

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/6003
6 June 1986

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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 2 October 1984 with the following terms of reference:

"To conduct the sixth 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 18 March, 28 June and 29 October 1985 under the chairmanship of Mr. István Major (Hungary). It had before it the annual reports by the Government of Switzerland under paragraph 4 of the Protocol covering the years 1981, 1982 and 1983 respectively (L/5423, L/5596, L/5673 and Add.1).

3. In his introductory statement, the Swiss representative underlined that during the period under consideration no changes had been made to the legal basis of the restrictions applied by Switzerland to agricultural products; quantitative restrictions had applied to the same products as in the preceding years and there had been no changes in either the systems of restrictions or the basis of their operation. Generally speaking, imports had in each year reached a level comparable to that of the preceding year. The objectives of Switzerland's agricultural policy remained, on the one hand, to maintain hard-core agricultural output to ensure domestic supplies, a demographic balance partly linked to it and protection of vital bases (soil, countryside, environment), and in addition to take into consideration the interests of other sectors of the economy, implying, inter alia, harmonious development of agricultural imports. The central concern of Switzerland's agricultural policy was that supply must be assured in times of trouble, while in normal times domestic production covered only a limited proportion of foodstuff consumption. That objective stemmed from fundamental considerations bearing on Switzerland's sovereignty, security and armed neutrality and it took account of the country's particular geographical situation. The policy was accordingly based on a system of permanent reserve stocks of essential products and on a plan for crop extension in case of need. For attainment of that objective to be possible, hard-core agricultural output must be maintained in normal times from the three-fold aspect of availability of land that was either unused or could rapidly be brought under cultivation in troubled times, maintenance of a farm population able to carry out the crop extension plan, and reserve stocks of other production means needed to that

end. High production costs and wage levels in Switzerland were additional sources of difficulty for the country's agriculture. Without the possibility of attaining an income level comparable to that found in other sectors, the agricultural sector would not be able to attain the objectives set for it. It should also be borne in mind that because of the high standard of living in Switzerland, possibilities of increasing foodstuff demand were greatly limited if not exhausted, at least from the overall aspect in terms of income elasticity. Furthermore, the annual population growth rate had been only 0.2 per cent between 1970 and 1980 and was not expected to rise much in future. Lastly, natural conditions - climatic and topographical - were in general relatively unfavourable. The high level of Switzerland's agricultural imports in absolute terms during the period 1981-1983: (Sw F 6 billion per annum, with an annual trade deficit of some Sw F 4 billion) as well as per capita (Sw F 600 per annum), reflected their important rôle in meeting the country's foodstuff needs, which in net terms were covered by domestic production to the extent of only 55 to 58 per cent.

4. The Working Party thanked the Swiss representative for his detailed statement and for the information furnished.

5. Members of the Working Party pointed out that in allowing Switzerland to derogate from the provisions of Article XI, the CONTRACTING PARTIES had nevertheless laid down certain obligations for that country. The reservations in respect of Article XI were to be applied only to the extent necessary to enable Switzerland to apply restrictions pursuant to the laws mentioned in paragraph 4 of the Protocol while observing to the fullest possible extent the appropriate provisions of the General Agreement, and in such a manner as to cause minimum harm to the interests of contracting parties. Furthermore, consistently with Article XIII of the General Agreement, Switzerland must observe the principle of non-discrimination in applying the said restrictions. It was further noted that there had been no appreciable improvement in access to the Swiss market for agricultural products whereas, under the Protocol of Accession, Switzerland had undertaken to ensure acceptable conditions of access for those products; if Switzerland did not seriously consider how to implement those provisions related to the terms and conditions of its Protocol of Accession, contracting parties would have to reconsider their acceptance of the Swiss reservation. One member of the Working Party reiterated that his country was maintaining a reservation on the terms of Switzerland's accession to the General Agreement because of its conviction that like treatment must be given within the framework of GATT to trade in agricultural products and in manufactures. Contracting parties must observe their obligations as well as their rights, and no contracting party should be exempt from having to take the necessary action to liberalize its agricultural trade when it was benefiting from liberalization measures in the agricultural and manufacturing sectors as a result of collective action by other contracting parties.

