

Working Paper No 2008/5

JULY 2008

Market Access in Switzerland and in the European Union for Agricultural Products from Least Developed Countries

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ABSTRACT

The introduction of the so-called “duty free quota free” treatment (DFQF) for all products from least developed countries (LDCs), in particular by the European Communities (EC) and by Switzerland, raised expectations of increased agricultural exports for these 49 countries. Despite the high tariff differential LDCs now enjoy over their competitors, especially for agricultural products and particularly in Switzerland, the results until 2007 are dismal: with the exception of sugar exports to the EC, LDCs have not been able to substantially increase their agricultural exports to Europe. This study analyses the resulting tariff situation and the remaining non-tariff barriers. In many instances it is not customs duties but the sanitary and phytosanitary barriers which turn out to be the single most important hurdle preventing trade. For instance, almost no LDC-based company can supply animal-based products. Similarly, certain private standards set by processors and retailers prevent imports, particularly from LDCs, far more effectively than tariffs. Several gateways into this “European cordon sanitaire” are proposed. Only if offered in the context of a package of various carefully coordinated measures, DFQF could yet have a real impact on trade from LDCs. As it stands, this treatment constitutes only a nice-to-have but still largely ineffective instrument of trade development.

KEY WORDS

agriculture; dispute settlement; economic partnership agreements (EPA); European Union; generalised system of preferences (GSP); least developed countries; market access; private standards; sanitary and phytosanitary measures (SPS); Switzerland; World Trade Organization (WTO)

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Contents

| | |
|--|-----------|
| 1. INTRODUCTION | 5 |
| 2. MARKET ACCESS CONDITIONS FOR LEAST-DEVELOPED COUNTRIES IN THE EUROPEAN UNION | 7 |
| 2.1. Tariffs | 7 |
| 2.1.1. WTO provisions applying to different types of customs duties | 8 |
| 2.1.2. Tariff Preferences of the EU | 10 |
| 2.1.3. Everything But Arms (EBA/DFQF) | 13 |
| 2.1.4. The impact of EU preferences on market access | 15 |
| 2.1.5. GSP rules of origin | 16 |
| 2.1.6. WTO-related aspects of EU trade preferences | 17 |
| 2.1.7. Economic Partnership Agreements (EPAs) | 19 |
| 2.1.8. A tariff hurdle in its own right: seasonal tariffs | 22 |
| 2.2. Non-Tariff Barriers (NTBs) | 23 |
| 2.2.1. Phytosanitary and sanitary legislation | 26 |
| A. General food law | 27 |
| B. Veterinary matters | 29 |
| C. Placing on the market of food and feed | 30 |
| D. Food safety rules | 30 |
| E. Specific rules for feed | 33 |
| F. Phytosanitary matters | 34 |
| 2.2.2. Technical barriers to trade | 38 |
| 2.2.3. Private standards | 39 |
| 2.3. Preliminary conclusion: Tariffs are not the only obstacle to trade | 42 |
| 3. LDCS' MARKET ACCESS CONDITIONS IN SWITZERLAND | 44 |
| 3.1. Tariffs | 44 |
| 3.1.1. Tariffs for LDCs | 45 |
| A. Safeguards | 47 |
| B. Two temporary exceptions: Sugar and broken rice | 48 |
| 3.1.2. Tariffs for other developing countries (GSP) | 49 |
| 3.1.3. Tariffs in Free Trade Agreements (FTAs) | 50 |
| 3.1.4. The resulting effective tariff advantage for LDCs' products | 51 |
| 3.2. Non-Tariff Measures | 51 |
| 4. RECENT PERFORMANCE OF LDCS' EXPORTS | 54 |

| | | |
|-----------|---|-----------|
| 4.1. | Trade Data | 54 |
| 4.1.1. | LDCs' exports to Switzerland | 54 |
| A. | Total exports | 54 |
| B. | Agricultural exports | 55 |
| C. | Individual products | 56 |
| 4.1.2. | LDCs' exports to the European Union | 60 |
| 4.1.3. | LDCs exports to the world | 61 |
| 4.2. | Analysis | 62 |
| 4.2.1. | European Union | 62 |
| 4.2.2. | Switzerland | 64 |
| 5. | POTENTIAL FOR INCREASED LDCS' EXPORTS TO SWITZERLAND | 64 |
| 5.1. | The hole in the tariff wall | 65 |
| 5.2. | The cordon sanitaire | 65 |
| 5.2.1. | Sanitary obstacles | 65 |
| 5.2.2. | Phytosanitary obstacles | 66 |
| 5.2.3. | FDI as a Trojan horse against SPS obstacles | 67 |
| 5.3. | The potential additional LDCs' market access | 68 |
| 6. | CONCLUSIONS AND RECOMMENDATIONS | 72 |
| 6.1. | Conclusions | 72 |
| | Conclusions regarding tariffs | 74 |
| | Conclusions regarding non-tariff barriers | 75 |
| 6.2. | Recommendations | 76 |
| | Recommendations for policy makers | 76 |
| | Recommendations for investment and trade promotion activities | 78 |
| | ANNEXES | 79 |
| | SELECTED TRADE DATA | 79 |
| | 1. Swiss Imports from LDCs, Principal Suppliers, and Changes 2006-2007 | 80 |
| | 2. EC Imports from LDCs, Principal Suppliers | 86 |

| | |
|---|------------|
| 3. World Agricultural Product Imports from LDCs, by tariff chapter | 102 |
| ACRONYMS | 103 |
| LITERATURE | 106 |
| LIST OF CONTACTS | 108 |

1. Introduction

The road to free market access for the least developed countries (LDCs) is long and bumpy. Vast differences exist between sectors, with agriculture and textiles proving the hardest nuts to crack. And importing countries offer very different levels of market opening. Mainly because of the historical ties of many developing countries with some of its Members States, the European Communities (EC) has been the leader in moving towards what today is called 'duty free and quota free' market access (DFQF). At the multilateral level, the WTO Hong Kong Ministerial in November 2005 – while disappointing for multilateral pro-trade advocates – at least acknowledged the importance of DFQF for the LDCs by making a commitment to grant them such treatment for 97% of all tariff lines.¹

Following the lead of the EC, Switzerland has progressively introduced DFQF market access for all products from the now 49 LDCs. The final step was taken on 1 April 2007.² Since then, these countries have been enjoying a definite tariff advantage over all other countries.³ Only two products were temporarily excluded: Broken rice (for use as animal feed) and sugar.⁴ Like products of other origins, the products of LDCs must, however, conform to a number of public and private standards, and in particular sanitary and phytosanitary conditions. Today, Swiss non-tariff barriers (NTBs) for agricultural products are identical or equivalent to those which the European Union (EU) applies to third-country imports.

¹ Cf. *infra* 3.1.1. and 4.1.3.

² Verordnung über die Präferenz-Zollansätze zugunsten der Entwicklungsländer (Zollpräferenzenverordnung) vom 16. März 2007 (Classified Compilation of Federal Law 632.911). Text in German at http://www.admin.ch/ch/d/sr/632_911/index.html (09.06.2008). The first two steps took place on 1 January 2002 and 1 April 2004.

³ Actually, a few heavily-indebted developing countries (HIPC) also benefit from being treated as LDCs for their exports to Switzerland (cf. *infra* 3.1.1).

⁴ The EC, in addition to all tariff lines for rice and sugar, also excluded bananas; cf. 3.1.1 *infra*

The effective market access potential for the products of LDCs is thus determined by a number of parameters:

- tariffs for competing products
- NTBs such as sanitary and phytosanitary norms
- private standards and operators' preferences – and, of course, price and quality characteristics of their products as seen by operators in Europe.

Given the size and proximity of the EU, and the relevant bilateral agreements with Switzerland, the rapidly evolving market access conditions in the EC obviously play a predominant role in determining the export prospects of LDCs for the Swiss market too. This study will therefore begin with an analysis of the legal situation prevailing in the EU, both for tariffs and NTBs (chapter 2). Chapter 3 examines the specific tariff and non-tariff market access conditions in Switzerland. In Chapter 4, recent trade statistics are presented for a number of LDC's exports to Switzerland, to the EU, and to the world as a whole. Chapter 5 presents a list of the products of LDCs that will potentially benefit from this new 'hole in the tariff wall' – or rather those products which can enter through that hole *and* jump the 'European cordon sanitaire'. The last chapter (6) contains some operational conclusions as well as a number of recommendations to policy makers and trade regulators, and trade and investment promoters which may help to improve LDCs chances for trading with Switzerland further.

At the outset, one should take into consideration that even at a very low level, increased imports from LDCs could do three things:

- a. displace domestic produce (*import trade creation* – with the possibility of a safeguard); or
- b. replace imports of other origins (*import trade diversion* – at the expense of perhaps more competitive suppliers); or
- c. lead to an increase in consumption and/or new export opportunities for processed agricultural products (*total trade creation*).

This study does not speculate which of these three possible consequences increased LDC supplies, if any, may have. However, policy makers and trade promoters alike should bear the different implications in mind.

