

GENERAL AGREEMENT ON TARIFFS AND TRADE

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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 was established by the Council on 7 December 1981 with the following terms of reference:

"To conduct the fifth 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 15 February and 4 March 1982 under the chairmanship of H.E. Ambassador Kâmrân Inan (Turkey). It had before it the annual reports by the Government of Switzerland under paragraph 4 of the Protocol, concerning the years 1978, 1979 and 1980, respectively (L/4881, L/5073 and L/5208 and Addenda).

3. The Working Party expressed its appreciation for the three annual reports and for the willingness of the Swiss authorities to participate in this Working Party.

4. Several members of the Working Party noted that the provisions of paragraph 4 of the Protocol had a particular relevant effect for the agriculture sector. In this connection, they stated the attachment of their authorities to the principle of trade liberalization in the agriculture sector. They reiterated the need for the CONTRACTING PARTIES to keep under constant review those cases where derogations exist from the application of GATT rules. Referring to the application of the provisions of paragraph 4 of the Protocol under review by the Working Party, they furthermore expressed their concern that Switzerland should apply the restrictions maintained under it in full accordance with both the Preamble of the Protocol and the last sentence of paragraph 4 of such Protocol.

5. One member of the Working Party noted that, as a matter of principle, his country was opposed to the non-application of GATT rules in the agriculture sector. He said that, by maintaining the exemption provided for in paragraph 4 of the Protocol, Switzerland was not obliged to liberalize its agricultural import regime while, at the same time, being entitled to share the benefits of liberalization in trade in both agricultural and manufactured products by other contracting parties. He further considered that the task of the Working Party was to assure itself on four points: (i) that Switzerland's dispensation in respect of Article XI was being utilized only to the extent necessary to permit

it to apply import restrictions pursuant to legislation specified in paragraph 4 of the Protocol; (ii) that Switzerland, in applying its import restrictions, was nevertheless observing to the fullest possible extent the appropriate provisions of the General Agreement; (iii) that these restrictions were applied in such a manner as to cause minimum harm to the interests of contracting parties; (iv) that all restrictions imposed under the laws mentioned in paragraph 4, were in accordance with the principle of non-discrimination. It was important that an additional factor listed in the preamble to the Protocol and on the basis of which the exemption was originally granted be kept in mind: namely, Switzerland's undertaking to provide for acceptable conditions of access for agricultural products.

6. Commenting on this point, the representative of Switzerland recalled in detail both the objectives and the aims of the agricultural policy applied by his country pursuant to existing national legislation. He stressed that his country's agricultural policy should be regarded as an integral part of the long-standing policy of neutrality followed by Switzerland. The restrictive measures implemented in conformity with paragraph 4 of his country's Protocol of Accession were considered by his authorities as conform to the needs of the country. Nevertheless, they were applied only when they were regarded as necessary to complement other existing measures aimed at implementing the objectives of the national agricultural policy, notably with respect to Switzerland's long-term supplies. Furthermore, the level of tariff protection was decreasing in real terms in a time of strong inflation given that the tariff system applied by Switzerland was based on the weight of imported products and not on their values.

7. Turning to the juridical aspects of the provisions of paragraph 4 of his country's Protocol of Accession, he recalled that the latter was a mutually negotiated and accepted exemption of Switzerland from applying Article XI in the agriculture sector. He mentioned the long historical process of Switzerland's accession to the GATT. During this process, in order to conform with its national legislation, Switzerland could neither expressly nor tacitly assume the obligations derived from Article XI of the General Agreement as far as the agriculture sector was concerned. He also recalled that this was indeed the reason behind Switzerland's decision not to join the GATT during eleven years and then to accede only provisionally to it in 1958 when the CONTRACTING PARTIES had authorized his country to be relieved from the application of the provisions of Article XI to the extent necessary to permit the implementation of its national agricultural legislation. When granting Switzerland full accession the CONTRACTING PARTIES had therefore confirmed their decision to relieve it from the obligations under Article XI in respect of agriculture subject, however, to certain conditions. These were that Switzerland should, inter alia, so far as was consistent with the implementation of the laws listed in paragraph 4, observe to the fullest possible extent the appropriate provisions of the General Agreement, and in particular should endeavour to ensure that the measures concerned were being applied in such a manner as to cause minimum harm to the interests of contracting parties; and that it should respect the principle of non-discrimination. Contrary to a waiver, however, there were no obligations for Switzerland to either reduce or eliminate in a given period of time the quantitative restrictions