6. Members of the Working Party noted that the protection afforded to Switzerland's agricultural production was no incentive to adjustment. Because of the measures applied by Switzerland, exports that could not reach that destination were either diverted to other markets or did not take place. Adjustment measures had to be taken at the world market level and, more particularly, by efficient producers, whether or not they were exporting to Switzerland. The incidence of the system applied was therefore not negligible, whether from the aspect of international trade or of GATT.

7. Members of the Working Party noted that foodstuff security matters could take various forms; market stability did not necessarily mean self-sufficiency and was not inconsistent with harmonious development of trade. Self-sufficiency was not in the long-term interest of the economy and production targets should not be insulated from international competition. The trend in Swiss agricultural policy, due to many factors and the fact that the relevant policy objectives were not different from those of other contracting parties which had set no reservation on application of Article XI, should allow Switzerland to achieve fuller integration in the GATT system.

8. One member of the Working Party said that difficulties resulting, inter alia, from quotas, licensing and monopoly taxes on alcohol had already been mentioned and still existed. In addition, measures applied by Switzerland together with currency fluctuations were detrimental to stability and forecasting. That trade barrier should be removed in pursuance of the Ministerial Declaration and the Decision adopted by the CONTRACTING PARTIES at their fortieth session. The Committee on Trade in Agriculture could be an appropriate forum for discussion to that end.

9. The concern to cause minimum harm to the interests of contracting parties was central to the work of the Committee on Trade in Agriculture. It remained to see how Switzerland intended to respond to that concern and what action it would take.

10. One member of the Working Party underlined the importance of the characteristics of agriculture and the fact that Swiss agricultural policy was determined by those recognized characteristics, in particular the need for a certain level of self-sufficiency in the event of an emergency situation. The Working Party was not called upon to determine whether the Swiss Protocol of Accession, which reflected the specific characteristics of agriculture, was well justified. Solutions to the problems before the Working Party could be found in the Committee on Trade in Agriculture which was to examine all applicable measures in a broad context and seek practical and viable rules and disciplines that could be applicable to all countries.

11. In connection with observance of the principle of non-discrimination and the need for transparency, several members of the Working Party noted a shortcoming in the reports presented. As had already been mentioned in 1969 (L/3250, paragraph 17), the Working Party should have details regarding the operation and administration of quotas applied by Switzerland, in particular, their volume, allocation and actual imports under quota. That information was essential for determining whether or not application of the Swiss quantitative restrictions was discriminatory and consequently consistent with the provisions of the Protocol, and furthermore for ascertaining that their application was designed to cause minimum harm to the interests of contracting parties. The Protocol required Switzerland to furnish such confirmation.

12. The representative of Switzerland outlined the history of the Protocol and underlined that the CONTRACTING PARTIES, recognizing Switzerland's special situation, had agreed to that special accession arrangement while stipulating a framework and certain conditions. Having "paid" for the Protocol, Switzerland could not accept the idea that on that occasion any imbalance had been created between the rights and obligations of the contracting parties. The status granted to Switzerland within GATT could not be assimilated to a reservation; it was an exemption granted by the CONTRACTING PARTIES on the basis of circumstantial considerations. With respect to the definition of acceptable conditions of access for agricultural products, the elements of Swiss policy that had been mentioned confirmed the relatively liberal de facto character of the Swiss market in regard to imports of those products. In considering possibilities of distortion, account should furthermore be taken of the relative size of the Swiss market: it comprised only 6 million consumers and demand in it was stagnant. As to foodstuff security and self-sufficiency, Switzerland's target was to ensure survival of the population within a period of three years by maintaining hard-core agricultural production on the one hand and, compulsory stocks to ensure supplies during the intermediate period on the other hand. It was not a matter of ensuring absolute self-sufficiency in normal times.