Other aspects of at least some statistical importance are the different definitions of LDCs adopted by different preferential schemes. This is so even though the special situation of LDCs had already been acknowledged back in 1972, by Resolution 3036 of the UN General Assembly at its 27th Session ('Special measures in favour of the least developed among the developing countries').⁵

2. Market Access Conditions for Least-developed Countries in the European Union

The products of LDCs have to compete against competitors supplying at most favoured nation (MFN) or Generalised System of Preferences (GSP) rates, and against products from countries benefiting from bilateral trade concessions under free-trade agreements (FTAs). This chapter deals with the conditions prevailing in the EU, especially the tariff advantage LDCs have gained over other developing countries – and which they are gradually losing again (2.1). Because of their parallel and simultaneous impact on LDCs' trade with Switzerland, the NTBs of the EC will then be presented in some detail (2.2.).

2.1. Tariffs

LDCs today enjoy preferential market access for all their products in the EU, which means it is better than MFN for many products.

⁵ This Resolution, adopted on 19 December 1972, endorsed Resolution 62 of 19 May 1972, adopted by the UN Conference on Trade and Development at its Third Session in the context of the Launching of the Second UN Development Decade. The official list can be downloaded at http://www.un.org/esa/policy/devplan/profile/LDCs_list.pdf (24.06.08). The UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing Countries publishes its list of LDCs under the following link: <http://www.un.org/special-rep/ohrlls/LDCs/list.htm> (10.01.08)

Overall, it is better than tariff conditions for any other country. But, as will be shown below their tariff advantage has shrunk, and it will be eroding even more.

We first look at the World Trade Organization (WTO) provisions applying to different types of customs duties – autonomous, preferential and contractual (2.1.1.) – and then at the EC's three preferential schemes (2.1.2.), in particular for LDCs (the so-called "Everything but Arms" initiative or EBA, in 2.1.3.). The picture of LDC market access is one of progressive and non-reciprocal steps towards free trade – but competing suppliers from other countries have also seen their tariff barriers in the EC being reduced, both under the EC's autonomous preferences and under its trade agreements with developing and developed countries, which partly explains the LDCs's lagging performance vis-à-vis EC imports from non-LDCs (2.1.4.). We then present the EC's rules of origin as perhaps one reason for this poor performance (2.1.5.). Some remarks with regard to the WTO-legal aspects of these arrangements (2.1.6.) will lead into to the new Economic Partnership Agreements (EPAs). Unfortunately, from the viewpoint of many LDCs, EPAs are also an eroding factor for EBA (2.1.7.). Finally, we identify a sometimes neglected tariff hurdle still facing the other developing countries, and which LDCs could exploit as a selling proposition for their exports: seasonal tariffs (2.1.8.).

2.1.1. WTO provisions applying to different types of customs duties

The paradise of worldwide duty-free trade is still some way off – and the road towards that goal seems not only long, but it is also rather bumpy. Today, and on almost all markets, different suppliers face different tariffs:

1. Usually at the highest levels are the WTO-enshrined MFN tariffs to which all WTO Members have unconditional access. Since 1995, this level has been slightly lowered, in particular as a result of the Uruguay Round negotiations.

2. The tariff levels that are normally lowest result from regional trade agreements, in particular FTAs.⁶ Their number is growing exponentially, and the EC is busy negotiating an ever widening network of such agreements.
3. Non least-developed developing countries enjoy (sometimes piecemeal) preferential access under two different tariff preference regimes which are 'unilateral' to the extent that the EC can withdraw such preferences at any time and without compensation. Actually, some of the EC preferences, especially those for the countries of the African, Caribbean and Pacific Group of States (ACP), are often granted in the context of overall development agreements. Despite this, the EC preferences, in a strict legal sense, remain 'unilateral' or 'autonomous' which means beneficiaries would have no legal ways and means against a suspension or withdrawal of such rights. Other preferences are not based on any agreements and can be revoked by the EC without even a consultation of the beneficiaries. This incidentally also applies to non-ACP beneficiaries of the EBA.

The legal basis for the three access modes under the relevant WTO provisions is as follows:

1. Access under the WTO-scheduled rates is guaranteed, for all WTO Members, by the General Agreement on Tariffs and Trade (GATT) Article I (most-favoured-nation clause – MFN).
2. FTAs, as well as Customs Unions, are one of two allowed major exceptions to the MFN principle. In order to be consistent with obligations under the WTO, a FTA must respect the conditions laid down GATT Article XXIV; and, for services, in the General Agreement on Trade in Services (GATS); cf. GATS Article V.
3. Preferential access for developing countries only is the other exception to the MFN obligation. The WTO legal basis for the GSP is the so-called *Enabling Clause* (1979). The Enabling Clause, officially called the 'Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of

⁶ In 2006, the EC had FTAs with only three developing countries: Mexico, Chile, and South Africa.

Developing Countries', was adopted under GATT in 1979 and enables developed Members to give differential and more favourable treatment to developing countries. On this basis, developed countries offer non-reciprocal preferential treatment to products originating in developing countries.

2.1.2. *Tariff Preferences of the EU*

As part of its effort to support former colonies of its Member States, the EC has for decades offered preferential market access to ACP countries, as well as to other developing countries. Part 4 of the Treaty of Rome (1957), which gave life to the European Common Market, provided for the creation of the European Development Funds (EDFs), aimed at giving technical and financial aid to African countries still colonised at the time and with which some Member States of the Community had historical links. Trade concessions were introduced in the framework of the Yaoundé Conventions I and II (1964 – 1975), continued in the Lomé Conventions I – IV (1975 – 2000).

At the start of the new millennium, the Cotonou Agreement replaced the Lomé Conventions. The Agreement constitutes the legal framework for the whole EC–ACP political, financial and technical co-operation. It will remain in force until 2020. In June 2005, various amendments were added, but with no changes in respect of trade provisions. The EU objective in the review process was not to call into question the fundamental *acquis* of the Cotonou Agreement, but rather to enhance the effectiveness and quality of the EU–ACP partnership. Accordingly, the proposed amendments were deliberately limited to technical or minor adjustments, with a particular emphasis on improving the implementation of the Agreement and ensuring its consistency with a number of political commitments recently undertaken by the EU. Amendments therefore were broadly grouped into the political dimension, development strategies, an investment facility and implementation and management procedures.⁷ The revised Cotonou Agreement is also

⁷ Agreement amending the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, in OJ L 209/27 (11.8.2005).

the basis for EBA (as an autonomous measure of the EC) as well as for the (contractual) EPAs replacing earlier preferences and which started to enter into force at the beginning of 2008 (cf. Section 2.1.7. below).⁸

Today, there remain three types of non-reciprocal preference schemes under the EC's GSP. All are based on Regulation (EC) No 980/2005.⁹

1. All beneficiary countries enjoy the benefit of the general arrangement.¹⁰ A new GSP scheme was adopted and entered into force on 1 January 2006, as usual for a period of 2 years. It included an additional 300 agricultural and fishery products. Previously, a set of unspecified rules constituted the basis for graduation, i.e. withdrawal of preferential treatment (share of preferential imports, development index and export specialisation index). In the new GSP scheme, these rules were replaced by a new, single graduation criterion: products in a given sector and from a given beneficiary country will cease to benefit from preferential access if they account for more than 15% of EU GSP imports.¹¹ For example, China thus remains a GSP beneficiary but 80% of its exports are 'graduated', whereas India continues to retain preferences for clothing, but not for its textile exports.
2. The special incentive arrangement for sustainable development and good governance (the 'GSP Plus') provides additional benefits for countries implementing certain international standards in human and labour rights, environmental protection, the fight against drugs, and good governance.¹² This arrange-

⁸ Cf. Cotonou Agreement, Annex V, to be read in conjunction with Title II, chapter 2 of the Agreement.

⁹ For the period 01.01.2006–31.12.2008, information downloaded on 16 January 2008 at http://ec.europa.eu/trade/issues/global/gsp/index_en.htm

¹⁰ Council Regulation (EC) No 2501/2001; complete set of legal texts under http://ec.europa.eu/trade/issues/global/gsp/legis/index_en.htm (24.06.08)

¹¹ For textiles and clothing, this threshold is set at 12.5%.

¹² Commission Decision of 21 December 2005 (2005/924/EC – L/337/50 – 22.12.2005) cf.

ment currently ensures duty free treatment for 91% of the EC's tariff lines. There are 15 beneficiary countries.¹³ This type of preference has been the subject of criticism and litigation.¹⁴

3. The special arrangement for the LDCs, also known as the 'Everything but Arms' (EBA) initiative, provides for the most favourable treatment of all, by granting the LDCs 'duty-free and quota-free' (DFQF) access to the EU market.¹⁵

All these schemes are basically granted on an autonomous, i.e. non-contractual basis; even where schemes such as the EBA are foreseen in Agreements (here, the Cotonou Agreement), the EU implements them based on its own legal instrument, i.e. one or more Council Regulations. This also means that the EU maintains the possibility to graduate (i.e. withdraw benefits from) countries, or reduce the number of products given preferential treatment.¹⁶

The only EC agreements formally containing trade concessions for developing countries are its FTAs and, since 2008, the new category of the EPAs; these agreements are also the first to have reciprocal concessions in favour of the EU.¹⁷

Because it is the ultimate step in terms of tariff preferences for LDCs, and in line with the focus of this study, the EBA is now presented in more detail. In Sub-section 2.1.7., we also compare the DFQF preferences with the contractual market access under the new EPAs (most of which entered into force on 1 January 2008). Indeed, some of the most prominent competitors of LDCs are par-

http://trade.ec.europa.eu/doclib/docs/2006/january/tradoc_126925.pdf
(24.06.08).