maintained under paragraph 4. Moreover, Switzerland had paid for the terms of its accession with concessions granted in terms of duty reductions and bindings for a considerable number of products, mainly in the industrial sector but also in the agriculture sector, thus balancing its rights and obligation under the General Agreement.

8. Questions were put regarding the possibilities for Switzerland to convert existing quantitative restrictions into custom duties, so as to afford greater transparency and less discrimination. A member of the Working Party further asked whether Switzerland could have not acceded without any reservation to the GATT and instead utilized the appropriate safeguard mechanisms under Article XIX. The representative of Switzerland explained that, in order to comply with the provisions of existing national agricultural legislation, his authorities had recourse to a number of measures, both domestically and at the frontier. Existing quantitative restrictions were an indispensable complement to all these measures and were applied only when necessary. He stated that this system was causing a minimum restrictive effect as illustrated by the net-ratio of Switzerland's self-supply which was of the order of 55 per cent only. He was also of the view that in the specific situation of Switzerland where domestic agricultural supply was subject to wide fluctuations, the use, for instance, of a system based on variable levies would most likely be less transparent than the opening up of Swiss market as required by domestic demand. With regard to Article XIX, he stated that in invoking it instead of having recourse to the Protocol, Switzerland would be recognizing that it should endeavour gradually to reduce and eventually eliminate its quantitative restrictions. The effects of such a dismantling would be contrary to the objectives of Swiss agricultural legislation. The use of Article XIX would be a matter of bad faith inasmuch as it would constitute a continuing undertaking of an eventual course of action.

9. A member of the Working Party asked whether the Swiss authorities would be disposed to negotiate existing restrictions in the agriculture sector, with a view to liberalizing the market, and if so on what conditions. In his reply, the representative of Switzerland indicated that his authorities were ready to examine any negotiating proposition. However, in view of the capital importance of agriculture in the context of his country's policy of independence, he was of the view that such negotiations would no doubt be very difficult and probably hardly rewarding for partners interested in the Swiss market, especially as that market was already largely open to them. He furthermore stressed that this question did not fall under the scope of the examination.

10. A member of the Working Party took note of and expressed disappointment at the replies of the representative of Switzerland concerning the difficulties to convert existing quantitative restrictions into custom duties and to liberalize the restrictions through negotiations.

11. Questions were put regarding conditions of access for agricultural products to the Swiss market and how these had evolved since Switzerland acceded to the GATT. A member of the Working Party stated that an examination of the statistical material contained in Annex I of the fifteenth annual report (L/5208) revealed that of the 28 products listed, there was a decline in the level of imports of 19 of them. On looking at trends over the past five years, instead of three, the situation appeared slightly less grim as out of the 28 products, the level of imports had declined for 10, it had remained approximately constant for 11, while it had increased for 7 of them. However, he expressed his concern when confronting this situation alongside the provisions of paragraph 4 of the Protocol relating to acceptable conditions of access for agricultural products to the Swiss market. Additionally, he said that the question must arise as to how the conditions stipulated in paragraph 4 of the Protocol could be met when the use of the exemption appeared to be resulting in a decline in the level of access. He asked whether the Swiss representative could demonstrate that there had been no decline in the overall level of access for agricultural products in recent years, noting that, on the basis of statistics available, declines in the volume of imports in the period 1966-67 to 1981 had been recorded in respect of bread wheat, whole milk powder, casein, meat and animal fats and apples and pears. While the items he cited might not be representative for a total picture, he felt that some questions existed as to the extent of the recourse to provisions of paragraph 4 and as to whether only "minimum harm" was being caused to the interests of contracting parties.

