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

Supplementary Questions to the Representative of Switzerland

In accordance with the procedure agreed at the meeting of the Working Party on 12 July 1991, the following supplementary questions to the representative of Switzerland have been received from New Zealand and Australia.

Supplementary Written Questions Submitted by New Zealand

Introduction

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

Question 1: Prise en charge system

- (a) While some information is provided in response to the questions on the "prise en charge" system, a number remain unanswered. Specifically, how does Switzerland consider the "prise en charge" system to be consistent with Article III of GATT, in particular Article III.1 and Article III.5? Does Switzerland consider that the exemption granted it under paragraph 4 of its Protocol extends to any provision of the GATT other than Article XI?
- (b) In answer to New Zealand's question about what range of products "prise en charge" may be applied to, Switzerland replied that "Article 31 of the General Ordinance on Agriculture...provides ...importers of seeds of oats, barley etc., may be obliged to

acquire...similar domestic products...". The products listed by Switzerland do not include three of the products - eggs in shell, sheep and goats - listed by Switzerland in L/6658 paragraph 60 as the products to which the system "is applied at present". It therefore appears that either Switzerland is applying "prise en charge" to three products without legislative basis, or that the list in Switzerland's reply to Question 1(iii) is not exhaustive. New Zealand therefore, once again, asks Switzerland for a list of those products to which "prise en charge" may be applied and the legislative basis for the products.

- (c) In paragraph 2, reply to Question 1(iv) Switzerland says that "With regard to the three phase system for imports of fruit and vegetables... There is no "prise en charge" in the three phase system." However, the excerpt from Switzerland's General Ordinance on Agriculture, quoted in reply to Question 1 (iii), states that "...importers of...stone fruit, berries, fresh vegetables...may be obliged to acquire over a specified period similar domestic products...in a proportion compatible with their imports. New Zealand recalls that its question referred to "certain products" and would be grateful if the Swiss delegation could clarify to the Working Party how these statements are compatible in respect of the products in question.
- (d) Switzerland's reply to Question 1(iii) by New Zealand, paragraph 2, suggests "prise en charge" system might only operate for part of the year, or alternatively that the ratio of imports to domestic products to be taken over might vary during the course of the year. Which interpretation is correct? Could Switzerland also please explain why maximum (rather than minimum) quantities of domestic products are set. What would happen if the maximum quantity were not reached?
- (e) In connection with this, New Zealand had asked what the current import ratios for products subject to the "prise en charge" system were, and how these had evolved since 1966.
- (f) New Zealand noted with interest that "prise en charge" obligations may be dispensed with by payment of a substitute tax. Reply to Question 1(iii) (paragraph 3) lists a number of products in this connection, but the reply to Question 1(iv) suggests the same facility is available to wine importers. Is the payment of a substitute tax an option for importers of any products subject to "prise en charge" obligations? At what level is the substitute tax set? How frequently, in practice, do importers opt for payment of the tax rather than meeting domestic purchasing obligations? How does the "optional nature" of these taxes make them covered by the Protocol? (see reply to Question 4 by Australia).

- (g) With regard to reply to Question 1(iv), concerning bovine meat, how do the Swiss authorities determine that "a market is subject to strong pressure"? Switzerland now claims there is no "prise en charge" system for imports of fruits and vegetables: information provided in Switzerland's Third Annual Report (document L/3214, paragraph 7 refers) suggested a form of "prise en charge" sometimes operated during the second phase. Has this subsequently changed?
- (h) In Question 1(v) New Zealand asked what products were affected by the "prise en charge" system in 1958 and 1966, and whether the system had been expanded to cover other products since the time of Switzerland's accession to GATT. Switzerland, in its reply, commented on sheepmeat (which New Zealand had provided as an example of such a product), but otherwise has not responded to these questions.
- (i) Similarly, for Question 1(vi), Switzerland has not provided information on how the import ratios are set (e.g. with respect to self-sufficiency ratios, price trends), on the legislative basis for altering import ratios, and on how Switzerland considers it is meeting the terms of its Protocol (requirement to cause "minimum harm" and to provide a "steadily expanding market for exports of agricultural products") in cases where the proportion of domestic production to be taken over has been increased. The "advantages" of the "prise en charge" system alluded to by Switzerland are not, in New Zealand's view, relevant to an assessment of whether these criteria are being met. Despite any claimed "advantages", New Zealand wonders why (e.g.) sheepmeat imports have remained relatively stable despite significantly increased domestic consumption.