¹³ Andean countries (Bolivia, Columbia, Ecuador, Peru, Venezuela), Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama) as well as Moldova, Georgia, Mongolia and Sri Lanka.

¹⁴ Maureen Irish (2007).

¹⁵ Cf. *infra* 2.1.3.

¹⁶ Cf. Art.20 of the Ordinance – apparently never used; for two cases of temporary withdrawals under Art.21.5, concerning Belarus and Myanmar, see Sub-section A. below.

¹⁷ Cf. *infra* 2.1.7.

ties to EPAs, namely other developing countries from the ACP group.

2.1.3. *Everything But Arms (EBA/DFQF)*

Since 2002, the EC has been granting DFQF treatment to all products except arms to all least-developed developing countries under its EBA.¹⁸ Only three products were exempted from this preferential access, i.e. bananas, sugar and rice.¹⁹ While bananas became duty-free in January 2006, sugar and rice are still subject to tariff-rate-quotas (TRQs).²⁰ These TRQs are further divided into country and country group quotas, including some reallocation provisions. LDCs will enjoy completely free access for their sugar exports to the EC only as from July 2009 (see box), and for rice as from September 2009.

EBA and Sugar

The EC's Common Market Organisation for Sugar concerns one of the most sensitive areas of the Common Agricultural Policy (CAP). Intervention measures extending from the farm to the refinery and beyond, include a number of border measures such as tariffs and quotas for different countries and groups of countries.

¹⁸ The provisions of the EBA Regulation (Council Regulation (EC) No 416/2001 of 28 February 2001) have been incorporated into the general GSP Regulation referred to above (Council Regulation (EC) No 2501/2001). For a description of EBA, *cf.*

http://ec.europa.eu/trade/issues/global/gsp/eba/index_en.htm

¹⁹ Actually, whereas for sugar and bananas this was and is a matter of competition with EC domestic production, the exception for bananas was apparently made for domestic or 'psychological' reasons only, because there is no LDC with significant banana exports to the EC, or even with a significant potential for such exports.

²⁰ Tariff quotas for rice and raw sugar from LDCs (EU imports 1,000 tonnes):

| | 2001/2 | 2002/3 | 2003/4 | 2004/5 | 2005/6 | 2006/7 | 2007/8 | 2008/9 |
|-------|--------|--------|--------|---------|---------|---------|---------|---------|
| Rice | 2,517 | 2,895 | 3,329 | 3,829 | 4,403 | 5,063 | 5,823 | 6,696 |
| Sugar | 74,185 | 85,313 | 98,110 | 112,827 | 129,751 | 149,213 | 171,595 | 197,335 |

Notes: marketing years for rice: September 2001 to September 2009; marketing years for sugar: July 2001 to July 2009.

Despite the sensitivity of sugar, the EBA initiative has already brought about additional quantitative market openings from which a certain number of LDCs have benefited. During the marketing year 2006/07, 154,000 tonnes of raw sugar were imported under EBA quotas, mainly by six countries.²¹ After full DFQF access, this group can expect to increase their exports to perhaps 1 million tonnes – a sizeable amount even for the large market of the EU – albeit with three other ACP countries likely to face export decreases.²² Even some newcomers such as Benin and Cambodia might actually benefit from this new opportunity.

The sugar case warrants a study of its own – especially in view of the fact that both domestic and trade policies in the EC are rapidly evolving. Nevertheless, a brief overview of the market situation shows that, both for the EU and (as we will show below) for Switzerland, LDC sugar exports retain a considerable market potential at least as long as they enjoy their present preferential margin. Of course, this margin will erode when other ACP countries obtain free access under the EPA, and after MFN tariff reductions of the kind envisaged in the Doha negotiations on agriculture.

Unlike the general preference scheme, and the second preference category described above ('GSP Plus'), DFQF has been granted for an unlimited period and is thus not subject to renewal. So far, there have been no temporary suspensions or withdrawals of EBA preferences in accordance with Article 21/5 of Council Regulation (EC) No 2501/2001. Some such suspensions or withdrawals have however occasionally occurred for the general GSP.²³ In only one case –

²¹ Ethiopia (19,000t), Malawi (22,000t), Mozambique (37,000t), Sudan (21,000t), Tanzania (7,000t) and Zambia (18,000t), with other countries taking up the remaining 30,000t. It should be pointed out, however, that some of these shifts in market shares are due to the ending of price guarantees for ACP countries which are not LDCs. The real test for LDCs will come after 2012 when the latter will also lose these guarantees.

²² Jamaica (-62,000t), Mauritius (-25,000t) and Malawi (-15,000t).

²³ Belarus was the object of such a temporary withdrawal of GSP, justified by alleged violations of freedom of association and of the right to collective bargaining (Council Regulation (EC) No 1933/2006 of 21 December 2006 temporarily withdrawing access to the generalised tariff preferences from the Republic of Belarus, in OJ L405 – 30.12.2006). This temporary withdrawal took effect on 21 June 2007.

Myanmar – have all preferences been temporarily withdrawn.²⁴ Nevertheless, graduation, including elimination of beneficiary countries is possible, and happens, in particular when the UN revises its own list of LDCs.

2.1.4. *The impact of EU preferences on market access*

There are no comprehensive studies on the trade impact of the various EC preferences. Generally speaking, this impact depends not only on the extent of the preference vis-à-vis non-preferential supplies, but also on the administrative costs of obtaining the necessary certificates, and on the degree of utilisation. The latter is sometimes hampered by the problem of origin certification, especially for commodities.²⁵

In a report to the European Parliament, the Commission takes the view that EC preferences are a useful instrument for economic development and trade promotion. However, it also acknowledges the natural limitations inherent in such autonomous schemes, and concludes that MFN gains outpace and even cancel out preference benefits.²⁶

The main problem in this context – and a fatal one for preferences in general – is *preference erosion*. Tariff reductions for competitors happen at all levels: for MFN reductions, by way of FTA, and autonomously. Every such tariff reduction erodes preferential advantages. The impact of preference erosion is the object of heated debates in various fora as well as in scientific studies: against the European Commission's just quoted optimistic (long-term) view, some cases indicate a literal collapse of, say, a national garment industry.²⁷

²⁴ Council Regulation (EC) No 552/97 of 24 March 1997 temporarily withdrawing access to generalised tariff preferences from the Union of Myanmar, in Official Journal L 085/8-9 – 27.03.1997). In this earlier case as well, social standards (forced labour) were the reason for the withdrawal of all preferences.

²⁵ Cf. *infra* 5.3. *in fine*.

²⁶ European Commission (2006).

²⁷ A good overview of the literature is contained in UNCTAD (2007).

This said, this study does not discuss trade preferences in general. A single remark may nevertheless underline the problematic nature of this instrument which nowadays is used, in different forms, by all industrialised and a few advanced developing countries. The EC as the largest preference provider has also used this instrument for the longest period of time and in respect of the countries with which its Member States have had traditional, often colonial, ties. However, over the last 50 or so years, the trade shares of the beneficiary countries – mostly ACP – have not kept up with the increasing exports of other developing countries with no or many fewer preferences. On the contrary, their export performance in general has remained well below the trade growth of many Asian and Latin American countries, and that of South Africa. Moreover, many ACP exports are basic commodities with little added value. This raises the question of whether trade preferences might also have a development-retarding role, in the sense that they allow producers who are not very competitive to continue exporting without making efforts at domestic processing and/or diversification. Again, we do not have sufficient material to buttress this very general hypothesis in the context of this study.

2.1.5. *GSP rules of origin*

One other criticism addressed to general trade preferences is their often limitative rules of origin provisions, i.e. the substantive and procedural requirements for obtaining tariff reductions.

Regional groupings may request preferential EC treatment, in particular through the *regional cumulation of origin* for products manufactured jointly in different countries.²⁸

²⁸ At present, there are three regional groups benefiting from regional cumulation:

Group I: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Thailand, Vietnam, Singapore (although Singapore is excluded from GSP, it continues to participate in origin cumulation within this group).

Group II : Costa Rica, Honduras, Guatemala, Nicaragua, Panama, El Salvador, Bolivia, Colombia, Ecuador, Peru, Venezuela.

Regional cumulation of origin allows imports at preferential or concessional tariffs for composite goods originating in different countries belonging to a certain region, here the different EPA regions. For agricultural produce this concept is of less importance than, say, for textiles, because the processing of agricultural commodities into food happens mostly in either the (single) country of production or in the country of final (food) consumption, here the EC. Nevertheless, there have been instances where an exporting country has been unable, primarily because reliable production and trade statistics were not available, to prove the origin of its produce. In such cases, the concept of regional cumulation might help.

Another difficulty arises in a Customs Union including one or more comprising a number of LDCs. Although the latter enjoys DFQF treatment, it may no longer be able to prove origin where that Customs Union concludes an FTA with the EC. At any rate, regional cumulation for DFQF purposes is not allowed – and important regional integration opportunities may thus be lost. Such a case has already arisen in the FTA between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU) of which Lesotho is a member.