13. Referring to the fact that the provisions of the Protocol were no incentive to adjustment of Swiss agriculture, the representative of Switzerland recalled the objectives of his country's agricultural policy. Frontier measures and their application were geared and adapted to needs. Because of stagnant demand, measures were also taken to limit domestic production. That was the case in particular in respect of milk, animals for slaughter, eggs, rapeseed and wine. One aspect of Switzerland's agricultural policy covered the domestic sector where production structures were continually developing, as reflected in reduction of labour and concentration of undertakings, even though that trend had slowed because of social and economic reasons. The trend showed that production was not sheltered as much as some parties thought and, furthermore, that the Swiss authorities were taking action to control it. Exemption from the provisions of Article XI nevertheless remained necessary because of the

objectives of Swiss agricultural policy. The Swiss representative noted that the lack of foreseeability and stability of exports to Switzerland, which had already been mentioned, was primarily attributable to the fact that purchase policies were conditioned by the market situation, all the more so because Switzerland's purchases were only marginal in relation to overall availabilities.

14. The Swiss representative pointed out that the current discussions among contracting parties on agricultural matters, in which Switzerland was taking an active part, did not fall within the mandate of the Working Party which was to review application of the provisions of paragraph 4 of the Protocol of Accession, and that paragraph bore on Article XI in its existing form. Some of the questions raised should therefore be discussed in other GATT fora.

15. Switzerland had furnished information on imports by origin of the products covered by the Protocol, and had declared its readiness to consider what additional information it could furnish regarding the various types and systems of quotas (some of which were only established in the course of the year). Such quotas played a rôle in two sectors - cut flowers and wine; their existence did not prevent exports by other suppliers and did not hamper flexibility as to the origins of imports. The difference between the size of quotas and actual imports reflected the existing margin for manoeuvre.

16. In reply to questions on specific products, the Swiss representative gave the following additional indications:

Cut flowers: The quota period was from 1 May to 25 October, imports being unrestricted during the rest of the year. Bilateral contractual quotas were fixed and at present amounted to 650 tons for the EEC, 45 tons for Colombia, 50 tons for Spain. Imports exceeded that quota volume and had developed substantially - from 653 tons in 1966 to nearly 2,700 tons in 1983. Demand was currently tending to level off. Expansion possibilities for imports from the Southern hemisphere were reflected in the levels reached: 28 tons in 1966, 700 tons in 1984. Some cut-flower purchases were made on the Amsterdam exchange so that the product could in fact come from various sources. The restrictions applied on cut-flower imports were conditioned, in accordance with Switzerland's agricultural policy, by the need to maintain a farm population and to preserve land suitable for new crops. Imports of dried flowers were unrestricted.

Wine: Bilateral contractual quotas were granted to a number of countries for red wine in casks, in certain cases for a very limited volume. The historical reason for their existence was outlined in the course of the 1982 Working Party. Actual imports totalled 1,700,000 hl in 1981, 1,700,000 hl in 1982 and 1,510,000 hl in 1983. Under global additional autonomous quotas, 500,000 hl were imported in 1981, nearly 600,000 hl in 1982 and 440,000 hl in 1983, thus ensuring a margin of manoeuvre for countries without a quota allocation. With respect to white wine in casks, there were a limited number of bilateral quotas covering a

total of 17,200 hl. Global special quotas were opened in 1981 and 1982 in the amount of 100,000 hl and 215,000 hl respectively. Because of the domestic production trend, no special quotas were opened in 1983. A global quota had been opened for wine intended for special use and was in the amount of 82,000 hl in 1983. The global basic quota for white wine in bottles totals 35,000 hl and additional quotas for the same amount were opened in 1981 and 1982. No additional quotas were opened in 1983. Imports of red wine in bottles were free from the quantitative aspect. There was a global tariff quota of 150,000 hl.