Question 2: Policy objectives and import trends

- (a) Switzerland has not replied to Question 2(i) (a), on the grounds that it goes beyond the Working Party's terms of reference. New Zealand notes that information on domestic products covered by the Protocol has been provided sporadically by Switzerland in its annual reports. New Zealand considers information on production trends for these products to be necessary in order for Working Party members to make an accurate assessment of the extent to which Switzerland is fulfilling the terms of its Protocol - e.g. causing minimum harm to the interests of contracting parties and providing a steadily expanding market. Statistics on quantities imported, in isolation, do not give an accurate picture of the evolution of the Swiss market for agricultural products.
- (b) New Zealand takes little comfort from Switzerland's reply to Question 2(ii) (b) which suggests that "limitation of production is more effective than price reduction for restoring market equilibrium". Production limitations are no substitute for

longer-term structural adjustment, and are likely to be undermined by conflicting signals given to producers by means of continuing price increases. The fact that Switzerland's production of milk has generally continued to increase since controls were instituted in 1977 suggests support prices are too high to counteract the disincentives to over-produce and/or that price penalties on over-quota milk are insufficient to prevent farmers from recovering marginal costs.

- (c) Switzerland has not replied to Question 2(ii) indicating what steps it is prepared to take to reverse the trend towards significantly decreased imports of agricultural products covered by the Protocol. We note that Switzerland has indicated percentage import changes over a three-year period only. While this is the period covered by the review, it does not give an accurate picture of the import evolution over time. New Zealand had identified a number of core products for which significant falls in imports had occurred over a number of years. The figures provided by Switzerland confirm this is the case for the 1987-89 period.

Question 3: Specific products

- (a) Cattle and meat: New Zealand repeated a range of questions, which were raised in the context of the last triennial review, concerning mechanisms and procedures for the import quotas governing beef (see Question 3(i)). Once again, Switzerland has not made any response.
- (b) New Zealand appreciates Switzerland's reply to the question concerning herd ceilings and cowshed building permits. On herd ceilings we would appreciate information on how ceilings were set (i.e. are herd numbers per farm set in relation to the size of each holding?). What is the resulting total herd size for Switzerland as a whole? Are the "levels set in a special authorization" higher or lower than the authorized herd ceiling?
- (c) Dairy products: New Zealand has analysed the trend in Switzerland's butter imports over a number of years, and notes that (with the exception of 1987), quantities imported have been declining steadily since 1982. How "temporary" is the increase in butter production being experienced in Switzerland currently? Switzerland suggests that butter production has increased because consumption is declining, in favour of low-fat products. What is the trend in butter production in absolute terms? Has it continued to increase while, at the same time, consumption has decreased?
- (d) Fresh flowers: New Zealand asks again what proportion of imports are covered by basic, as opposed to supplementary quotas? What is the proportion of domestic flowers to be marketed by importers which governs the amount of supplementary quota which may be available to them?

- (e) Given that imports have comfortably exceeded the quantities set out in remaining bilateral quotas, what plans does Switzerland have to terminate these arrangements, in conformity with its obligations under Article XIII? New Zealand agrees with the comments by Australia to the effect that it is difficult to see an acceptable linkage between the maintenance of quantitative restrictions on flower imports and Switzerland's stated agricultural policy objectives. Does Switzerland have any plans to eliminate quotas on flower imports.
- (f) Wine: Switzerland has not replied to the questions raised by New Zealand, other than to note that "changes to the import régime for red wine in casks are currently being studied". What is the time-frame for this review? Are there plans to study the liberalization of imports of white wine? New Zealand reiterates the question raised concerning the allocation of quotas and the opportunities for new suppliers to enter the Swiss market.
- (g) New Zealand notes that Switzerland now considers the import control measures on white wine in bottles, introduced as an emergency safeguard measure, to constitute a quantitative restriction. What was the legislative basis for these restrictions to be introduced?

Supplementary Questions from Australia

Question 1

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

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

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

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

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

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

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

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

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

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

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

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

Question 2

Australia does not consider Switzerland's response to our initial Question 7 to be adequate. Knowledge of the existence of a particular trade measure in 1966 does not, in itself, justify the continuation of that measure. To claim otherwise is to give a general grandfathering right to

all Swiss agricultural measures existing in 1966, regardless of whether they were justified under paragraph 4 of the Protocol of Accession. This was not the intent of the Protocol. Indeed, if it had been, there would have been no need for paragraph 4 - Switzerland may have simply availed itself of the Protocol of Provisional Application of the GATT.

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

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

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

Question 3

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

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

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

We invite Switzerland to comment on these points.