A general revision of GSP rules of origin is under consideration in a collaboration between the European Commission, Member States and interested parties. There is however no information on if and when these negotiations will come to fruition. For the more advantageous rules of origin under EPAs, see below 2.1.7.

2.1.6. *WTO-related aspects of EU trade preferences*

As explained above, trade preferences require adequate coverage under relevant WTO provisions, because they constitute an important exception to the MFN principle. When they are offered without exceptions to all developing countries – or to the whole group of LDCs – they fall under the provisions of the Enabling Clause

Group III : Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka.

and do not normally raise any problems. DFQF, for example, if applied indiscriminately to all LDCs, qualifies under this clause.²⁹

However, this condition of universality was not fulfilled for the agreements with the ACP group. Therefore, because not all developing countries that are Members of the WTO belong to the ACP Group, the EC sought, and obtained, appropriate waivers for its obligations under GATT Article I (MFN); this waiver was granted at the WTO Ministerial Conference in Doha, on 15 November 2001.³⁰ It includes an 'Understanding on Bananas' on the basis of which the EC was committed to introducing a 'tariff-only' treatment for its banana imports no later than 1 January 2006. In addition, because of its preferential quota of 750,000 tonnes for ACP banana producers, the EC also requested a waiver under Article XIII (Non-Discriminatory Administration of Quantitative Restrictions).³¹ This request was revised on 13 November 2001,³² and approved by the WTO Ministerial Conference in Doha together with the above-quoted Article I waiver.³³ A request for an extension dated 11 October 2005 was still pending in 2007.³⁴ The issue of the extent and duration of these waivers was a subject of contention in two dispute settlement procedures initiated by Ecuador³⁵ and the United States.³⁶ The WTO panels concluded in both cases that the

²⁹ The EC's general preference scheme, in comparison, contains a number of exceptions, safeguards and graduations. However, a compatibility test under the Enabling Clause has not been tried until now.

³⁰ Cf. Ministerial Conference, European Communities, The ACP – EC Partnership Agreement, Decision of 14 November 2001 (WT/MIN(01)/15), 14 November 2001.

³¹ Doc. G/C/W/269 dated 27 June 2001, Annex 1.

³² Doc. G/C/W/269/Rev.1.

³³ Doc. WT/MIN(01)/16.

³⁴ Doc. G/C/M/88 dated 26 April 2007.

³⁵ Cf. EC – Bananas III (Article 21.5 – Ecuador II), Constitution of the Panel (WT/DS27/80), 18 June 2007. The decision of the WTO panel in *European Communities – Regime for the Importation, Sale and Distribution of Bananas: Second Recourse to Article 21.5 of the DSU by Ecuador* was released on 7 April 2008 (WT/DS27/RW2/ECU).

³⁶ Cf. EC – Bananas III (Article 21.5 – US), Constitution of the Panel (WT/DS27/84/Rev.1), 5 September 2007. The decision of the Panel was released on 19 May 2008 (WT/DS27/RW/USA). As in the compliance case

EC had failed to implement the original, 'Banana III' rulings of the WTO Dispute Settlement Body (DSB). However, nobody had contested the fact that beyond 2007 there would be no waiver in force for the treatment afforded by the EC to the ACP countries. In fact, the EPAs which entered into force on 1 January 2008 confer preferential access to ACP products to the EC on a contractual and (partly) reciprocal basis. The WTO-compatibility of these agreements will thus be reviewed not under the Enabling Clause but under GATT Article XXIV applying to Free Trade Agreements and Customs Unions.

2.1.7. *Economic Partnership Agreements (EPAs)*

Under the terms of Articles 34 to 38 of the Cotonou Convention, a series of reciprocal EPAs between the EC and groups of ACP countries was to be negotiated 'in full conformity with the provisions of WTO' and introduced by 1 January 2008.

The objective of these EPAs was to foster trade, investment and development not only between these countries and the EC, but within and between these groups of countries as well. With this goal in mind, the EC's concessions to all ACP countries cover full market access for all goods, with exceptions (and special provisions) only for sugar and rice. In terms of product coverage, and in order to be fully compatible (i.e. without the need for a waiver) with its interpretation of the EC's WTO obligations, in particular with GATT Article XXIV, the European Commission asked each regional group to phase out, over a period of 15 years, import tariffs for at least 80% of their imports from the EC. In addition, these (ambitious) agreements were to include (possibly reciprocal) provisions on trade in services, investment, and intellectual property.

As negotiations were stalling – with vocal opposition coming not only from many ACP countries themselves but also from several

brought by Ecuador, the panel found that the preferences granted by the EC for bananas from the ACP countries were inconsistent with the obligations of the EC under GATT Article I (Most-Favoured-Nation) and Article XIII (non-discriminatory application of quantitative restrictions); unlike for Ecuador, there was no claim under Article II (customs duties in excess of the scheduled rate).

non-governmental organisations (NGOs)³⁷ mainly in the EU, only one 'comprehensive EPA' could be signed.³⁸ 'Interim EPAs' were therefore signed, at the end of 2007, with a number of ACP countries in order at least to maintain (with partial improvements) their access to the EC at the level of the concessions of the Cotonou Agreement.³⁹ While there have been no new developments since then, some press clippings that appeared in April 2008 made it clear that the road to 'final EPAs' is likely to be a bumpy one.⁴⁰

The EC concessions to its ACP partners, even under the Interim EPAs, are indeed far-reaching. In addition, a financial package of €23bn in development assistance over the next seven years, and a considerable share of the EC's 'aid for trade' programme totalling €2bn, is intended to 'back up' this process. Disbursements, however, appear to be slow or absent.⁴¹

³⁷ Examples:

(i) The response given by EU Trade and Development Commissioners Peter Mandelson and Louis Michel to such criticisms on 27 September, 2007 ('Open letter to anti-poverty campaigners').

(ii) Oxfam Press Release published 10 October 2007 ('Oxfam calls on EU to show flexibility in EPA negotiations').

³⁸ EPA between the EU and 15 Caribbean countries, covering trade in goods, trade in services and other trade-related areas such as investment and intellectual property, as well as development cooperation provisions.

³⁹ For an update on the Interim Agreements with SADC, East and Southern Africa and in the Pacific, dated 11 January 2008 see http://ec.europa.eu/trade/issues/bilateral/regions/acp/pr110108_en.htm (without further updates by 24.06.08).

⁴⁰ NEWS 9 April 2008 Posted to the web 8 April 2008, By Joseph Olanyo Kampala: 'African Union (AU) trade and finance ministers want the recently initialled trade deals between the European Union (EU) and African countries to be re-negotiated in the context of a comprehensible full agreement saying it has contentious issues.

In their declaration at the end of a three-day trade meeting in the Ethiopian capital Addis Ababa, April 1-3, the Ministers said the definition of substantially all trade, transitional periods and export taxes, among others, should be reviewed to ensure an all inclusive comprehensive Economic Partnership Agreements (EPAs) that would safeguard development and regional integration efforts. Free circulation of goods and national treatment are others.'

⁴¹ Information provided by an un-named ACP Mission in Brussels

Such Interim EPAs were signed with the following countries and groups of countries:

- (1) Southern African Development Community
- (2) East African Community (EAC)
- (3) Eastern and Southern Africa (ESA)
- (4) The Pacific
- (5) Côte d'Ivoire.⁴²

The Lomé Convention's Protocols on sugar and on beef and veal were maintained, but reviewed in the framework of the negotiations for the new EPA.

Origin cumulation is possible within the various EPA regions and with the EU. Between EPA regions such cumulation requires administrative co-operation agreements of those regions. In this sense, EPA rules of origin are thus more advantageous than under DFQF. The biggest improvement, however, is that only 'single transformation' is required for textiles (i.e. only one change of tariff lines). Some simplification also applies to fisheries and a few agricultural products. This said, not all EPAs contain equal protocols of origin provisions; in particular, further negotiations are foreseen for the EAC and ESA.

With not all ACP countries parties to the Cotonou Agreement having signed such temporary EPAs, ten of them lost their 'Cotonou' access and, as from 1 January 2008, were granted only the less favourable GSP regime of the EC. The countries facing this reduction of access were, on one side, Congo (Brazzaville), Gabon and Nigeria, with few agricultural exports to the EC. On the other side are seven small island countries in the Pacific which do not trade much at all with the EC. As a result, 99.5% of EC imports from ACP countries are now duty-free.

⁴² Cf. 'Trade Policy in Practice' – Update: Interim EPA, published 19 December 2007:

http://trade.ec.europa.eu/doclib/docs/2007/november/tradoc_136959.pdf
(no further updates by 24.06.08)

Many LDCs may view these EPAs as a mixed blessing. Certainly, they obtain contractual access to what for many of them constitutes their most important market. On the other hand, their main competitors now enjoy virtually the same access conditions, thus eroding their DFQF trade preferences. Their only remaining advantage, in terms of EC preferences, is that they are exempted from any volume limitations, surveillance mechanisms and safeguard clauses. For instance, under the various EPAs all ACP sugar is to enjoy DFQF access as of 1 October 2009. The only advantage for LDCs is that the other EPA suppliers will remain subject to an automatic volume safeguard clause, and an enhanced surveillance mechanism applies to certain processed agricultural products with high sugar content, in order to prevent circumvention of the sugar import regime. As from 1 October 2015, all ACP sugar will be DFQF, but non-LDC imports will still be subject to a special safeguard clause for sugar.