Fruit: The so-called three-phase system was applied. It was noted that this system was particularly restrictive; on the basis of trade practices and the manner in which the system was now conceived, however, it should not constitute the handicap mentioned, in particular by Southern hemisphere countries. The Swiss market had traditional suppliers, generally neighbouring countries. Possibilities for placing products on the Swiss market were known relatively early in the year. Furthermore, in general and in practice, products from the Southern hemisphere were not the subject of specific consignments but were purchased in European ports. Administration of the system was described during the last review, when it was noted that information on developments was furnished on a continuing basis.

Milk and dairy products: The dairy economy was of particular importance for Switzerland. While the production quota system was not flawless, it nevertheless represented a real constraint and had proved its worth. The Swiss Butter Supply Centre (BUTYRA) was an institution of a monopoly character comprising all interested bodies and circles. It administered butter imports (in respect of quantity, quality and price), buys in domestic production and made its purchases in relation with the market situation and consumer tastes. Imports covered 25 per cent of consumption. Switzerland had traditional suppliers, but offers can always be made to BUTYRA by other suppliers. Since import charges were used to finance the dairy account, it was in the interest of BUTYRA to buy on the best possible terms.

Cattle and bovine meat: The quota administration and allocation criteria were described in the report of the 1982 Working Party. Some special quotas were fixed.

Sheep meat: Imports were free of quantitative restriction. There was a buying-in system for domestic production. Because of considerable expansion of consumption, the self-sufficiency ratio had declined appreciably since the mid-1970s.

17. One member of the Working Party asked whether the measures applied in respect of white wine in bottles were consistent with paragraph 4 of the Protocol of Accession. The import restrictions that Switzerland applied, by derogation from Article XI of the General Agreement, were required to be consistent with certain Swiss legislation. However, Article 23 of the Law on Agriculture, of 3 October 1951, under which those measures had been adopted, stipulated that measures could only be taken if certain conditions were fulfilled, namely if imports were jeopardizing the disposal of

agricultural products at equitable prices in accordance with the principles of that Law. The conditions established by Article 23 were not taken into consideration in respect of measures in the wine sector. Furthermore, the duration of measures (whether for a three-year period or indeterminate) did not take account of possible changes in this situation, and imports did not seem to be the only factor taken into consideration for their application. It seemed desirable to examine the consistency of the measures taken with paragraph 4 of the Protocol of Accession. Other members of the Working Party recalled that the problem had already been raised and that it also concerned other products such as meat or cut flowers.

18. The representative of Switzerland said that interpretation and application of domestic legislation were matters within the sovereignty of the country concerned; any measures taken having regard to a given situation under the provisions mentioned could be revoked if the situation changed. Furthermore, Article 23 of the Law on Agriculture stated: "If imports jeopardize the disposal of agricultural products at equitable prices, according to the principles of the present Law, the Federal Council may, taking account of the other sectors of the economy ...". The principles underlying that Law should therefore be taken into consideration because it was by reason of them and the corresponding articles of the Federal Constitution that, on the occasion of acceding to GATT, Switzerland had requested the inclusion in its Protocol of an exemption for which it had "paid". The Swiss representative underlined that his country had respected the obligations set forth in its Protocol of Accession.

19. Recalling the conditions set forth in paragraph 4 of the Protocol of Accession for application by Switzerland of import restrictions in derogation from the provisions of Article XI of the General Agreement, some members of the Working Party expressed doubt as to whether certain measures taken by Switzerland were consistent with the conditions set forth in that paragraph. Other members, however, were of the opinion that the measures taken by Switzerland were consistent with those conditions.

20. Members of the Working Party underlined that, as had already been noted in 1969, additional information was needed from Switzerland regarding the application, administration, allocation and volume of quotas in order to ensure that the provisions of the Protocol were being applied in the manner envisaged, i.e. so as to cause minimum harm to the interests of contracting parties and to observe the provisions of Article XIII. Switzerland was formally requested to furnish to the Working Party in writing, and to include in subsequent reports, information on annual quotas for products covered by the Protocol, bilateral quotas fixed within the framework of those annual quotas and imports by country under the said quotas. That information was essential for determining whether Switzerland was complying with the terms of its Protocol of Accession and the extent to which it was observing the conditions of that accession and its commitments under the General Agreement. In particular, it was essential so that the Working Party could decide whether the application of bilateral quotas was consistent with the provisions of the Protocol and, in particular, with Article XIII of the General Agreement. It was not required solely in cases where trade interests were at stake but corresponded to the obligation of all contracting parties to observe the provisions of the General Agreement. The Working Party needed that information in order to carry out its terms of reference.

