

GENERAL AGREEMENT ON

RESTRICTED

L/6658

21 March 1990

TARIFFS AND TRADE

Limited Distribution

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 11 November 1987, with the following terms of reference:

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

2. The Working Party met on 12 February, 16 March, 15 April and 31 August 1988, 30 May and 30 November 1989, and 15 March 1990. It was under the chairmanship of H.E. Ambassador Manuel Tello (Mexico), with Mr. Alejandro de la Peña (Mexico) serving as acting Chairman following Ambassador Tello's departure from Geneva in January 1989. It had before it the annual reports by the Government of Switzerland under Paragraph 4 of the Protocol covering the years 1984, 1985 and 1986 (documents L/6101 and L/6229).

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

4. During the period covered by the three annual reports, agricultural products accounted for about 8-9 per cent of total Swiss imports by value. Their value (in Swiss francs) increased by 11.5 per cent between 1983 and 1986. This growth was set out in more detail in the supplementary statistical table provided by the Swiss authorities and issued as document L/6229/Add.1. The figures showed that even though population growth and real demand were stagnant, Switzerland offered an open and active market. Per capita the Swiss were (apart from Iceland) the largest net importers of agricultural products in the OECD. Switzerland's net self-sufficiency (i.e., without imported feedgrains) was 59 per cent on average from 1984 to 1986, in calorie terms. With feedgrain imports added, it was 66 per cent on average from 1984 to 1986. This rate had shown a slight increasing trend in the first half of the decade, with a break in 1984.

5. The representative of Switzerland emphasized that:

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

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

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

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

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

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

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

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

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

12. Numerous members of the Working Party raised questions concerning the wider political significance of the Swiss exemption under Paragraph 4, particularly in the context of the Uruguay Round negotiations. Several wanted to know what the Swiss Government's intentions were concerning the future of this exception to the GATT. More general questions were also asked concerning the Swiss attitude to agriculture in the Uruguay Round, and what their participation might mean given the existence of the Protocol of Accession. Some members noted that another contracting party which enjoyed a waiver from provisions of Article XI in respect of agriculture had stated it was "on the table" in the Uruguay Round, and they sought a similar indication from the Swiss authorities. One member said that in effect Switzerland was hiding behind the Protocol as far as the negotiations were concerned, on the assumption that it was a permanent fixture. The member's authorities did not see it that way. The preamble to the Protocol of Accession made a clear link, this member stated, to the then current MTN (the Kennedy Round), full Swiss participation in which had been an important premise for the granting of the exemption. The situation was similar now, the member maintained. Switzerland had accepted the Punta del Este mandate; within the Negotiating Group on Agriculture assurances had been sought that the achievement of new GATT rules and disciplines would allow termination of the Swiss exemption. There had been no response so far, and the member wanted to put the question again.

¹Price rises for some agricultural products

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

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

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

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

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

cited discriminatory charges on imports, monopoly purchases, and general uncertainty (e.g. the three-phase import system) as examples of the conditions she referred to. Few concessions had, she noted, been made by Switzerland since 1966. And while the total trend of imports remained more or less stable, this member stated, there had in fact been a decline in imports of many important products, for example feedgrains, meat and butter. The increasing domestic production and stagnant consumer demand which this decline reflected was attributed to excessively high levels of support. The member found it difficult to be satisfied that minimum harm was being done to the interests of other contracting parties when their access to the Swiss market was examined. Another member questioned the operation of the Swiss import restrictions under the Protocol against the objectives of Swiss agricultural policy set out in Section B of L/6101 and L/6229.

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

18. The member who had raised the question expressed himself more concerned than satisfied by this response. He found it worrying that Switzerland could make unilateral changes in the application of the Protocol, whether or not these were described as only administrative. It was incumbent on the Swiss authorities, in his view and that of another member, to provide the Working Party with the means (i.e., legal texts, commentaries) of examining how the 1972 and 1982 legislation translated that noted in 1966, so members could judge for themselves whether the terms of the Protocol were being respected.

19. The Swiss representative repeated that no changes affecting the terms of the Protocol had been made. However, in response to members' requests he supplied the texts of Article XI of the Federal Decrees of 26 September 1956, 28 September 1962 and 28 June 1972, and of the Federal Law of 25 June 1982. (These texts were circulated to members of the Working Party in document Spec(88)21 of 27 April 1988, and are set out in Chapter II.) In presenting these texts, the Swiss representative repeated that any changes made in the legislation since 1966 concerned provisions other than Article 11, which was the Article cited in Paragraph 4 of the Protocol of Accession. Article 11 as repeated in these successive laws showed no change; it had simply been reconfirmed each time the Federal Decree was renewed. The only substantive change affecting Article 11 since 1966 had been the conversion of the Federal Decree into a Federal Law in

1982, which meant that instead of needing to be renewed every ten years it remained in force until repealed. Thus the Article 11 of 1956 and 1962 mentioned in Paragraph 4 of the Protocol, and its economic effect, remained the same today.

20. The member of the Working Party who had requested this information did not find all of his questions resolved by it. He, and another member, said that they had asked for a broader range of information (e.g., including interpretative notes or legal commentaries) than had been supplied. He recalled that the Working Party had to ensure full compliance with Paragraph 4 of the Protocol. The CONTRACTING PARTIES had accepted Switzerland's partial reservation with regard to Article XI of the General Agreement only to the extent necessary to apply certain specified legislative provisions. While at first sight there appeared to have been no substantial changes to Article 11 of the Federal Decree for the products with which he was concerned, he understood it as normal GATT practice that legislation forming the basis of an agreement by the CONTRACTING PARTIES could not be changed unilaterally. Noting also that the reporting obligation of Paragraph 4 did not appear to have been met, insofar as details of these changes had not been set out in the Swiss Government's annual reports, he said that such proposed changes should perhaps have been cleared with the CONTRACTING PARTIES or that at least the Working Party should have been given the chance to discuss them. As it was, the Working Party was called on to satisfy itself that Swiss measures contrary to Article XI of the General Agreement were consistent with an exemption based on legislation which, strictly speaking, did not exist any more. He also raised as worthy of further examination the question of the GATT position of legislation which needed renewal. Perhaps GATT acceptance expired, legally speaking, with the specific piece of legislation involved and could not be rolled on to a successor law which was, technically, new legislation.

21. This member went on to observe that his authorities were not just concerned about Article 11 of the Federal Decrees of 1955 and 1962 (etc.). Following L/6229 (page 2) they had referred to the "6th Report on the Situation of Swiss Agriculture and of the Confederation's Agricultural Policies" and noted that, concerning breadgrains, there had been a change in Article 23 bis of the Federal Constitution in 1980 substantial enough to involve accompanying change in the Federal legislation on wheat. He did not know what this involved, but had the impression from the "6th Report" that it was significant. In fact, Article 23 bis, one of the constitutional provisions cited in Paragraph 4 of the Protocol of Accession, had been amended twice since Swiss accession to the GATT, in 1980 and in 1985. Likewise, the constitutional provision on which alcohol laws were based (Article 32 bis) had also been changed twice. These amendments did not appear to have been reported in the GATT and their effect was not known. But once again it was a question of a unilateral change in the fundamental legal or institutional basis of the CONTRACTING PARTIES' 1966 agreement, which was based on specified constitutional and legal provisions as they existed at that time. His authorities' general point was that there was an obligation on any contracting party enjoying an exemption from GATT provisions such as Switzerland did to come forward with information on any relevant changes. It might be that these in fact had nothing to do with Article XI of the General Agreement, but in the light of

Paragraph 4 of the Protocol of Accession any change in the specified legislation was relevant and worthy of consideration.