The Interim EPAs that entered into force on 1 January 2008 are to be (at least partially) reciprocal agreements. For this reason the EC and its EPA partners do not claim coverage under the Enabling Clause, nor under a WTO waiver. They will nevertheless have to stand up to the test of GATT-Article XXIV (in particular, covering 'substantially all the trade'). It remains to be seen whether this requirement, or any other bone of contention, turns out to be an obstacle for clearing the EPA under the relevant WTO agreements.

2.1.8. A tariff hurdle in its own right: seasonal tariffs

Like many other WTO Members the EC applies different tariff levels for seasonal products such as fruits and vegetables. For LDCs, these barriers to access do not apply – but there are some FTAs where the removal of seasonal tariff differences has been agreed. Out-of-season products from tropical countries have traditionally enjoyed low or no tariffs. But a continuous market supply is often a prerequisite of the importers and retailers. This explains why seasonal tariffs can still damage export strategies even for out-of-season goods. At the same time, this may offer suppliers in LDCs a continuous market access which they have not so far exploited as much as they could. For instance, they can offer a year-round supply of 'temperate' products whereas their non-LDC competitors

are hampered by seasonal tariff variations. Seasonal tariffs, incidentally, are also under examination in the Doha Round negotiations.

2.2. Non-Tariff Barriers (NTBs)

Clearly, NTBs are more trade restrictive than tariffs: the latter can be paid, whereas sub-standard goods face prohibitions, fines, destruction or, at worst, have to be shipped back to their country of origin.

From the perspective of the regulators on the import side, the purpose of NTBs is to ensure identical or equivalent treatment of imports and domestic products. Their obligation, both under national legislation and under WTO rules, is to ensure the same level of protection of human, animal and plant life. This is the essence of the so-called national treatment obligation. But it is an old truth that even when two measures are identical, they might not be the same. *In casu* they might have a different impact for imports and for domestic produce. This is not only due to differences in production conditions such as climate. Sadly, governments and legislators often neglect to take such differences into account when they determine their 'appropriate level of protection' or 'acceptable risk levels'.⁴³

To some extent, international agreements address these difficulties. They can protect exporters from abuse or over-regulation by the importing country. This is the case for multilateral agreements such as the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). Technical and trade-standard-setting agreements and bodies have the same objectives, especially those enjoying WTO enforcement possibilities for either SPS measures⁴⁴ or for technical standards by public or private standardising bodies.⁴⁵

⁴³ WTO-SPS Agreement: Preamble, 5th indent and Art.4 .1.

⁴⁴ Annex A, Art.3 of the SPS Agreement enumerates the so-called 'three sisters' (for EC enacting legislation *cf. infra* 2.2.1):

1. For food safety: the FAO/WHO Codex Alimentarius Commission

As far as EC food legislation is concerned, it is interesting to note that under the general concept of food safety we find not only measures meant to protect human, animal and plant health but also policy instruments intended to improve food quality, consumer information or animal welfare. Legally speaking, there is an important difference between these two categories: in WTO terms, the first category is usually treated under the SPS Agreement, whereas disciplines applying to the second category are found in the TBT Agreement. For trade in agricultural products, the difference between SPS and TBT measures can be quite important too: while SPS measures usually imply the impossibility of trading, technical trade barriers 'only' mean additional costs of complying with different criteria for, say, organic production, or transport of live animals. Such costs can however be prohibitive, and the end-result will be the same as for many SPS measures, *i.e.* no trade will take place. LDCs are especially likely to find TBT measures in importing countries difficult to cope with, because of their generally weaker production, processing and institutional structures. The same goes for private standards such as the Euro-Retailer Produce Working Group's EurepGap (now GLOBALGAP), where LDCs clearly have more problems than other suppliers in fulfilling importers' requirements (see 2.2.3 below).

A procedural difference is made only through the notification obligations under the two different WTO agreements. While this difference is important in legal terms, including in dispute remedies, it has little if any meaning for producers and traders in LDCs. Manufacturers and other operators need however to obtain adequate information on the regulations applying to their products on their export markets. For this purpose, they can turn to the WTO as

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2. For animal health and zoonoses: the International Animal Health Organization (Office International des Epizooties, OIE)
 3. For plant health: the FAO's Secretariat of the International Plant Protection Convention (IPPC).

⁴⁵ Annex 3 of the TBT Agreement contains a Code of Good Practice for the Preparation, Adoption and Application of Standards.

an official source of such information, including for technical barriers to trade.⁴⁶

Another set of inter-governmental trade regulations are the agricultural quality standards laid down by the United Nations Economic Commission for Europe (ECE-UN), in particular for fresh fruit and vegetables.⁴⁷ While major developing countries now participate in the preparation of those standards – as they did for a similar body of norms developed under the auspices of the Organisation for Economic Co-operation and Development (OECD) – this is not the case for LDCs.

In addition to the multilateral agreements, the EC has concluded several bilateral agreements where specific problems of exporters on both sides are addressed at the inter-governmental level.⁴⁸ Unfortunately for LDCs, they are not parties to such agreements. Thus, import regulations applying to the export products of LDCs need to respect the general rules laid down in the multilateral agreements, and do not benefit from such trade facilitation provisions. This also makes the solution for particular, bilateral difficulties harder to find, sometimes simply because there is no appropriate channel for problem solving, such as through mutual recognition agreements, or through agreed simplifications of testing procedures, let alone consultations on and settlement of trade conflicts.

This Section essentially deals with the EC's sanitary and phytosanitary provisions affecting the products of LDCs (2.2.1.). The following discussion of sanitary and phytosanitary measures in the EC includes those measures which, in WTO terms, are called 'technical barriers to trade' (TBT). Short sub-sections follow on some particular TBT (2.2.2.) and private standards (2.2.3.).

⁴⁶ All WTO Member governments are required to establish national enquiry points and to keep each other informed through the WTO – around 900 new or changed regulations are notified each year. The Technical Barriers to Trade Committee is the major clearinghouse for Members to share the information and the major forum within which to discuss concerns about the regulations and their implementation.

⁴⁷ http://www.unece.org/trade/agr/standard/fresh/fresh_e.htm (24.906.08)

⁴⁸ For references *cf. infra* 2.2.1.

2.2.1. *Phytosanitary and sanitary legislation*

In order to protect human, animal and plant life and health in Europe the EC applies a large number of SPS measures to agricultural third-country imports. These measures are taken at the border, and they have to be notified to the WTO Committee on Sanitary and Phytosanitary Measures.

For the purposes of this study, only the most relevant aspects and some particularities of these measures are presented. This approach is also useful because, as will be explained in Section 3.2., Switzerland applies basically the same measures to its overseas imports.

This summary of the EC's (rapidly evolving) Food Safety, Veterinary and Phytosanitary Policy contains the basic legislation and regulations in force at the time of writing, especially with regard to imports from third countries. Basically, a distinction has to be made, on the one side, between animals and animal-based products including germinal products such as semen and embryos and, on the other side, plants and plant-based products not containing any animal products, even in minimal quantities.

As mentioned above, and in addition to its own legislation, a number of international agreements contain rules also relevant to exports from LDCs to the EC:

- a. The applicable multilateral rules are those laid down by the WTO (in particular, the SPS and TBT Agreements) and in the above-mentioned 'three sisters' to which the EC is also a party, i.e. *Codex Alimentarius*⁴⁹, OIE⁵⁰ and IPPC.⁵¹

⁴⁹ Council Decision 2003/822/EC of 17 November 2003 on the accession of the European Community to the Codex Alimentarius Commission (L309/14 – 26.11.2003).

⁵⁰ World Organisation for Animal Health (historical acronym : OIE) *cf.* www.oie.int

⁵¹ Council Decision 2004/597/EC of 19 July 2004 approving the accession of the European Community to the International Plant Protection Convention, as revised and approved by Resolution 12/97 of the 29th Session of the FAO Conference in November 1997 (L267/39 – 14.08.2004).

- b. Two other agreements also apply to phytosanitary matters, i.e. the International Treaty on Plant Genetic Resources for Food and Agriculture,⁵² and the International Convention for the Protection of New Varieties of Plants,⁵³ but they are not directly relevant to this study.
- c. In addition, the EC has entered into a number of bilateral agreements covering sanitary and/or phytosanitary matters, but these agreements do not apply to imports from LDCs.⁵⁴

Consequently, this summary focuses on Community legislation as it applies to imports from third countries, but excludes the bilateral agreements with the EC. For practical reasons, it is divided into the following segments: (a) general food law (b) veterinary matters (c) placing on the market of food and feed (d) food safety rules (e) specific rules for feed (f) phytosanitary matters.

The implications for market access especially for LDCs will be analysed in Chapters 4 and 5.

A. *General food law*

The general principles and requirements of the EC's food safety legislation were issued in 2002 and are laid down in a regulation of the European Parliament and of the Council.⁵⁵ This regulation has

⁵² Council Decision 2004/869/EC of 24 February 2004 concerning the conclusion, on behalf of the European Community, of the International Treaty on Plant Genetic Resources for Food and Agriculture (L378/1 – 23.12.2004).