21. A number of other members of the Working Party noted that the presentation of the report had been improved and that in the light of the explanations given it was possible clearly to discern the trend in regard to exports and suppliers to the Swiss market. Additional information seemed unnecessary.

22. The representative of Switzerland said that the information given by his delegation confirmed that conditions of access were assured. Bilateral quotas accounted for only a small percentage of total agricultural imports and, as already indicated, were effective in the cut-flower and wine sectors. A number of contingency quotas were opened on the occasion of special events such as trade fairs. Quotas were fixed on the basis of certain criteria to ensure smooth expansion of imports and equitable allocation amongst suppliers. Account was taken of traditional trade flows, consumer tastes, the trend in demand from the aspect of quantity and quality, as well as the need to ensure access for new suppliers. A sufficient margin of flexibility was ensured, of which exporters could take advantage through normal trade channels. The Swiss delegation could not agree that non-transmission of statistical data on wine quotas implied that the provisions of paragraph 4 of the Protocol of Accession had not been observed, all the more so in the absence of concrete evidence of any specific trade impairment. With reference to that paragraph, the Swiss representative underlined that in his view his country could not be reproached with having applied any discriminatory measure and that furthermore provisions applied by Switzerland must be consistent with the laws mentioned in paragraph 4. The bilateral quotas were based on a contractual commitment and were a matter of public international law. Unless specifically required by the bilateral agreements, their publication could not be automatic, it implied the other party's consent. Accordingly, Switzerland considered that it was in conformity with the provisions of paragraph 4 of its Protocol of Accession.

23. Some members of the Working Party took the position that Switzerland had not complied with the transparency requirement of its Protocol of Accession. In light of the lack of information concerning certain aspects of the operation of the terms of the Protocol, they concluded that they were unable to determine whether or not Switzerland had complied with other requirements of the Protocol. They considered, therefore, that it had not been possible to conduct a thorough review of the Protocol as laid out in paragraph 4 thereof, and suggested that the Working Party proposes that the CONTRACTING PARTIES recommend that Switzerland provide in its future reports under paragraph 4 of the Protocol of Accession all the necessary information in respect of the operation of the Protocol. A number of other members, however, came to the conclusion that the information provided by Switzerland corresponded to the transparency requirement of paragraph 4 of its Protocol of Accession and therefore took the position that Switzerland had complied with the requirements of the Protocol

24. The representative of Switzerland thanked the members of the Working Party for the interest they had shown. His delegation had tried to reply accurately to questions within the Working Party's mandate and to furnish more general elements of information that could allow better understanding of Swiss agricultural policy and the modalities of application of paragraph 4 of the Protocol of Accession. It had furnished with the necessary details and transparency the information needed for the Working Party's consideration, and was prepared to confirm or clarify on a bilateral basis the information furnished. The Swiss delegation did not share the concern expressed by some delegations regarding application of the provisions of paragraph 4, and considered that some of the remarks made had no place in the Working Party's deliberations. Nevertheless his authorities, which were anxious to respond to the fullest extent possible to the wishes of Switzerland's trade partners, would be fully informed, and would also be advised of the suggestions made regarding the content of future reports. The Chairman of the Working Party thanked the Swiss representative for the contributions made.

25. The Working Party took note of the reports and statements as well as of the readiness of Switzerland, in light of the discussion of transparency conducted in the Working Party, to provide in its future reports under paragraph 4 of its Protocol of Accession all the necessary information relevant to the operation of the Protocol.