22. In reply the representative of Switzerland stressed that, like all contracting parties, Switzerland had its own national legislative techniques and these were its own concern as long as there was no contradiction with the country's international commitments. However, it seemed to him that some members of this Working Party wanted to go further than was acceptable in examining Swiss national legislation. The only area where he saw their interest as justified was amendments to the legislation mentioned in Paragraph 4 of the Protocol of Accession, to the extent that such amendments relate to quantitative import restrictions. The fact that no-one had raised this question before now cast doubt on its importance.

23. A member of the Working Party said that since this was a case where a partial reservation from GATT obligations had been granted on the basis of a definitive package of then extant legislation specified in the CONTRACTING PARTIES' decision, it was not just a legitimate task but a responsibility on the Working Party to examine the current status of that legislation in terms of the partial reservation as well as other relevant issues. Not to do so would be to fail to carry out a thorough examination as required under Paragraph 4. This view was supported by other members.

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

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

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

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

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

27. The Swiss representative discerned a misunderstanding that all agricultural imports were under quota; in fact 80 per cent were quota-free. He described the system of quota administration in response to the above queries. Feedgrains, seed potatoes, wine in cask, white wine in bottles, cut flowers, some meat, breeding livestock and horses were subject to quota. These were normally established, in line with basic policy objectives, taking into account the interests of all economic sectors. In general, quotas were set at the beginning of each year but released in phases, to take account of market developments. For certain categories of meat (adult cattle and calves) the amounts were fixed by an advisory panel every two weeks. Within this overall structure, the system was specific for each product, and Switzerland was willing to discuss the individual details with any interested member of the Working Party. Importers understood the system, and knew that at the beginning of each year there was a given market requirement; what they had to consider was marginal quantities from week to week. The Swiss representative added that as very few traders exported directly to the Swiss market - most goods were transshipped via European Community entrepôts - special shipments over long distances were not involved. He noted that this transshipment also affected Swiss statistics on import origins.

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

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

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

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

29. Members of the Working Party commented further on these statements and made specific requests for additional information or clarification. One said that the effects of high Swiss domestic price support should be judged against the Protocol obligation to cause minimum harm to other contracting parties. In general, production controls might relieve short-term pressures but not the fundamental causes of over-production. Another expressed concern at the Swiss replies in paragraphs 26-28 above; information on production might well be available in various publications, but he had asked for it to be included in the reports before this Working Party. He also noted that there was very little concrete information on what import restrictions were applied and how they functioned; there were some examples, but only in L/6101. His concern, which other members shared, was that because his country did not always get enough detail to assess how the quotas worked (and also because of their short duration in the case of beef) its opportunities to supply Swiss markets were restricted. He wanted to know in detail how import performance measured up against quotas, and the process by which quotas were filled. Therefore he and other members of the Working Party asked the Swiss authorities to provide further written information for a representative recent year - 1986 - which would enable the Working Party to see how quotas were set, i.e., when, how, to whom and in what quantities - how tenders operated, and what imports actually took place. Beef was requested as the sample product.

30. The Swiss representative subsequently provided the data on import permits for sirloin beef delivered in 1985/86 which are set out at annex. The members who had requested the information, and others, commented that while this was useful it was only a partial answer to the questions set out above. In reply the Swiss representative pointed out that his authorities supplied detailed information of this type to other GATT bodies; for example, as they had noted in L/6101, to the International Meat Council. Document IMC/INV/7/Rev.3 contained considerable additional information on Switzerland's meat import system, and he referred members of the Working Party to it. He emphasized again that all sectors involved in the meat production and marketing process - including importers - were consulted in the procedures for the allocation of import quotas.

31. To the members who had originally asked for more information on the functioning of Swiss import restrictions, this reply was still not satisfactory. They noted that while beef had been nominated for examination as an example of how the import system worked, members' interest was not confined to this product. They had a fundamental concern with the complexity and lack of transparency of the Swiss import régime in

general. This led to problems for exporters, who (it appeared) had to be already inside the system to know how it operated, and for members of the Working Party, who needed sufficient information to be able to form an opinion as to whether the terms of Paragraph 4 of the Protocol of Accession were being respected. It was not seen as adequate by these members to refer the Working Party to documentation provided in other GATT fora; where particular questions were raised in the Working Party, members suggested it was incumbent on the Swiss authorities to circulate the answers. In any case, it was not accepted that IMC/INV/7/Rev.3 provided all the answers sought. Its description of the import system ran to only two short paragraphs and gave no information on (e.g.) bilateral contractual arrangements with various countries.

32. The representative of Switzerland noted in relation to these concerns that the provisions in Paragraph 4 of the Protocol of Accession which provided for consultation on request had never been invoked. Hence he was somewhat surprised at these comments. The Swiss market was recognized as being broadly open, and some countries did well in it. He asked members of the Working Party to apply all of Paragraph 4, and consult with his authorities as necessary. Nonetheless he was ready to reply and clarify further, while expressing the wish that this review should take place within the terms of the Protocol of Accession. A member of the Working Party appreciated the Swiss offer to consult but noted that the relevant provision in Paragraph 4 of the Protocol of Accession applied to the CONTRACTING PARTIES as a body, not to individual contracting parties.

33. A member asked whether the Swiss Government established target levels for self-sufficiency - this could have an effect on quota size, it was suggested. He asked, for example, why a high support price had been established for soybeans. This member also pointed out a drop in import value and volume in 1987. High producer support prices and import restrictions not only increased production, he added, but also depressed consumption, hampering the operation of comparative advantage in agriculture. In this context it was hard to see how import restrictions on cut flowers contributed to national security goals. Could the declared objectives of Swiss agriculture not be met in some other ways (e.g., through lower producer prices with decoupled income payments, greater reliance on storage, etc.)? Another delegation endorsed these comments. The Swiss representative said that soybeans were outside the scope of this Working Party, as they were not under import restrictions. And, concerning the orientation of Swiss agricultural policy, the voters could always decide to change it if their interests as consumers prevailed over their interests as citizens. The use of other policy instruments was always on the Federal Government's mind - as the increasing use of direct payments, already cited, bore out.

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

(a) Did a quota on breadgrains still exist?

(b) What were the price ceilings on beef, and when did they trigger import quotas?

- (c) How were the dairy import quotas determined (i.e., on what proportional relationship to domestic production)?
- (d) What was the degree of import limitation under Phase II of the three-phase system for fruit and vegetables?
- (e) What sort of programmes and subsidies existed for the improvement of domestic wine quality?
- (f) Why was a discriminatory quota still applied to white wine in cask?
- (g) Was there any justification for the red wine quota, given that the historical reasons for the bilateral contractual quotas presumably no longer applied?
- (h) What were the charges on imports of eggs, wine and dairy products?

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

35. The Swiss representative replied that:

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

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

(e) wine quality promotion: the Swiss representative described the measures involved. An important indirect measure was the establishment of a land survey of wine-growing areas under which the area to be planted in vines was limited to that suitable for higher-quality production. Quality standards were also applied directly; payment for grapes depended on their quality, and the main wine-producing cantons (Valais, Vaud, Geneva and Neuchatel) had to fix minimum sugar content for grape must. Wines made from must which did not meet this standard were declassified, i.e., they could not be marketed under regional or varietal appellations;

(f) white wine: bulk imports were in principle only permitted when there was a domestic shortfall, or for industrial purposes;

(g) red wine: it was not the quotas for imports of red wine in cask as such which had been globalized, but rather the independent adjustments of contractual quotas;

(h) concerning import charges on eggs, wine and certain dairy products, the Swiss representative stated that this matter was not within the scope of this Working Party.