⁵³ Council Decision 2005/523/EC of 30 May 2005 approving the accession of the European Community to the International Convention for the Protection of New Varieties of Plants, as revised at Geneva on 19 March 1991 (L192/63 – 22.07.2005).

⁵⁴ The plurilateral agreements such as for the European Economic Area, and bilateral agreements with large overseas suppliers such as Australia, Canada, Chile, New Zealand and the United States are not presented here. The relevant provisions of the Agreement on Agriculture with Switzerland are contained in chapter 3. A list of these EC agreements is available under http://ec.europa.eu/food/international/trade/agreements_en.htm (24.06.08)

⁵⁵ (1) Basic text

Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority

been implemented by a number of application texts in the form of Council and Commission regulations and decisions.⁵⁶ Safeguard measures are also taken on the basis of these texts.⁵⁷

EC legislation and measures applying to imports from third countries are based on the so-called 'stable to table' concept. This concept implies that the main responsibility for ensuring compliance with food legislation lies with the EU-based operators. Their obligation in relation to products in the food chain basically consists of keeping track of all relevant production processes and standards, and transmitting this information to their next-in-line customers ('one step back/one step forward'). This concept of 'partial traceability' appears more realistic than a requirement for a retailer to trace his product all the way back to the farm. Nevertheless, in reality it may still imply an obligation for the importer and his clients to go back all the way to and even behind the farm gate. Even

and laying down procedures in matters of food safety (L31/1 – 01.02.2002), amended by: (a) Regulation (EC) No 1642/2003 of the European Parliament and of the Council of 22 July 2003 (L245/4 - 29.09.2003) (b) Commission Regulation (EC) No 575/2006 of 7 April 2006 (L100/3 - 08.04.2006).

⁵⁶ (a) Commission Regulation (EC) No 1304/2003 of 11 July 2003 on the procedure applied by the European Food Safety Authority to requests for scientific opinions referred to it (L185/6 – 24.07.2003); Corrected by: Corrigendum to Commission Regulation (EC) No 1304/2003 (L186/46 - 25.07.2003)

(b) Commission Regulation (EC) No 2230/2004 of 23 December 2004 laying down detailed rules for the implementation of European Parliament and Council Regulation (EC) No 178/2002 with regard to the network of organisations operating in the fields within the European Food Safety Authority's mission (L379/64 - 24.12.2004)

(c) Commission Decision 2004/478/EC of 29 April 2004 concerning the adoption of a general plan for food/feed crisis management (L160/98 – 30.04.2004); Corrected by a Corrigendum dated 12 June 2004 (L212/60)

(d) Council Decision 2006/478/EC of 19 June 2006 appointing half of the members of the Management Board of the European Food Safety Authority (L189/7 – 12.07.2006).

⁵⁷ Example: Commission Decision 2006/504/EC of 12 July 2006 on special conditions governing certain foodstuffs imported from certain third countries due to risks of contamination of these products by aflatoxins (L199/21 – 21.07.2006); Amended by: (a) Commission Decision 2007/459/EC of 25 June 2007 (L174/8 - 04.07.2007) (b) Commission Decision 2007/563/EC of 1 August 2007 (L215/18 - 18.08.2007).

where this is not the case, complying with such liability contingencies may entail the same costs for an operator as a full traceability obligation. This shows that, useful and justified as it may be, the price for 'stable to table' grows exponentially with distance – and LDCs are often also the countries at the furthest distances from their export markets.

B. *Veterinary matters*

Today, there are virtually no commercial imports of live animals and germinal products from LDCs into the EC (nor to Switzerland). Imports of meat and other animal-based products from third countries are subject to a regime comprising the following non-tariff elements:

- Control systems (border inspection posts, computer systems (Trade Control and Expert System, TRACES), and safeguard measures);⁵⁸
- Control measures for animal diseases (foot and mouth disease, classical swine fever, African swine fever, African horse sickness, avian influenza, Newcastle disease, fish diseases, mollusc disease, bluetongue disease, and transmissi-

⁵⁸ Basic texts:

(1) Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (L24/9 – 30.01.1998). Amended by: Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (L18/11 – 23.01.2003)

(2) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules L165/1 – 30 April 2004); Amended by: Commission Regulation (EC) No 776/2006 of 23 May 2006 (L136/3 – 24.05.2006)

(3) Council Regulation (EC) No 1791/2006 of 20 November 2006 (L363/1 – 20.12.2006); Corrected in L191/1 – 28 May 2004)

Application texts are contained in more than a dozen Commission Decisions and Regulations. As they are subject to frequent modifications, they are not listed here.

ble spongiform encephalopathy (including bovine spongiform encephalopathy, BSE);

- Import requirements for animal products: For third countries, the EC applies a certification procedure for each supplier. Based on this procedure, a list of establishments authorised to export to the EC is published for each animal product.

In addition, a number of provisions concern animal welfare (especially transport of live animals) and zootechnics.⁵⁹

C. *Placing on the market of food and feed*

The importer and subsequent intermediaries have to follow a certain number of food safety rules, including at the final points of sale (retail levels). These are mainly hygiene rules, specific rules for animal products, control rules, specific control rules for animal products, rules for animal by-products, and specific rules for feed hygiene.

For all traders, such rules constitute a challenge in terms of traceability: traders have to ensure that their suppliers guarantee compliance, quite often all the way back to the first processing plant or even the farm. Obviously, distant countries and countries with deficient regulatory institutions and procedures face particular difficulties in providing such guarantees.

D. *Food safety rules*

There are many specific food safety rules, and they apply *mutatis mutandis* to imports as well as to local production. It is beyond the scope of this study, to analyse these rules in respect of their impact on LDCs' trade. The European Commission services subdivide these rules into 9 categories:

⁵⁹ Basic text: Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species (L178/66 – 12.07.1994).

1. Labelling, presentation and advertising of foodstuffs (including nutritional labelling)⁶⁰
2. Additives authorised and purity criteria, extraction solvents and flavourings⁶¹
3. Food contact materials⁶²

⁶⁰ Basic texts:

(i) Commission Directive 87/250/EEC of 15 April 1987 on the indication of alcoholic strength by volume in the labelling of alcoholic beverages for sale to the ultimate consumer (L113/58 – 30.04.1987)

(ii) Council Directive 89/396/EEC of 14 June 1989 on indications or marks identifying the lot to which a foodstuff belongs (L186/21 – 30.06.1989)

(iii) Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs (L276/40 – 06.10.1990)

Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (L109/29 – 06.05.2000).

⁶¹ Basic texts:

(i) *Food additives*: Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption (L40/27 – 11.02.1989). Numerous amendments and special cases.

(ii) *Extraction solvents*: Council [Directive 88/344/EEC](#) of 13 June 1988 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (L157/28 – 24 June 1988)

(iii) *Flavourings*: Council [Directive 88/388/EEC](#) of 22 June 1988 on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production (L184/61 – 15 July 1988); Council [Decision 88/389/EEC](#) of 22 June 1988 on the establishment, by the Commission, of an inventory of the source materials and substances used in the preparation of flavourings (L184/67 – 15.07.1988); [Regulation \(EC\) No 2232/96](#) of the European Parliament and of the Council of 28 October 1996 laying down a Community procedure for flavouring substances used or intended for use in or on foodstuffs (L299/1 – 23 November 1996); [Regulation \(EC\) No 2065/2003](#) of the European Parliament and of the Council of 10 November on smoke flavourings used or intended for use in or on foods (L309/1 – 26 November 2003). Numerous amendments.

⁶² Regulation 1935/2004/EC of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food (L338/4 – 13 November 2004)

4. Food supplements⁶³
5. Food for particular nutritional uses such as infant formula (including for exports to third countries)⁶⁴
6. Quick frozen foodstuff⁶⁵
7. Contaminants⁶⁶
8. Novel foods and genetically modified (GM) foodstuffs⁶⁷
9. Ionising radiation.⁶⁸

⁶³ Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (L183/51 –12 July 2002)

⁶⁴ Basic texts:

(i) Council Directive 89/398/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (L186/27 – 30 June 1989).

(ii) Council Directive 92/52/EEC of 18 June 1992 on infant formulae and follow-on formulae intended for export to third countries (L179/129 – 01 July 1992).

⁶⁵ Council Directive 89/108/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption (L40/34 – 11 February 1989).

⁶⁶ Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (L37/1 – 13 February 1993)

⁶⁷ Basic texts (each with numerous application decisions and amendments):

(i) Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (L43/1 – 14 February 1997)

(ii) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (L268/1 – 18 October 2003)

(iii) Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC (L268/24 – 18 October 2003)

⁶⁸ Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (L66/16 – 13 March 1999).

Although these measures are all part of the EC's 'food safety' legislation many of them in reality have as their main objective informing operators and consumers. In WTO-legal terms they are arguably technical barriers to trade. Whether or not they are compatible with the disciplines of the TBT Agreement is not the object of this study. What is beyond doubt, however, is the considerable burden such measures impose on distant producers, most of all in the LDCs.

