

	Tonnes									
	1979/80	1980/81	1981/82	1982/83	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89
Top-grade butter	21,381	19,966	17,452	18,206	21,475	21,105	19,985	17,754	18,160	20,380
Creamery butter and butter made from unpasteurized cream										
Creamery butter and butter made from unpasteurized cream, made from collected cream	74	136	113	120	362	404	344	318	351	308
Creamery butter made at cheese-making plants	91	81	47	63	101	144	134	176	176	217
Butter made from unpasteurized cream at cheese-making plants	443	412	431	402	428	463	395	369	356	340
Cheese-maker's butter:										
from collected cream	8,149	8,250	8,600	8,966	9,297	9,369	9,840	9,654	9,512	10,155
made at the plant from pasteurized cream	3,684	3,847	3,931	4,333	4,572	4,577	4,869	4,880	4,936	5,240
made at the plant from unpasteurized cream	674	593	577	596	617	584	623	690	657	614
Local sales:										
Creamery butter and butter made from unpasteurized cream	237	230	220	200	188	187	167	156	146	136
Cheese-maker's butter	614	618	592	575	572	534	525	529	533	488
	35,347	34,133	31,963	33,461	37,612	37,367	36,882	34,526	34,827	37,878

ANNEX 2 (cont'd)  
Production of Butter by Calendar Year

	Tonnes									
	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Top-grade butter	20,311	20,393	17,412	18,829	21,704	20,887	19,939	17,155	18,661	20,910
Creamery butter and butter made from unpasteurized cream										
Creamery butter and butter made from unpasteurized cream, made from collected cream	84	133	115	149	373	414	330	315	355	315
Creamery butter made at cheese-making plants	91	80	50	65	103	151	142	175	181	213
Butter made from unpasteurized cream at cheese-making plants	439	416	429	405	423	456	399	362	351	333
Cheese-maker's butter:										
from collected cream	8,124	8,320	8,619	9,095	9,337	9,398	9,830	9,394	9,843	10,227
made at the plant from pasteurized cream	3,686	3,882	3,967	4,427	4,554	4,600	4,899	4,867	4,967	5,291
made at the plant from unpasteurized cream	666	595	570	602	620	578	623	694	644	605
Local sales:										
Creamery butter and butter made from unpasteurized cream	238	231	213	198	187	183	166	155	145	134
Cheese-maker's butter	618	615	589	575	571	530	526	528	528	481
	34,257	34,665	31,964	34,345	37,872	37,197	36,854	33,645	35,675	38,509

These tables do not take into account an estimated 200 tonnes (204 tonnes as from 1988) not included in the production statistics.

ANNEX 3

Butter Consumption by Accounting Year and by Kind (1 November to 31 October)

Wholesale sales	Tonnes					
	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89
Top-grade butter, domestic and imported	11,659	11,864	11,928	11,249	10,664	9,813
Low-fat butter (quantities expressed in terms of normal butter)						(451) 272
Creamery butter and butter made from unpasteurized cream	1	2	7	1	1	1
Cheese-maker's butter	2,393	2,170	2,084	2,000	1,895	1,748
Cooking butter	27,681	26,543	26,596	25,372	25,328	24,155
Resolidified butter (quantities expressed in terms of normal butter)	(3,245) 3,933	(3,325) 4,030	(3,580) 4,339	(4,175) <sup>2</sup> 5,061	(4,434) <sup>2</sup> 5,374	(4,509) <sup>2</sup> 5,465
Total <sup>1</sup>	45,667	44,609	44,954	43,683	43,262	41,454
Local sales by cheese-making plants						
Creamery butter and butter made from unpasteurized cream	188	187	167	156	146	136
Cheese-maker's butter	572	534	525	529	533	488
Total	760	721	692	685	679	624
Consumption of butter not included in production statistics	200	200	200	200	204	204
Total butter consumption	46,627	45,530	45,846	44,568	44,145	42,282
Per capita consumption	7.1 kg.	6.9 kg.	6.9 kg.	6.6 kg.	6.5 kg. <sup>3</sup>	6.2 kg. <sup>3</sup>

<sup>1</sup>These sales breakdown into the following categories of purchases:

Resellers and end-users (excluding processed cheese and edible fat manufacturers)	44,260	43,215	43,463	42,122	41,651	39,744
Processed cheese manufacturers	382	399	410	391	354	368
Edible fat manufacturers	1,025	995	1,081	1,170	1,257	1,342
Total wholesale sales as above	45,667	44,609	44,954	43,683	43,262	41,454