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

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

(b) Was it correct that the permitted ratio of milk powder imports to local production was 50/50?

(c) Fruit and vegetables: in the second phase, what were the level and type of quotas?

(d) Red wine: what proportion of import remained under bilateral quota?

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

37. The representative of Switzerland replied as follows:

(a) Average indicative prices for beef were used - these involved a dozen categories.

(b) Milk powder: the proportions of the total "taken over" to supply demand were 75 per cent domestic, 25 per cent imported.

(c) The details of the three-phase fruit and vegetable import system varied from product to product and year to year; but it should be noted that for products covered by the system Switzerland's self-sufficiency level had decreased.

(d) Red wine in cask: contractual, bilateral quotas covered 1,177,000 hectolitres and the global quota 231,000 hectolitres - but additional global quotas were granted as domestic production warranted. These had amounted to around 200,000 hectolitres annually in the early 1980's.

Concerning the status of import charges as mentioned in paragraph 35(h), he noted that there was obviously a divergence of views.

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

39. Another member stated that the "prise en charge" system for eggs and milk powder (which he believed also applied to casein) appeared to be a "mixing" arrangement, which was prohibited under Article III(5). The Swiss representative replied that his Government's application of different policies in this respect was known at the time of Switzerland's accession and was covered in the Protocol. He suggested, to those wishing to take it further, that the question might initially be discussed bilaterally. A further member asked whether Switzerland would compensate other contracting parties when it introduced a quantitative restraint. Addressing more generally some of the issues raised in the Working Party's discussions, the representative of Switzerland recalled that each delegation had its rights; the Working Party reported collectively and no-one could dictate its report. The rôle of this Working Party was not to change the Swiss Protocol of Accession but to examine its use. In respect of the question of compensation another member of the Working Party recalled that the Council Chairman at the time of the adoption of the Protocol had noted that Switzerland's partial reservation under paragraph 4 was subject to the procedures of both paragraphs 1 and 2 of Article XXIII of the General Agreement.

Written Questions

40. It was agreed that questions, such as those noted above, on which more detailed responses were sought from the Swiss authorities, and any further questions, should be forwarded in writing through the secretariat to the Swiss authorities. Members noted that the submission of these written questions did not prejudice their right to put further questions orally or otherwise as they found necessary. Questions received before the agreed deadline are set out below, together with the replies which the Swiss representative presented to the Working Party at the fourth meeting. In introducing these replies the representative of Switzerland noted that recent official visits had established that there were no major trade problems of a concrete nature between Switzerland and the countries which had posed the questions in the area covered by the Working Party. He also evoked the pragmatic GATT spirit with which previous working parties had, in his view, addressed their mandate. He contrasted this with a different approach which he saw reflected in some of the written questions, although no decision to change the character of the group's work had been taken.

41. Questions from Argentina:

- (1) "Why are "contractual quotas" maintained, with only a very small part of imports of red wine in cask globalized?"
- (2) What do "contractual quotas" mean in practice? The allocation of a fixed annual amount to each country? Or to the importing company? If so, on what basis are such amounts granted or distributed?
- (3) The Swiss delegation stated that "imports of red wine in bottles are not subject to any quantitative restrictions: beyond a certain quantity a supplementary customs duty has to be paid over and above the normal customs duty" (L/6101 - page 30).
 - In that case, what is the quantity on which the normal duty has to be paid?
 - We should also like to know the amount of the duty considered "normal" and the amount of the "supplementary" duty applied to these imports."

42. Questions from New Zealand

- (1) "At the second meeting of the Working Party, on 16 March, New Zealand requested details of the operation and allocation of quotas for a sample product (beef) over a representative period (1986). The information provided by Switzerland in response to this question gave quarterly totals of beef quotas allocated in 1985 and 1986 for one sub-category of beef (sirloin) only. In the view of New Zealand this is an inadequate response to the question posed, since it particularly appears that sirloin is one of a small number of cuts of meat for which quotas are established quarterly. Switzerland is therefore requested once again to provide the following information:

- (a) details of both totals and volume for individual import quotas for all beef, allocated on a fortnightly basis, during calendar year 1986 or 1987;
 - (b) information on the basis on which fortnightly allocations were made (i.e. what criteria must be met by traders involved?);
 - (c) information on importers/traders to whom quotas were allocated (i.e. what segment of the industry/trade receives quotas, and is this on a historical basis?);
 - (d) details of usage of quotas allocated;
 - (e) details of market price movements during the representative period, in relation to the upper/lower bands of the target price bracket set, according to which import allocations are determined;
 - (f) details of the required utilization of surplus slaughter animals by importers; what price band needs to be triggered (presumably lower)? If it has been triggered, for what periods of time has the requirement operated, and what volume of meat in proportion to imports has been frozen and stored?
 - (g) Switzerland's reply to IMC questionnaires G and H (IMC/INV/7/Rev.3) refers to an exchange system of exports in return for imports of certain cuts of meat under quota. Could the delegation please provide information on whether this exchange system continues to operate and, if so, what quantities and cuts of meat are involved?
- (2) In the first two meetings of the Working Party, there appeared to be an element of contradiction in replies given by Switzerland, to questions concerning the operation of its "prise en charge" system and associated supplementary import charges, with respect to whether or not these measures were covered by the Protocol (Spec(88)11/Rev.1, paragraphs 32 and 33 refer).
- (a) Does Switzerland consider these measures to fall within the purview of GATT Article XI? If not, on what basis are they deemed to be "covered" by Switzerland's Protocol of Accession?
 - (b) To what products within Chapters 1-24 are the "prise en charge" and any similar compulsory domestic purchasing programmes applicable? Discussion in the Working Party has to date focused on eggs and milk powder, but New Zealand understands that other products, including sheepmeat, are involved.
 - (c) How does the import régime for sheepmeat operate: on what basis are import licences granted? What is the proportion of domestically produced sheepmeat which must be purchased in relation to imports of sheepmeat, and how has this percentage changed over recent years? How are the domestic purchasing requirements for individual butchers determined?

- (3) In Switzerland's twenty-first annual report (L/6229), notification was given of "the globalization of all the separate adjustments of the contractual quotas for red wine in casks". In a subsequent meeting of the Working Party, however, it was explained that not all bilateral quotas had been globalized: contractual bilateral quotas still covered 1,177,000 hectolitres and the global quota was for 231,000 hectolitres (plus around 200,000 hectolitres as domestic production warranted).
- (a) New Zealand notes that Switzerland's previous report (L/6101) gives a figure of 1,177,000 hectolitres covered by bilateral contractual quotas. Could Switzerland explain the reference to globalization contained in document L/6229, since there appears to have been no change in the measures?
- (b) Why was the decision taken to globalize only a small proportion of the total import quotas for red wine in casks? Does Switzerland have plans to globalize more of the 1,177,000 hectolitres covered by contractual, bilateral quotas?
- (c) Given that the bulk of Switzerland's imports of red and white wine in casks continues to be covered by discriminatory bilateral quotas, what are the individual quotas, how have they changed over the years (in terms of size and/or allocation), and what are the historical reasons for their application?
- (d) New Zealand notes that import restrictions on white wine in bottles were originally introduced by Switzerland as a safeguard measure under Article XIX (L/6101, section 8), and further notes that imports of these wines have been declining in recent years. In those circumstances, can Switzerland explain how it is "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"?
- (5) New Zealand has on earlier occasions indicated that it is concerned by aspects of the operation of the three-phase system affecting imports into Switzerland of various fruit and vegetables, since the indeterminate periods for phases two and three make market development planning difficult. An eight-day advance warning of the impending change in phase is unlikely to be sufficient for distant countries such as New Zealand. Given the requirement, in Paragraph 4 of Switzerland's Protocol of Accession, that measures adopted should cause minimum harm to the interests of contracting parties, why is the three-phase system necessary, in view of the protection already provided by Swiss phytosanitary regulations and the tariff?"