E. Specific rules for feed

EC rules for animal-based feed contain a number of specific aspects, such as additives and residues, which are additional to or different from those applicable to other animal-based products.⁶⁹

Another set of rules concerns compound feedingstuffs,⁷⁰ feed materials,⁷¹ undesirable substances,⁷² feedingstuffs intended for particular nutritional uses,⁷³ and medicated feedingstuffs.⁷⁴

⁶⁹ Basic texts:

- (1) Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs (L270/1 – 14.12.1970), repealed with effect 18 October 2004. However, Article 16 remains in force until Directive 79/373/EEC has been revised to include rules concerning the labelling of feedingstuffs incorporating additives. Transitional measures concerning evaluations under Council Directive 70/524/EEC are set up in Article 25.
- (2) Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition (L268/29 – 18 October 2003)
- (3) List of the authorised additives in feedingstuffs published in application of Article 9t (b) of Council Directive 70/524/EEC concerning additives in feedingstuffs (situation as 15 July 2003) C50/1 – 25 February 2004).

⁷⁰ Council Directive 79/373/EEC of 2 April 1979 on the circulation of compound feedingstuffs (L86/30 – 6 April 1979), with numerous amendments and applications.

⁷¹ Council Directive 96/25/EC of 29 April 1996 on the circulation of feed materials, amending Directives 70/524/EEC, 74/63/EEC, 82/471/EEC and 93/74/EEC and repealing Directive 77/101/EEC (L125/35 – 23 May 1996), with numerous amendments and applications.

⁷² Directive 2002/32/EC of the European Parliament and the Council of 7 May 2002 on undesirable substances in animal feed (L140/10 – 30 May 2002).

F. *Phytosanitary matters*

Protection within the EC against the introduction, establishment and spread of organisms harmful to plants or plant products is regulated in a number of ways: control measures,⁷⁵ protected zones, plant passports, imports from third countries, inspections and notification of interception. Other rules concern plant health and plant protection products (for instance, pesticide registration, continued use, non-authorised and banned substances).⁷⁶ The quality of seeds and propagating material is also regulated.⁷⁷ A 'Cata-

⁷³ Council Directive 93/74/EEC of 13 September 1993 on feedingstuffs intended for particular nutritional purposes (L237/23 – 22 September 1993).

⁷⁴ Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community (L92/42 – 7 April 1990)

⁷⁵ *General control measures*: Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (L169/1 – 10 July 2000).

Specific control measures: Council [Directive 69/464/EEC](#) of 8 December 1969 on control of Potato Wart Disease (L323/1 – 24 December 1969); Council [Directive 69/465/EEC](#) of 8 December 1969 on control of Potato Cyst Eelworm (until 01 June 2010) (L323/3 – 24.12.1969); Council [Directive 74/647/EEC](#) of 9 December 1974 on control of carnation leaf-rollers (L352/41 – 28 December 1974); Council [Directive 93/85/EC](#) of 4 October 1993 on control of Potato Ring Rot (L259/1 – 8 October 1993); Council [Directive 98/57/EC](#) of 20 July 1998 on the control of *Ralstonia solanacearum* (Smith) Yabuuchi et al. (L235/1 – 21 August 1998); Council [Directive 2006/91/EC](#) of 7 November 2006 on control of San José Scale (Codified version) (L312/42 – 11 November 2006)

⁷⁶ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (L230/1 – 19 August 1991).

⁷⁷ (For fodder plants) Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed (125/2298 – 11 July 1966).

(For cereals) Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed (125/2309 – 11 July 1966).

(For vines) Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine (L93/15 – 17 April 1968).

(For vegetable propagating and planting material) Council Directive 92/33/EEC of 28 April 1992 on the marketing of vegetable propagating and planting material, other than seed (L157/1 – 10 June 1992).

logue of varieties of agricultural plants' harmonises Member States' lists of seed varieties accepted for free circulation within the Community, taking into account internationally established rules.⁷⁸ Special rules apply to the marketing of beet, fodder plants, cereals, potatoes and oil and fibre plants, the seeds of which may be marketed under the provisions of the Directives concerning, respectively, the marketing of beet seed (2002/54/EC), fodder plant seed (66/401/EEC), cereal seed (66/402/EEC), seed potatoes (2002/56/EC) and seed of oil and fibre plants (2002/57/EC). Seed varieties from third countries are subject to inspection and certification requirements based on the principle of equivalency.⁷⁹ Several additional special rules apply, for instance, to seeds of certain species of fodder plants.⁸⁰

(For fruit plants) Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production (L157/10 – 10 June 1992).

(For ornamental plants) Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants (L226/16 – 13 August 1998).

(For forest reproductive material) Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material (L11/17 – 15 January 2000).

⁷⁸ Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (L193/1 – 20 July 2002).

⁷⁹ Council Decision 2003/17/EC of 16 December 2002 on the equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries (L8/10 – 14 January 2003).

⁸⁰ (i) Commission [Directive 75/502/EEC](#) of 25 July 1975 limiting the marketing of seed of smooth-stalk meadow grass (*Poa pratensis* L.) to seed which has been officially certified 'basic seed' or 'certified seed' (L228/26 29 August 1975)

(ii) Commission [Decision 80/512/EEC](#) of 2 May 1980 authorizing the Kingdom of Denmark, the Federal Republic of Germany, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the United Kingdom not to apply the conditions laid down in Council Directive 66/401/EEC on the marketing of fodder plant seed, as regards the weight of the sample for determination of seed of *Cuscuta* (L126/15 – 21 May 1980)

(iii) Commission [Decision 85/370/EEC](#) of 8 July 1985 authorizing the Netherlands to assess the satisfaction of the varietal purity standards laid down in Annex II to Council Directive 66/401/EEC for seed of apomictic

Generally speaking, trade in phytosanitary products is considerably less regulated than that in animal-based food and feed-stuffs. This is especially the case for non-living plant material including, for instance, cut flowers and plant-based feed. Perhaps for this reason the exports from LDCs to Europe consist mostly of products covered 'only' by phytosanitary regulations, leaving the SPS problems with animal-based produce, living plants and seeds to other exporters...

Nevertheless, in a number of special cases phytosanitary problems have occurred which have sometimes led to total disruption of trade over a protracted period of time. This situation has had and is continuing to have an important impact on trade.

One significant and well-known example of this issue is food and feed products containing higher than permitted levels of aflatoxins (see box).⁸¹ Mainly because of their climatic conditions and because of their monoculture production and export patterns introduced in colonial times, this particular problem affects several LDCs. In some cases, large parts of their traditional exports were suddenly

uniclonal varieties of *Poa pratensis*, also on the basis of the results of seed and seedling testing (L209/41 – 06 August 1985)

(iv) Commission [Directive 86/109/EEC](#) of 27 February 1986 limiting the marketing of seed of certain species of fodder plants and oil and fibre plants to seed which has been officially certified as 'basic seed' or 'certified seed' (L93/21 – 08 April 1986).

⁸¹ Aflatoxins are naturally occurring mycotoxins that are produced by many species of the *Aspergillus* fungus, most notably *Aspergillus flavus* and *Aspergillus parasiticus*. Aflatoxins are toxic and carcinogenic. Crops which are frequently affected by aflatoxins include cereals (maize, sorghum, pearl millet, rice, wheat), oilseeds (peanut, soybean, sunflower, cotton), spices (chile peppers, black pepper, coriander, turmeric, ginger), and tree nuts (almond, pistachio, walnut, coconut, brazil nut). The toxin can also be found in the milk of animals, which have been fed contaminated feed. Virtually all sources of commercial peanut butter contain minute quantities of aflatoxins, but it is usually far below the safe level recommended by Codex and the US Federal Drug Administration (Source: <http://en.wikipedia.org/wiki/Aflatoxin>; 24.06.08).

interrupted by new standards and measures taken by the EC and other importing countries.⁸²

Special Case – Aflatoxins

Aflatoxins are toxic; they occur in numerous food and feed products, although mostly in very small quantities. Peanut butter, for instance, invariably contains aflatoxins. The contamination of animal feedingstuffs with aflatoxin B1 can be a very serious problem, occurring partly as a result of inadequate storage conditions. Contamination may also occur at the pre-harvest stage. Good cropping practices, use of seed varieties bred for resistance to seed-infecting fungi and insect pests as well as the use of appropriate approved pesticides constitute reasonable preventive measures to control contamination in the field. Despite such practices, conditions created by the environment and/or traditional agricultural procedures may render such preventive measures ineffective.

In tropical countries, production of groundnuts and groundnut-based feed products such as oilcakes is particularly difficult because higher temperatures favour higher levels of aflatoxins. The problems created by too much moisture are magnified by deficient post-harvest crop handling techniques (e.g. inadequate storage, processing and transport conditions).

During the past two decades production, processing and handling practices have become safer – but regulatory measures (e.g. maximum residue levels and acceptable daily intake limits) have become more restrictive, too.⁸³ In 1997 alone, two new Codex Codes of Practice for aflatoxins were adopted.⁸⁴ In the EC, different

⁸² The USA is a groundnut (peanut) producer itself and imports less of its total consumption than the EC.

⁸³ Maximum levels for aflatoxins in foodstuffs have been elaborated on the basis of the Codex General Standard for Contaminants and Toxins in Foods (cf.

http://www.codexalimentarius.net/download/standards/17/CXS_193e.pdf, pp.21-27) (24.06.08).