12. In his reply, the representative of Switzerland recalled that only certain agricultural products were subject to quantitative restrictions. To have an overall view of the development of agricultural trading relations, it was necessary to consider all imports under CCCN Chapters 1 to 24. In constant terms, the value of those imports had regularly increased, from Swf 3.3 billion in 1967 to Swf 4.1 billion in 1981 and this despite the decrease of population. In this respect, he recalled that Switzerland continued to import the highest net amount per capita of agricultural products in the world. Imports of products subject to quantitative restrictions had also increased overall, although with some fluctuations due to a number of factors. He furthermore stated that while the expansion of the trade of developing countries was not specifically mentioned among his country's objectives in connexion with paragraph 4 of its Protocol of Accession, the effect of the measures applied was to take into account the interests of developing countries. For example, in the case of the so-called three-phase system, developing countries were favoured by the fact that the free phase usually corresponded to the production season of southern-hemisphere countries. Consequently, developing countries could have a trading advantage as compared with other exporting countries even in the case of products subject to quantitative restrictions.

13. Several members of the Working Party put questions on the systems applied for and the methods of administering quotas. A point was also raised regarding bilateral agreements under which quotas on some restricted products were granted in exchange for concessions given to

Switzerland. Some members also expressed their concern regarding the position of new and non-traditional suppliers vis-à-vis the systems applied by Switzerland. The representative of Switzerland replied that a multiplicity of systems existed in his country. That very multiplicity was clear evidence of the state of adaptation of each system to the products concerned and its high degree of flexibility. He stressed that, while exporters might experience problems in the Swiss market, those problems existed mainly at the level of private operators, for in order to sell goods on the Swiss market, one had to find an importer in the country. He recalled furthermore that all the quotas were established by commissions in which all interests (importers, producers, consumers) were represented. In the case of meat, the quota was fixed on a fortnightly basis depending on the economic needs of the market and, with one small exception, it was global. Imports within that quota thus depended only on the prices and qualities offered. In the case of fodder grains, a global quota was established on a quarterly basis and made available to members of the Swiss Grains and Fodders Co-operative (Société Coopérative Suisse des Céréales et des Matières Fourragères).

14. In answer to a question regarding imports of cut flowers, the representative of Switzerland said that there were indeed three bilateral quotas for such imports. However, the importation of flowers was free during the winter and that meant a strong possibility of exports by southern hemisphere countries. For the rest of the year there was a very large global quota, which posed no problems of access to the Swiss market.

15. He recalled that most fruits and vegetables were imported into Switzerland without restriction throughout the year, while the remainder were subject to the three-phase system. The system established a quota based on supply and demand conditions; if the domestic supply was non-existent or largely inadequate, importation was free (first phase). If before or after the main harvest, the supply was partly adequate, then a quota was established (second phase), while imports were prohibited during the main harvest (third phase). The procedure was relatively simple, for the phases were announced in writing by the Exports and Imports Division in the form of a synoptic table published at each change of phase. Interested supplier countries were kept informed through their embassies in Bern. In the case of transition from one phase to a more restrictive one, the time-limit was eight days. In the opposite case, there was no time-limit, but importers on the Swiss market, who followed changes in stocks of fruit and vegetables from day to day, could foresee any relaxation of import measures and they were therefore able to get in touch, and make arrangements, with foreign suppliers well before the Swiss authorities announced the start of a less restrictive phase.