43. Questions from Australia

- (1) "Paragraph 4 of the Swiss Protocol of Accession contains a partial reservation to the provisions of Article XI to the extent necessary to permit it to apply import restrictions pursuant to specified legislative and constitutional provisions in effect at the time the Protocol was agreed to by CONTRACTING PARTIES.

- (2) In light of the above, could Switzerland advise the specific details of all changes to these legislative and constitutional provisions since 1 April 1966 and, in particular, their implications for Swiss imports?
- (3) Could Switzerland also detail when such changes were notified to CONTRACTING PARTIES?
- (4) Could Switzerland supply a list of all products by tariff line whose imports are conducted under the reservation in Paragraph 4 of the Swiss Protocol of Accession. Does Switzerland consider that it is entitled to extend its reservation to other products? Please also provide a list of commodities categorized in terms of import restriction measures used under the reservation.
- (5) Could Switzerland provide further clarification and detail of its "prise en charge" system and, in particular, its consistency with Article III? Does Switzerland consider that this system falls under its reservation? To which products does the "prise en charge" system apply?
- (6) Could Switzerland detail the procedures, for each product covered by its reservation, for determining how the total quantities permitted entry into Switzerland are derived? How does Switzerland ensure that there is minimum harm to the interests of other contracting parties?
- (7) Please provide details of all import restrictions that are not global in their application and the commodities to which they apply. Are there quantities specifically allocated for any individual contracting party or group of contracting parties? If so, please provide details and clarify the basis for such specific allocations, in particular how the arrangements are consistent with Article XIII.
- (8) Please provide clarification and details of the contractual and bilateral quotas for red wine in cask referred to in the Working Party (Spec(88)11/Rev.1, paragraph 31(d)). How are these quotas allocated?
- (9) Does Switzerland have self-sufficiency targets for products covered by its reservation? If so, are these targets adjusted regularly? How are the interests of all other contracting parties taken into account in developing any self-sufficiency targets?
- (10) Does Switzerland use quotas, import licensing, or other means to ensure diversification of sources of supply (among various exporting countries) for any agricultural commodities or products?
- (11) In the Working Party, Switzerland noted that there were no quantitative restrictions on eggs. Could Switzerland clarify whether eggs (some detail on which is provided in Switzerland's annual reports) are covered by the reservation in Paragraph 4 of the Swiss Protocol? Are there any products referred to in L/6101 and L/6229 which Switzerland considers are not covered by its reservation?

- (12) Could Switzerland provide details on the following:
- (a) Are import licences granted on a non-discriminatory, first-come, first-served basis? If not, what are the criteria for being granted an import licence?
 - (b) Can a branch office of a foreign firm receive an import licence?
- (13) Please provide detailed information for a representative recent year, e.g. 1986, to enable the Working Party to see how import licences/quotas were set for the products covered by the reservation, i.e. when, how, to whom and in what quantities, how tenders operated, and what imports took place. To facilitate the task, perhaps initially information could be provided in greater detail for beef and veal and wine.
- (14) By way of illustration, could Switzerland set out in detail for beef and wine, the sources of public information available to a potential exporter to the Swiss market and the steps that would have to be gone through to conclude a transaction?
- (15) What time periods are involved in:
- announcement of quotas
 - application for licences
 - duration of licences?
- (16) What is the level of duty levied on domestic distilled spirits? How does it compare to the monopoly charge on imported spirits? If these differ, how is this justified under Article VIII?"

Replies by Switzerland

44. "These replies to the foregoing questions are set out in the following categories:

- (i) red wine;
- (ii) beef;
- (iii) "prise en charge" system;
- (iv) three-phase system;
- (v) import licensing;
- (vi) other questions.

Red wine

45. Several questions concern our import régime for red wine, more specifically Questions (1), (2) and (3) by Argentina, Question (3) by New

Zealand and Question (8) by Australia. This import régime was described in detail in the following earlier reports:

29.10.1969 (document L/3250), paragraphs 14, 17 and 18;

7.5.1982 (document L/5311), paragraphs 13, 16, 21, 22 and 23-25;

6.6.1986 (document L/6003), paragraphs 11, 15 and 16-18.

46. In addition, as regards the current review, the present report mentions this matter in paragraphs 24, 34 and 35. In the annual reports covering the reference period (1984-1986), the relevant indications may be found in paragraph 8, pages 29-32 of L/6101 and paragraph 8 of L/6229 (pages 24-26).

47. On the basis of statistics published in the FAO Production Yearbook, volume 40, average imports of wines and vermouth were as follows:

World	1.06 kg./inhabitant in 1984		
	1.10 "	"	1985
	0.90 "	"	1986
In Switzerland ²	35.40 "	"	1984
	36.50 "	"	1985
	33.15 "	"	1986
In Europe	6.90 "	"	1984
	7.48 "	"	1985
	6.90 "	"	1986
In Australia	0.90 "	"	1984
	1.20 "	"	1985
	1.22 "	"	1986
In New Zealand	1.00 "	"	1984
	1.20 "	"	1985
	0.88 "	"	1986

48. As regards the globalization introduced in 1986, referred to by Argentina and New Zealand in Question (3), I can give you the following indications:

- (a) Switzerland maintains contractual and autonomous bilateral quotas for red wine in casks, concluded in the light of its historical trade relations.
- (b) After the last review, conducted in 1986, a first globalization phase was decided in respect of 231,800 hl. This global quota is available for each country. In fact, 80 per cent of this

²Representing approximately 55 per cent of Swiss consumption of wine

globalization was taken up by the traditional suppliers, who are well installed in the market, operate actively in the market and offer interesting margins to importers.

- (c) Switzerland is prepared to examine other globalization instalments (e.g., bearing on the autonomous bilateral quotas).

49. As regards red wine in bottles, this is a matter outside the purview of a review under Paragraph 4 of our Protocol. The situation (not covered by the Protocol) is as follows in respect of red wine in bottles:

- Tariff quota of 150,000 hl.
- Customs duty Sw F 50.-/100 kg.
- Supplementary duty Sw F 100.-/100 kg.³

Beef

50. Several questions concern our import régime for meat, more specifically Question (1)(a)-(g) by New Zealand and Question (14) by Australia.

51. This import régime has already been described in detail by my delegation in:

- the report of 29.10.1969 (document L/3250), paragraphs 8 and 10;
- the report of 7.5.1982 (document L/5311), paragraphs 13 and 22;
- the report of 6.6.1986 (document L/6003), paragraph 16;
- in addition, during the present review, the secretariat's report, not yet final, mentions this in paragraphs 2 (pages 8-13) in L/6229 and 2 (pages 10-16).

Details as to total volumes of import quotas

52. The competent authority in this regard is the Swiss Co-operative for the Supply of Slaughter Animals and Meat (CBV). The relevant details were furnished by us in the table to be found in Annex I to the present report. Because of the danger of market operators being identified and, accordingly with a view to preserving business secrecy, I am not in a position to furnish the additional details requested. I can, however, give you the following indications so that you may have a still clearer idea as to how our import régime functions:

³For the quantity imported in excess of 150,000 hl.