<sup>2</sup>Including imported butter oil

<sup>3</sup>Provisional

ANNEX 3 (cont'd)  
Butter Consumption by Calendar Year and by Kind

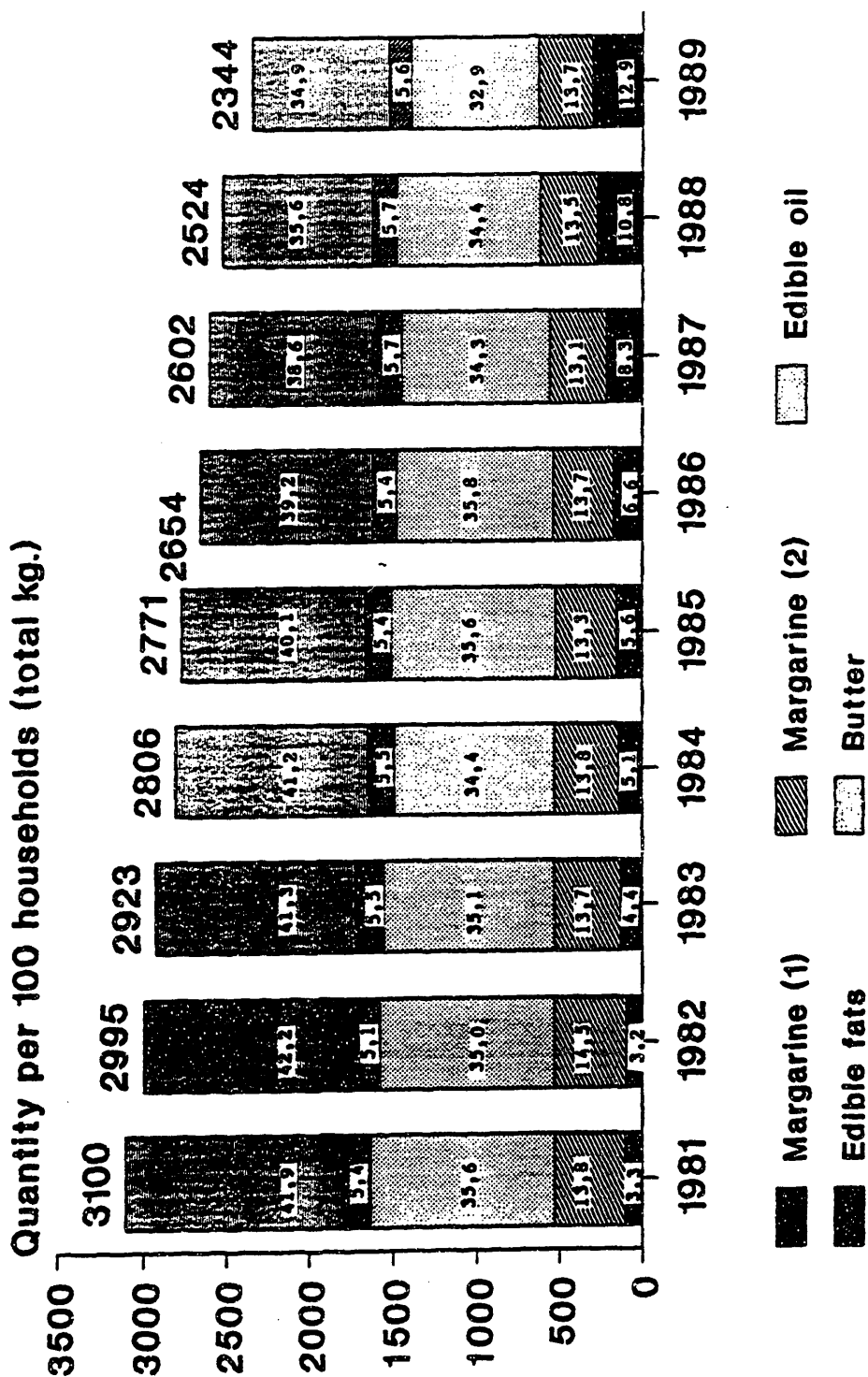
	Tonnes					
	1984	1985	1986	1987	1988	1989
Top-grade butter, domestic and imported	11,636	11,907	11,879	11,175	10,522	9,857
Low-fat butter (quantities expressed in terms of normal butter)						(575) 346
Creamery butter and butter made from unpasteurized cream	3	2	7	1	1	1
Cheese-maker's butter	2,367	2,151	2,075	1,986	1,878	1,679
Cooking butter	27,415	26,623	26,232	25,673	25,019	23,950
Resolidified butter (quantities expressed in terms of normal butter)	(3,203) 3,882	(3,403) 4,125	(3,664) 4,441	(4,296) 5,207 <sup>1</sup>	(4,327) 5,245 <sup>1</sup>	(4,572) 5,541 <sup>1</sup>
Total	45,303	44,808	44,634	44,042	42,665	41,374
Local sales by cheese-making plants						
Creamery butter and butter made from unpasteurized cream	187	183	166	155	145	134
Cheese-maker's butter	571	530	526	528	528	481
Total	758	713	692	683	673	615
Consumption of butter not included in production statistics	200	200	200	200	204	204
Total butter consumption	46,261	45,721	45,526	44,925	43,542	42,193
Per capita consumption	7.0 kg.	6.9 kg.	6.8 kg.	6.7 kg.	6.5 kg. <sup>2</sup>	6.2 kg. <sup>2</sup>

<sup>1</sup>Including imported butter oil

<sup>2</sup>Provisional

# ANNEX 4

Trends in total Consumption of Fats by Private Households According to Surveys Carried out by IHA (Market Research Institute)



(1) Low-calorie margarine  
 (2) Normal margarine

Contraction of market for fats in private households from 1981 to 1989: 24.4% = 766 kg.