16. As to wine, the representative of Switzerland recalled that the situation on the Swiss wine market was rather delicate owing to the fact that wine was a traditional product greatly affected by changes in weather conditions. Quotas were set by contract with traditional suppliers in accordance with a practice that predated Switzerland's

accession to the GATT. Such contractual quotas were however supplemented by quantities, of which part at least was at the disposal of other suppliers. The wine was imported through import licences which were valid for three months and which could be prolonged twice for two months. On the other hand, imports of red wine in bottles were not subject to quantitative restrictions. Turning to the question of bilateral agreements comporting the granting of quotas by Switzerland, he recalled that such quotas existed exclusively with respect to wine, cut flowers and certain meat preparations.

17. In response to questions on future prospects for agricultural trade in the Swiss market and on adjustment measures taken to that effect by the Swiss authorities, he recalled that his country had introduced restrictions on domestic milk and meat production. He also recalled that between 1975 and 1980, eight thousand farms had disappeared in Switzerland, thereby allowing structural adjustments.

18. A member of the Working Party asked for clarifications on existing legislation on alcohol in Switzerland, particularly on how this law operated to restrict consumption. In his reply, the representative of Switzerland explained in details the various provisions by which the Federal Law on Alcohol operated to reduce domestic consumption of alcoholic beverages.

19. A question was raised concerning the possible restrictive effects of the 1972 Order regarding External Economic Measures. The representative of Switzerland stressed that that Order, which was primarily of an administrative character, did not, of itself, have restrictive effects on trade.

20. Questions were asked on the methods of administering import licences. A member of the Working Party questioned whether the licensing system applied by Switzerland was really based on automatic licences. The representative of Switzerland replied that import licences in GATT terms could not be equated to quantitative restrictions and were therefore not covered by the present examination. They were required in cases where import control was necessary owing to the existence of a delegated public monopoly, in the interests of public order, or to ensure compliance with an obligation arising from an international contractual obligation. Imports of fodders subject to a price supplement were part of a State monopoly delegated to the Swiss Grains and Fodders Co-operative, which administered the monopoly along with the Exports and Imports Division of the Ministry of Public Economy. The monopoly was then delegated by the Co-operative to private importers whose goods it bought before customs clearance and resold to them after they were freed for trade. Actually, that amounted to import licensing subject to the payment of price supplements, collected with a view to orientation of domestic production. Referring to the system of mandatory stocks, he added that it was applied in his country under legislation on the preparation of economic national defense and that it was not pursued through the introduction of quantitative restrictions. Its application was not discriminatory and was necessarily dependent on import licensing which could facilitate control of the level of stocks.

Such stocks had no function of price regulations and were applicable also to domestic production. With regard to the system of automatic licensing to ensure certain reference prices for cheeses, he stated that imports of hard and semi-hard cheeses were subject to licensing upon presentation of an attestation concerning the frontier price or an export attestation of the country of origin showing that their price was not lower than the established price. Turning to phyto-sanitary regulations, he explained that those regulations were also applied to domestic products and concerned plant pests and disease-bearing agents. Goods subject to the ordinance on the protection of vegetables could only be imported into Switzerland after they had met phyto-sanitary conditions and the phyto-sanitary tax had been paid. That system also necessarily involved licensing.

21. A member of the Working Party asked whether imports of bottled red wine were subject to licences. In his reply, the representative of Switzerland stated that no quantitative restrictions were imposed on imports of bottled red wine which were, however, partly subject to additional custom-duties and, therefore, such imports required a licence.

22. A member of the Working Party expressed his concern for the level of quotas which were applied to his country's exports of red wine in cask and salami. Having recalled that these quotas were established in 1973, he pointed out that since then export capacities of his country had been largely increased and that his authorities would like the quotas to be adjusted accordingly. He also indicated that the Swiss authorities had recently increased the charges on imports on corn flour, pellet and lucerne pellet. Owing to this increase, his country's exports in these products had sharply declined in 1981. The representative of Switzerland indicated that the question was rather of a bilateral nature. As to crude fodders, Switzerland's level of self-supply was relatively high and they were imported only in case of poor harvests.