Description of the import system

53. Imports of slaughter animals and meat are subject to quotas. The quantities admitted (global quotas) are generally fixed by the authorities every two weeks, at the meetings of the CBV. In principle, imports are authorized when market prices reach the upper limit of the target price. For certain special cuts or categories of meat (sirloin, rump, tripe, tongue and muzzle, sweetbreads, liver, corned beef), the quotas are normally fixed quarterly or annually as the case may be. The quantities authorized for import depend on the supply and demand situation on the domestic market for like products.

54. When the livestock markets organized by the trade groups and supervised by the CBV are no longer sufficient to keep the market price within the limits of the target price, importers may be required to participate in the utilization of surpluses of slaughter animals, in a proportion that is tolerable in relation to their imports of like products. The utilization of surpluses is effected mainly by the freezing of meat and its subsequent storage.

Economic groups

55. Business undertakings in the following economic groups (hereunder also: importers) are authorized to import:

- (a) Butchers (including wholesale butchers);
- (b) Slaughter-animal merchants;
- (c) Manufacturers of dried meat;
- (d) Foodstuff traders;
- (e) Importers of pork-butchers' products;
- (f) Horsemeat butchers and horsemeat traders;
- (g) Edible-fat traders.

Conditions

56. The right to import is granted exclusively to undertakings which:

- (a) Have their registered headquarters on Swiss customs territory and offer the guarantee that they will fulfil the obligations attaching to the right to import;
- (b) Have premises and installations corresponding to the importance and nature of their activities, as well as to the type of goods to be imported, and which comply with the provisions of the Federal Order of 11 October 1957 on meat inspection;

- (c) Declare themselves ready to conclude with the Federal Department for Agriculture a contract regarding establishment of a reserve fund.

Withdrawal of right to import

57. This right is withdrawn from undertakings that cease to fulfil all the conditions attaching to the right to import.

Competent administrative authorities

58. The right to import is granted by the following authorities:

- (a) The Federal Department for External Economic Affairs, Import and Export Division: for the import of edible fats falling within tariff headings ex 1502.20 and ex 1503.20 and likewise for salami and the like (see hereunder: pork butchers' products) falling within tariff heading 1601.10/20;
- (b) The Federal Department for Agriculture: for the import of slaughter animals and other goods subject to restrictions mentioned in Article 2 of the Order on slaughter animals.

"Prise en charge" system

59. Several of the questions put concern our "prise en charge" system requiring importers to acquire domestic products in proportion to their imports - more particularly Question (2) by New Zealand and Questions (5) and (9) by Australia.

50. Details given by my delegation regarding this system were recorded in the report of 6 June 1986 (L/6003), paragraph 16. The system is applied at present in respect of sheep and goats, whole milk powder, casein and eggs in shell. It is a system 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.

61. The delegation of New Zealand has requested further details regarding the trend in imports of sheepmeat.

Sheepmeat

62. Import licences are issued without delay for a period of three months. The taking over of local production is assured as follows: importers have to send - weekly or monthly - to the Swiss co-operative for cattle for slaughter, certificates of slaughtering of Swiss cattle which are issued by butchers. If the quantities involved appear to be insufficient as compared to imports, they can be compelled to buy additional home-produced sheep and lambs.

Relationship Between Home Production and Imports

	<u>1984</u>	<u>1985</u>	<u>1986</u>
Imports	5,410	6,196	5,574
Production	3,575	3,877	3,997
Self-sufficiency	38.97	40.65	41.16

63. Until 1 January 1967, imports were subject to quantitative restrictions. Substitution of the quota system through the taking over system which had then taken place introduced more flexibility in the import régime in favour of those interested.

Eggs

64. The import of eggs in shell is subject to the requirement to take over domestic eggs at the rate of 40 per cent in relation to average imports in the previous two years.

- The self-sufficiency ratio for egg and egg-based products is approximately 50 per cent, a level that can be considered low and which has shown no appreciable increase since the 1960s.
- Egg imports have been increasing in recent years in relation to that self-sufficiency ratio.

For eggs:

1975-1977:	22,700 tonnes
1978-1980:	24,500 tonnes
1981-1983:	28,000 tonnes
1984-1986:	30,159 tonnes

while in respect of egg-based products there have been the following variations:

1975-1977:	7,207 tonnes
1978-1980:	8,152 tonnes
1981-1983:	7,766 tonnes
1984-1986:	7,478 tonnes.

65. As in the meat sector, measures have been adopted to limit and influence production (limitation of the number of poultry, and a system of compulsory permits for shed construction).

Three-phase system

66. Several questions concern the three-phase technique used in our import régime for fresh fruit and vegetables.

67. This import mechanism was described in detail in the reports of:

- 29.10.1969 (document L/3250), paragraph 12;
- 7.5.1982 (document L/5311), paragraphs 12 and 15;
- 6.6.1986 (document L/6003), paragraph 16.

Furthermore, in the context of the present review, this report once again describes how the system works in paragraph 35(d).

68. Like the "prise en charge" system, this is a means by which the import policy for agricultural products is designed to translate into reality its characteristic principle of proportionality. The aim is to attain the objectives of our agricultural policy (see section B of our annual reports) consistently with the spirit and the letter of Paragraph 4 of our Protocol of Accession.

69. In this era of rapid means of communication, the disadvantage for some exporters of being situated further away from a market - such distance being neither the fault of Switzerland nor of its agricultural policy, still less of its agricultural import policy - is alleviated. Furthermore, exporters still have access to the market during seasons when there is no Swiss production. They thus enjoy a comparative advantage offered by nature which is not available to exporters that produce in climatic conditions comparable to those of Switzerland.

70. The phytosanitary regulations are designed to limit the risk of disease to the fullest extent possible. They could not be applied for agricultural policy purposes outside the sector of human, animal and plant health.

Import licensing

71. Several questions concern import licensing by Switzerland, in particular Question (2) by New Zealand and Questions (10), (12) and (13) by Australia.

72. The Swiss delegation has already had occasion to give a descriptive explanation in paragraph 20 of the report of 7 May 1982 (document L/5311).

73. Switzerland is a signatory of the Code on Licensing. The Swiss system is not designed to regulate imports, and accordingly does not constitute a system of quantitative restrictions on imports. Its operation does not, therefore, fall within the purview of this review. Nevertheless, since it also constitutes a means of applying the quantitative import restrictions that are covered by our exemption under Paragraph 4 of our Protocol of Accession, I shall give you here a brief description, it being understood that this system is examined under the mandate of the Committee on Import Licensing.

Question (12) by Australia

74. - Yes (non-discrimination);
- Yes (branch office of a foreign firm).

The licensing régimes apply without discrimination to all countries. The only exceptions to that rule, in respect of potato seedlings, vine stocks and certain host plants, stem from quality requirements and phytosanitary regulations.

75. The purpose of automatic licensing systems varies according to the products concerned. It may be:

- to ensure the collection of price supplements on imports (for example skimmed milk powder, condensed milk and fodder);
- to verify the establishment of compulsory reserve stocks for the country's economic supply (for example, sugar, coffee and cocoa);
- to ensure observance of health or phytosanitary regulations;
- to ensure quality control (e.g., certain host plants);
- to ensure observance of reference prices (e.g., cheese).

Implementing modalities

76. As a general rule, the formalities for filing licence applications are published. The amount of quotas, their allocation, etc. are communicated to importers in writing.

77. The volume of quotas is fixed, according to the product concerned, for the year, six-month period, three-month period or for a shorter period. In most cases, it is fixed after operations in the sector concerned have been consulted in commissions established for that purpose.

78. As a general rule, there is no special allocation of licences to domestic producers of like goods. Any unused portion of allocations is generally not carried over to the quota for a later period.

79. There is no time-limit for filing applications as from the date on which a quota is opened. Applications are replied to in one to three days, depending on the product concerned. Quotas are generally allocated on the basis of earlier imports; in certain cases the business turnover of applicants is also taken into consideration. As a general rule, a reserve is held back to allow the grant of licences to new importers. For further details, see also GATT document L/5233.

80. Having regard to the time required for obtaining a licence, the application should be filed three to five days before the import actually takes place. In exceptional cases, the licence can be granted in response to a request by telephone. Generally, a licence may be granted immediately on request. For the import of certain goods, however, approval must also be obtained from the cantonal veterinary office, which prolongs this period by one to two weeks. The period of the year in which licence applications may be submitted and/or imports effected is not limited.

81. In most cases, the application is examined by only one body. Nevertheless, applications in respect of goods subject to veterinary

inspection and certain products for which the law requires compulsory reserve stocks have to be examined by a second body. The importer addresses his application to only one body.

Conditions for entitlement of importers to apply for a licence

82. Only the normal criteria are involved. The reasons for any rejection are communicated to the applicant, who can appeal to the administrative authority or to an appeal body.

83. As a general rule, any natural or legal person domiciled in Switzerland is entitled to apply for a licence. In certain cases the applicant must be regularly engaged, and in a professional capacity, in trade in the product concerned. Sometimes also, a licence is granted only to persons holding a basic permit. No list is published of approved importers.

Documents and other formalities to be complied with when applying for a licence

84. Only the usual particulars are required. In certain cases, the applicant must indicate the purpose for which the goods are to be imported.

85. In addition to the import licence and the documents normally required by the customs authorities, certain certificates - certificate of origin, health certificate, phytosanitary certificate, etc. - are required depending on the product concerned. In certain cases involving the taking over of like domestic products, the importer must produce the relevant invoice (sometimes at the time of filing the licence application).

86. Except for certain cases which are exempt, a fee is charged for issuing a licence; its amount varies according to the product concerned and corresponds to the cost of the administrative service.

Other questions

Amendments to the relevant Swiss legislation 1966-1986

Question (2) by Australia

87. During the reference period, 1984-1986, covered by our review, there have been no changes to the relevant legislation. For earlier periods, please refer to section A of our annual reports (see, e.g., the Tenth Report).

List of products imported under the reservation in Paragraph 4 of the Swiss Protocol of Accession - Question (4) by Australia

88. As you will have seen, only about 20 per cent of our agricultural imports are covered by measures falling within that reservation. The products are mentioned in section G of our annual reports.

Self-sufficiency ratios as targets in legislation - Question (9) by Australia

89. These do not exist, in a general or binding way, in the relevant legislation of Switzerland, but we work with indicative targets in the case of eggs in shell, bovine meat and pigmeat.

Sources of public information - Question (14) by Australia

Beef: Livestock exchange in Zurich
Wine: Association of wine importers (Bern)

90. For questions of a general character: OSEC (Swiss Trade Expansion Office), Lausanne, Zurich.

91. This review is not a forum for the promotion of imports or exports. In case of any specific need, we are prepared to consider questions of this type bilaterally.

Domestic distilled spirits - Question (16) by Australia

92. Outside the terms of reference.

Links with the Uruguay Round - Examination by the Working Party

93. I have nothing to add to what Ambassador Girard has already stated on this subject (paragraphs 13 and 15 above). I should nevertheless like to draw your attention to the third point in the standstill commitment of the Declaration of Punta del Este, which enjoins participants not to take any trade measures in the course of the negotiations in such a manner as to improve their negotiating positions. That too I see as a virtual link with our present review."

*
* *

94. Members of the Working Party expressed their appreciation of the replies given by the Swiss delegation. These also attracted a number of comments and further questions. Concerning red wine in cask one member noted that the Swiss replies had mentioned a historical basis in relation to the contractual quotas, and asked, with another member, on what GATT basis such allocations were maintained. He was aware of the provisions of Paragraph 4 of the Protocol of Accession with regard to Article XI, but the Swiss authorities had no such reservation with regard to Article XIII. Likewise the member expressed reservations concerning the reply to Question (3) by Argentina, on imports of red wine in bottles. He asked for more information on the operation of the 150,000 hectolitre tariff quota on this item, especially in connection with the opportunities for non-traditional suppliers to have access to the market.

95. Another member commented that Switzerland's responses concerning wine did not distinguish, at a country level, between "bilateral, contractual"

and "globalized" quotas. Were the latter what were elsewhere referred to as "independent" quotas? What was the difference between "autonomous bilateral quotas" and "contractual quotas"? Such lack of clarity made it difficult for non-traditional suppliers to enter the Swiss market. Noting that Switzerland had referred to the possibility of considering globalizing further instalments of the former, she asked whether, and on what basis, the latter could likewise be made global. Though details had been requested as to how these (discriminatory) quotas had changed over the years, none had been supplied. The previous Working Party (paragraph 20 of its report, L/6003, referred) had made a formal request for Switzerland to provide detailed lists of the individual quotas within the totals. (Another member made a similar point, noting that the information supplied was still not adequate.) Concerning white wine in bottles, she noted that there had been no reply to her authorities' point concerning the restrictions originally introduced as safeguard measures under Article XIX of the General Agreement.

96. Concerning the responses to the questions on beef, the same member noted the point about commercial confidentiality but nevertheless found the replies insufficient. She restated a number of questions where further information was needed in reply, particularly concerning the operation of the fortnightly import quotas, the basis for whose allocation was still not clear. Was this a sort of "prise en charge" system? What was the upper limit of the target price? What cuts were involved (i.e., was it limited to the cuts listed)? She noted that no market price information had been supplied for the period 1986-87, nor any information concerning how the system of utilization of surplus slaughter animals worked. Was this a broader form of "prise en charge"? How did it operate in relation to the import quota allocation? How often did the system operate and what value of beef was taken into storage? She also noted that no details had been supplied concerning an exchange system of exports in return for imports of certain cuts of beef under quota. Her authorities had asked whether such a system existed and, if so, how it tied in with the other controls on beef imports.

97. On sheepmeat, she observed that problems of transparency remained, and that imports had not increased significantly since the change from quantitative restrictions to "prise en charge". The workings of the "prise en charge" system were unclear; for example the Swiss response gave no indication of the proportions involved for determining the level of imports. It was not clear what linkage there was between slaughter levels of Swiss beef cattle and authorization of sheepmeat imports. Concerning the three-phase system, she repeated that her country's exporters had found that the short advance notice of quotas caused problems in terms of seasonal planning.

98. Overall, this member's authorities recognized Switzerland's efforts in providing responses but remained concerned at the lack of transparency in the Swiss system and the lack of information in some areas. In light of the Working Party's responsibility to ensure that the actions taken by Switzerland under Paragraph 4 caused minimum harm to other contracting parties, any further information would be appreciated. These points were endorsed by another member.