23. Several members of the Working Party having made frequent reference to bilateral agreements and bilateral quotas, the discussion reverted to the general aspects of this subject. Members indicated that the number and size of bilateral quotas were likely to determine the access for suppliers who did not have quotas. A member asked for details on the nature of these quotas and noted that this information was not contained in any of the annual reports submitted by Switzerland under paragraph 4. A further member expressed his concern that the implementation of bilateral agreements could involve discrimination. A point was also raised on the opportunities open to new suppliers for negotiating such agreements.

24. On the subject of a number of bilateral agreements to which Switzerland was a party, and as a result of which quantitative restrictions were in operation, a member of the Working Party sought advice as to which bilateral arrangements had been entered into by Switzerland since that country's accession to the GATT, together with details of the size of the quotas, the beneficiaries of those quotas,

the difference between conditions of access for quota holders as compared with other contracting parties, the volume of imports under the quotas and the opportunities which non-quota holders had for exports to Switzerland. He added that it was his understanding that contracting parties had been unable to confirm that most of these arrangements were consistent with the General Agreement. Their existence was of concern in that it left open the question as to whether or not practices carried out under the aegis of these agreements discriminated against the trade interests of third countries. He therefore sought advice as to how Switzerland justified these practices in terms of the words of paragraph 4 of the Protocol requiring minimum harm to the interests of contracting parties and the application of all restrictions on a non-discriminatory basis.

25. Commenting, the representative of Switzerland stated that in most cases these agreements were of long-standing, as for wine, and quotas were allocated according to these. Then, quotas were granted to traditional suppliers or suppliers with major interests. However, depending on the market situation, demand and domestic production, additional quotas were granted. He also explained that these agreements had been generally negotiated within the framework of broader negotiations, as a part of final package-deals. In his view, however, the possibility for new suppliers to expand their agricultural exports in the Swiss market was more dependant on their capacity to create an appropriate marketing and distribution system than on eventual bilateral quotas.

26. Several members of the Working Party felt that the annual reports by the Swiss Government should furnish more detailed information on each product subject to restriction and on the methods used to operate import restrictions. They therefore reiterated their wish that, in the future, the detailed information provided in the course of the present Working Party be given sufficiently in advance in order to facilitate the thorough review of the application of Switzerland's restrictions in accordance with the provisions of paragraph 4 of the Protocol. Such information would include, inter alia, details of bilateral and plurilateral agreements to which Switzerland was a party, the volume of each quota currently in operation, the manner in which the quotas are administered and applied, access possibilities for new or small exporters, trade actually carried out under the quotas.

27. The representative of Switzerland drew attention to Addendum 1 to document L/5208 which contained additional statistical materials covering imports by provenance of the principal products covered by the provisions of paragraph 4 of the Protocol. He considered that this material could at least partly respond to the request of some delegations for additional information and expressed the willingness of his authorities to provide this kind of information in each of the future annual reports. He furthermore reminded the Working Party that detailed information concerning the various systems of restrictions were to be found in the third annual report of the Swiss government regarding paragraph 4 of its Protocol of Accession (L/3124) and that these systems had not changed since then. As to the data related to the bilateral and

plurilateral quotas, he indicated that the Swiss authorities would examine if further information could be given and be included in the forthcoming reports taking into account the different types and systems of quotas, some of them being established only during the year. He further indicated that his delegation or his authorities in Bern were ready at any time to supply further statistical information which might be requested bilaterally. In conclusion, he recalled the particular position of the agriculture in his country, but stated the concern of his authorities to meet to the extent possible the needs and wishes of their trading partners. Finally, he thanked the other members of the Working Party of their interest in examining the three years under review.

28. The Working Party was grateful to the Swiss authorities for the information provided and expressed its thanks to the representative of Switzerland for his exhaustive replies and his very co-operative attitude.

ANNEX/ANNEXE

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