99. Regarding the Swiss responses to questions concerning the "prise en charge" system in general, the member stated that she understood its coverage to be broader than had been indicated, extending to breadgrains, certain types of grape juice, certain types of poultry, beef and pork - and, in a sense, some phases of the three-phase system for fruit and vegetables. Another member also wished to be certain concerning the product coverage of this system. Poultry, for instance, was or had been subject to so-called "voluntary prise en charge"; he would like to know the extent to which it was really voluntary, and whether its omission from Section G of the annual report meant it was not covered by the partial reservation. He further asked for an explanation of the remarks concerning proportionality, and details of the basis of calculation of the "prise en charge" requirement, with statistics concerning its operation. In particular he had sought such information on eggs in shell and sheepmeat. Without this, it was not possible for the Working Party to see whether the policy had been carried out in such a way as to cause minimum harm to other contracting parties, as required.

100. Concerning the consistency of the "prise en charge" system with Article III of the General Agreement, this member noted the Swiss offer to discuss the issue bilaterally, but commented that a matter of such wide interest and importance should not be dealt with in this way only. He noted the fuller response given concerning the "prise en charge" system by the Swiss representative in paragraphs 59-60 (above), and in particular the statement that the system was covered by Paragraph 4. However this was not enough on this crucial point. He asked for an assurance that Switzerland did not consider that its Protocol of Accession in any way provided a partial reservation to Article III of the GATT in respect of agricultural products.

101. In reply, the Swiss representative said that if the questions had not all been answered in the detail some members might have wished, this was because of fundamental issues concerning GATT and Switzerland's participation in it. He repeated that the purpose of this exercise was to address concrete questions relating to the operation of arrangements under Paragraph 4. But he now saw another, different, approach being taken; while noting the questions, he asked whether it was appropriate to modify the Working Party's procedures in the sense of examining certain very broad aspects which did not pose any problems. Replying to the specific additional question concerning red wine in bottles, he repeated that this was not under the Protocol of Accession. He added that Switzerland was prepared to examine the possibility of carrying out further globalization. The system did, he maintained, offer access opportunities to non-traditional suppliers.

102. Reacting to the foregoing observations by the Swiss representative, a member of the Working Party said that Paragraph 4 constituted a partial reservation to a critical Article of the General Agreement. It was analogous to a waiver and needed to be considered in that way. This meant, inter alia, that the provisions of Article XXIII were relevant. Commenting on the expectations of the CONTRACTING PARTIES at the time this reservation was allowed, the member recalled that, as discussed above, they had done so in the context of Swiss commitment to the Ministerial Resolution setting up the Kennedy Round. He referred back to the earlier Swiss reply concerning

their position on Paragraph 4 of the Protocol in relation to the Uruguay Round (paragraphs 13 and 15 above). This reply was disappointing, implying as it did a two-track negotiation. There should be one negotiation, with new rules applying equally to all. Switzerland had subscribed to the Ministerial Declaration of September 1986 and the Mid-Term Review Agreement and was, he said, supposed to be an active participant in the Round. His authorities would like to know what approach the Swiss might take to changes in GATT rules in the light of the Round; would a rules-oriented approach give Switzerland greater scope to modify its arrangements?

103. The representative of Switzerland reminded the Working Party that his country had negotiated a Protocol of Accession, whereas the United States (for example) had requested and obtained a waiver, which Belgium had been refused. Switzerland had therefore had to negotiate for its accession. This was a question of relevance to all smaller contracting parties. Concerning the reference (above) to the Kennedy Round and the expectations of contracting parties, he pointed to the evolution of agricultural exports to Switzerland from the country which had raised the question, and asked whether this was not acceptable given the well-known situation in agricultural trade. He also noted that Switzerland had never sold surpluses at knock-down prices on world markets, and invited members to reflect on these points. He reaffirmed the reply his delegation had given concerning the Uruguay Round and Paragraph 4 of the Protocol (paragraph 13 above), and added that for the Working Party the most relevant element of the Punta del Este Declaration was the standstill undertaking, according to which no participant in the negotiations should strengthen its negotiating position by resorting to established GATT procedures.

104. The member who had put the questions in paragraph 42 above said his authorities could not accept that the Uruguay Round standstill commitment in any way constrained the rights of a contracting party to seek to ensure another's compliance with its GATT obligations. It was Switzerland which had in place the measures under examination, and the standstill commitment did not increase Switzerland's rights under its partial reservation by reducing its obligation thereunder. Concerning specific commodity questions, he recalled the lengthy effort he and other members had made to ensure transparency. On the basis of present information he would have considerable difficulty in making an assessment that Switzerland had acted fully in compliance with Paragraph 4 of the Protocol Accession.

105. This member then returned to the questions he had raised concerning Swiss legislation in relation to the Protocol of Accession, as his delegation was concerned about the brevity of Switzerland's response on this subject. He stated that there was no time-limit on the Working Party's ability to examine the relevant legislation, and amplified a number of points (covered in paragraphs 17-23 above) which were of particular concern. As the summary record of the 1965-66 discussions made clear, the partial reservation granted by the CONTRACTING PARTIES in 1966 applied to specified legislation, such as the Federal Decree of 1962 which had apparently expired in 1972. The legislation of 1972 and 1982 which effectively renewed it might have the same economic effect - as the Swiss representative had stated - but its legal effect in terms of the 1966 CONTRACTING PARTIES decision was not the same. Furthermore, only Article 11 of the legislation in question had been supplied to the Working

Party. Examination of the entire 1982 Law, for example, indicated that it conferred to the federal authorities additional powers (under Article 1) to control imports. It was clearly unacceptable to add new powers to those covered in the Protocol; did the Swiss authorities claim the whole of the 1982 Law was covered by it? He recalled the points he had made (see paragraphs 20 and 21 above) concerning failure to notify or consult with contracting parties over the post-1966 legislative changes and their - apparently significant - implications for the Swiss import régime. Did this indicate that Switzerland did not regard this legislation as covered by the partial reservation?

106. The same member observed that several of his other questions to the Swiss authorities had not been answered either fully or at all. His point about self-sufficiency targets was not whether these were set down in legislation but whether they existed, whether they were adjusted regularly, and how contracting parties' interests were taken into account in so doing. Recalling that self-sufficiency had been mentioned in the replies concerning sheepmeat and eggs, he remarked that it was a constant theme in this Working Party and seemed important in Swiss agricultural policy. If there were no such targets, how could the operation of "prise en charge" be determined, or the relationship between production and import levels? Were there minimum targets of x per cent? Were there self-sufficiency targets for various products, as the "prise en charge" system implied? If so, what were they? Recalling that one of Switzerland's obligations under Paragraph 4 of the Protocol of Accession was to ensure that use of its reservation caused minimum harm to other contracting parties, he expressed interest in how any such targets squared with this obligation. He noted in this regard an interest in an eventual answer to the question raised by another member concerning compensation (see paragraph 39 above).

107. Lastly, if (as the representative of Switzerland had replied) the question raised regarding relative duty rates on domestic and imported distilled spirits was outside this Working Party's mandate, did this mean these products were outside the scope of the Protocol?

108. The representative of Switzerland repeated, in reply, that he saw this seventh review exercise as involving an examination of the measures taken in 1984-86 by Switzerland under Paragraph 4 of its Protocol of Accession. There seemed to be some misunderstanding about this. Switzerland's international obligations under Paragraph 4 related to the measures which they applied; it was risky to examine legal texts from a theoretical viewpoint. The review exercise was conceived in a pragmatic manner to allow for the consideration of any concrete problems which might arise for Switzerland's GATT partners because of the use of import restrictions authorized under the Protocol of Accession. That was the limit of the Working Party's mandate. Hence the answers Switzerland had provided during the Group's work had been in line with Paragraph 4 of the Protocol, which dealt with import restrictions as therein defined.

109. In reaction to these remarks a member maintained that wider issues - such as the legislation on which Switzerland's partial reservation was based, and the relationship to the Uruguay Round - were legitimate topics for discussion by the Working Party. In allowing the partial reservation in 1966 CONTRACTING PARTIES had been quite clear that they were not in a

static situation; indeed it was Switzerland's acceptance of a dynamic situation in respect of its economic relations which had enabled it to seek full accession to the GATT. It was therefore legitimate to raise questions in this forum concerning not only Swiss legislation but also the prospect that the new rules to be negotiated in the Uruguay Round could allow the termination of the partial reservation. She noted that Switzerland had conceded that it was understandable and legitimate that questions touching on the Uruguay Round should be raised in this body (see paragraph 13 above). This was a matter of considerable importance to her delegation.

110. The representative of Switzerland replied that he had noted the additional questions, and recalled his comments above. He emphasized that Switzerland's good faith in the Uruguay Round could not be questioned, and strongly rejected any imputation to the contrary.

111. Another member of the Working Party endorsed the comments made in paragraph 109 above. This member reaffirmed that the Working Party was concerned not simply with measures in isolation but with import restrictions pursuant to specified legislation in existence at the time of the Protocol of Accession. Therefore, in order to conduct the review provided for under the provisions of Paragraph 4 of the Protocol, the Working Party had to ensure that the juridical basis for the maintenance of the partial reservation and of the measures under it was still valid. Furthermore, with the emphasis in the Uruguay Round on strengthening the GATT rules in agricultural trade it would be appropriate for Switzerland to reconsider the exemption it enjoyed under its Protocol of Accession, and, consistently with the undertakings provided, to give contracting parties an early indication of the reforms it envisaged implementing.

112. 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. It recalled that Switzerland, in the light of previous Working Party discussions (L/6003), had indicated its willingness 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. The Working Party expressed its appreciation for the additional information included in subsequent annual reports 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. The Working Party took note of the view of certain delegations that changes to Swiss legislation cited in the text of the Protocol approved by the CONTRACTING PARTIES in 1966 might have changed the basis on which the partial reservation had been granted. It also took note of the statement by the representative of Switzerland that the Protocol provided for an exemption from Article XI and of his reconfirmation that the legal basis of the measures applied under the Protocol remained unchanged.

113. The Working Party noted that, subsequent to the completion of the last triennial review of the operation of the Protocol, the Uruguay Round of trade negotiations had been launched, in September 1986. Differing views were 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. Some members expressed the view that fulfilment of the mandate for negotiations on agriculture, and of the decisions reached by Ministers in the context of the Uruguay Round, would alter the basis on which the reservation under Switzerland's Protocol of Accession had been agreed. They were therefore of the view that a successful agreement on strengthened and more operationally effective GATT rules and disciplines would include the termination of Switzerland's partial reservation. The representative of Switzerland held that such issues were beyond the mandate of this Working Party, and that the exemption negotiated with and accepted by the CONTRACTING PARTIES was part of the GATT rules and hence not temporary. He reminded the Working Party that Switzerland had agreed to discuss in the Uruguay Round possible changes in the GATT rules. All members of the Working Party reaffirmed their commitment to the aims agreed by Ministers for the agricultural negotiations of the Uruguay Round.

Annex
Supplementary Information

In accordance with requests from members of the Working Party, the representative of Switzerland has supplied the following supplementary information:

- Import permits for sirloin beef delivered in 1985/86;
- The text of Article XI of the Federal Decrees of 28 September 1956, 28 September 1962 and 28 June 1972, and of the Federal Law of 25 June 1982.

Beef

Import Permits Issued in 1985/86 for Sirloin Beef
(Tons)

	<u>1st quarter</u>	<u>2nd quarter</u>	<u>3rd quarter</u>	<u>4th quarter</u>	<u>Total</u>
1985	791	789	1,474	988	4,042
1986	674	1,079	1,328	1,221	4,302

The amounts of the permits are fixed every fortnight by the Administration of the Swiss Cooperative for the Supply of Slaughter Animals and Meat.

Federal Decree on External Economic Defence Measures
of 28 September 1956

Article 11

1. This Decree shall come into force on 1 January 1957 and remain applicable until 31 December 1962.
2. The import restrictions based on the Federal Decree on External Economic Defence Measures of 14 October 1933/22 June 1939 shall remain in force until further notice for motor lorries, trolley buses, motor buses and motor coaches in the heavy and medium-heavy categories (ex heading No. 914c/d of the customs tariff), while the provisions for agricultural tractors (ex heading Nos. 896b/898b M 5, 914 g. of the customs tariff) and for cinematographic films (heading No. 902a of the customs tariff) shall remain in force until the end of 1960 at latest.
3. Other implementing provisions and measures taken under the Federal Decree on External Economic Defence Measures of 14 October 1933/22 June 1939 shall remain in force after 31 December 1956 unless they have been repealed or amended prior to that date.

4. The Federal Decree on External Economic Defence Measures of 14 October 1933/22 June 1939 and its implementing provisions shall remain applicable to events that occurred when they were in force, subject to the first sentence of paragraph 5.

5. The procedural provisions of this Decree and its implementing provisions are applicable to applications and appeals pending before the competent offices and authorities at the date of 1 January 1957. Appeals against the decisions of the Swiss Clearing Commission pending at that date before the Federal Department of the Public Economy shall be decided by the latter; appeals shall be to the Federal Tribunal in the case of the disputes mentioned in Article 6, and to the Federal Council in all other cases. The Federal Council shall also have jurisdiction over appeals already before it which would otherwise fall within the jurisdiction of the Federal Tribunal.

Federal Decree on External Economic Defence Measures
of 28 September 1962

Article 11

1. Import restrictions based on the Federal Decree on External Economic Defence Measures of 14 October 1933/22 June 1939 shall remain in force until further notice for the following goods:

- vehicles for the transport of goods with a payload of more than 5 tons, in the case of vehicles with normal axles, and over 4.5 tons in the case of special axles (tip-lorries, vans, tankers etc.) and special-purpose motor vehicles other than radar lorries, falling within heading Nos. 8702.28 and 8703.20 of the customs tariff;
- public transport vehicles (motor coaches, motor buses, trolley buses) having more than 30 seats (excluding the driver's seat) falling within heading No. 8702.28 of the customs tariff;
- chassis, whether or not fitted with engines, gears, front and rear axles and steering gear for the above-mentioned motor vehicles falling within heading Nos. 8406.20/22, 8702.28, 8704.01 and 8706.34 of the customs tariff.

2. The other implementing provisions and measures taken under the Federal Decree mentioned in paragraph 1 shall remain in force after 31 December 1962, unless they have been repealed or amended prior to that date.

Federal Decree on External Economic Measures
of 28 June 1972

Article 11

1. This Decree shall enter into force on 1 January 1973 and have effect until 31 December 1982.

2. The implementing provisions and measures taken under the Federal Decree on External Economic Defence Measures of 28 September 1956 shall remain in force after 31 December 1972 unless they have been repealed prior to that date.

3. The Federal Council shall be responsible for publishing this Decree in conformity with the provisions of the Federal Law on Referendums on Federal Laws and Decrees of 17 June 1874.

Federal Law on External Economic Measures
of 25 June 1982

Article 11

1. The implementing provisions of the Federal Decree on External Economic Measures of 28 June 1972 shall remain in force unless they have been repealed prior to the expiry of the said Decree.

2. This law is subject to optional referendum.

3. It shall enter into force on 1 January 1983.