⁸⁴ (a) Codex Code of Practice for the Reduction of Aflatoxin B1 in Raw Materials and Supplemental Feedingstuffs for Milk Producing Animals, *in*

http://www.codexalimentarius.net/download/standards/331/CXP_045e.pdf (24.06.08).

maximum levels for aflatoxins in food⁸⁵ and for animal feed-ingstuffs⁸⁶ apply. The Commission services closely monitor the development of scientific information and Member States' surveillance of production as well as imports. A report published in 2004 estimated, on a worst-case basis that the exposure of dairy cattle to Aflatoxin B1 at the current permissible levels could still lead to milk contamination exceeding the maximum level.⁸⁷

For an assessment of the export potential of LDCs it is therefore important to look at all the parameters involved. This is especially the case for export-oriented investments, because frequent SPS regulatory modifications are moving goalposts threatening the viability of such investments.

2.2.2. *Technical barriers to trade*

Government regulations, standards, testing and certification procedures are necessary for a variety of reasons, from environmental protection, safety and national security to consumer information. They can help trade, but they may also create obstacles to market access especially when they vary between countries. The TBT Agreement tries to ensure that such standards do not create unnecessary obstacles to trade.⁸⁸ Just as for SPS measures, the test in

(b) Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Peanuts, *in*

http://www.codexalimentarius.net/download/standards/10084/CXC_055_2004e.pdf (24.06.08).

⁸⁵ Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (L 37 – 13 February 1993); Commission Regulation (EC) No 2174/2003 of 12 December 2003 amending Regulation (EC) No 466/2001 as regards aflatoxins (L 326 – 13 December 2003).

⁸⁶ Directive 2002/32/EC of the European Parliament and the Council of 7 May 2002 on undesirable substances in animal feed (L140/10 – 30 May 2002).

⁸⁷ Opinion of the Scientific Panel on Contaminants in the Food Chain on a request from the Commission related to Aflatoxin B1 as an undesirable substance in animal feed, *in* EFSA Journal (2004) 39, p.21.

⁸⁸ for the text of the Agreement:

http://www.wto.org/english/docs_e/legal_e/17-tbt.pdf

terms of what constitutes an ‘unnecessary’ obstacle to trade is whether the measure concerned explicitly or implicitly discriminates against foreign suppliers. A growing body of WTO jurisdiction constitutes the current framework for national policy developments and limitations.

As for agricultural and fish products there are quality control measures, labelling and packaging regulations which do not fall under the SPS disciplines but under the more general provisions of the TBT Agreement. As an example, and like in other sectors, mutual recognition agreements may avoid product testing in both the exporting and the importing market and thus lift an unnecessary burden on producers and traders. However, WTO rulings based on the TBT Agreement in cases involving agricultural products are rare.⁸⁹

2.2.3. *Private standards*

In recent years and for a number of reasons, importers and processing companies, largely driven by major retailers, have adopted a rapidly growing number of private standards. Their impact can be worse, from an exporter’s point of view, than that of government trade barriers, both SPS and TBT. They face a situation where private standards *de facto* close a market simply because they are stricter than government regulations. This is the case, for example,

⁸⁹ Researchers particularly interested in this topic might wish to examine the following three cases, all involving the EC:

1. European Communities – Trade Description of Sardines
(http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds231_e.htm - 24.06.08)
2. European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs
(http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds174_e.htm - 24.06.08)
3. European Communities – Measures Affecting Asbestos and Products Containing Asbestos; the report of the Appellate Body contains an interpretation of relevant TBT provisions
(http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds135_e.htm - 24.06.08)

when such private standards disallow biotech products accepted by the government. In addition, in some instances exporters have to deal with more than one private standard in the same country and for the same product.

In this sense, a 'grouping' of standards, especially if it is done EC-wide, may offer certain advantages; the case in point is GLOBALGAP (see box). However, even here, developing countries in particular find it extremely hard to cope with such standards.

EurepGap/GLOBALGAP⁹⁰ – the biggest private NTBs

Among the many examples of private standards, GLOBALGAP (formerly known as EurepGap) is the most prominent. This initiative taken by virtually all major retailers in Europe is called the 'Global Partnership for Safe and Sustainable Agriculture'. It establishes a single set of rules, including governmental regulations, by replacing most private standards applying to the production, processing and marketing of farm products both in Europe and from overseas. Its key references are the (self-defined) Good Agricultural Practices (GAP) in the global marketplace, drawn up in order to translate consumer requirements across the whole supply chain. A growing list of countries – more than 80 on every continent – and products (from fruits and vegetables to fish) – are currently part of this private standard certification scheme.

Certification of conformity with GLOBALGAP standards, including some environmental and social ones, is carried out by more than 100 independent and accredited certification bodies. The scheme is well advanced in major exporting countries including developing ones. However, large parts of sub-Saharan Africa including most LDCs have not yet been able to meet all the necessary requirements. This is not surprising. Indeed, while LDCs, once again, are not treated worse than other suppliers, they may find it even more difficult to meet the conditions for the marketing of their goods under such circumstances.

⁹⁰Cf. www.globalgap.org (09.06.08).

At an informal information session on private standards organised jointly by the United Nations Conference on Trade and Development (UNCTAD) and WTO, on the margins of a meeting of the WTO Committee on Sanitary and Phytosanitary Measures, this problem was presented from a development perspective and by way of a dozen studies and contributions.⁹¹ One example of the difficulties faced by LDCs, and with the successful introduction in Uganda of so-called Good Agricultural Practices benchmarked to EurepGap was presented in an East African Regional Workshop organized by the Food and Agriculture Organization of the United Nations (FAO) and UNCTAD.⁹²

Multilateral disciplines for private standards are virtually nonexistent. Both the SPS and the TBT Agreements commit WTO Members to encourage their operators to abide by the same rules of transparency and non-discrimination applying to government regulations. The TBT Agreement also sets out a Code of good practice for non-governmental or industry bodies to prepare, adopt and apply voluntary or private standards. Over 200 standard-setting bodies apply this code. In practice, however, there is little evidence of such private standard-setters actually having considered the concerns of exporting countries and operators, especially in developing countries. On the contrary, in quite a few cases developing country operators have to meet requirements which exceed production standards in their own country. Such standards may be transparent and non-discriminatory, but they are not based on consumer health and safety. Moreover, it appears that there is precious little the WTO can do to mitigate such problems for developing country suppliers. In particular, there is no formal WTO

⁹¹ This workshop took place at the WTO on June 25, 2007. For an excellent if somewhat optimistic overview see the presentation made by Nigel Garbutt, the Chairman of EurepGap. His and other presentations can be downloaded at http://www.wto.org/english/tratop_e/sps_e/private_standards_june07_e/private_standards_june07_e.htm (09.06.2008).

⁹² In particular, see Musa K. Muwanga (2007).

obligation for private bodies to adhere to international standards, or to consult with developing country producers.⁹³

2.3. Preliminary conclusion: Tariffs are not the only obstacle to trade

Our analysis so far shows that DFQF certainly offers a welcome, albeit temporary, advantage for the exports of LDCs in comparison with their mightier competitors from other members of ACP and other countries subject to MFN treatment. At the same time, it is clear that numerous NTBs continue to hamper trade. At least in relative terms, NTBs are becoming more important as tariff barriers fall. Quite appropriately, NTBs can be compared to ‘seabed rocks appearing when the tide goes down’.

It is also clear that in many instances LDCs, more than other suppliers, are affected by such NTBs, even though each measure applies indiscriminately of product origin, including to the EC’s domestic production.

In particular, SPS measures in Europe clearly constitute the single most important obstacle to market access for agricultural products from LDCs.⁹⁴

The impact of such measures on trade and even on the economic development of the countries concerned cannot be over-emphasized: for many developing countries, trade with the EU is like an economic lifeline. An analysis conducted in 2003 revealed that in the product areas likely to be most affected by SPS measures, some 17 countries accounted for approximately 83% of ACP exports.⁹⁵ Five of those countries are LDCs.⁹⁶ In the same study, fish was identified as the sector most affected by the harmonisation

⁹³ Gretchen Stanton (2007).

⁹⁴ Since the establishment of the WTO, in 1995, more than 10,000 SPS measures have been notified. They can be found at the SPS Information Management System under <http://spsims.wto.org/>

⁹⁵ Cf. Study of the Consequences of the Application of sanitary and phytosanitary (SPS) measures on ACP countries (2003).

⁹⁶ Madagascar, Mauritania, Senegal, Tanzania and Uganda.

of EC authorisation procedures and, again, four LDCs, of a group of 16 countries, were at risk of being excluded even from their historical markets in the EU.⁹⁷

Many LDCs (and other developing countries) have reacted to these difficulties, both at the international levels (multilateral and, in a few cases, bilateral), on a regional scale and at home:

1. Despite serious human and financial resource constraints preventing their continuing participation, LDCs have increased their attendance in the multilateral fora (WTO, *Codex* etc.). Various NTBs on LDCs client markets have become standing items on the agenda of these fora. However, regardless of preambular language and committee rhetoric, existing multilateral rules and disciplines do not provide a mandatory basis for special and differential (S&D) treatment where 'hard-core' SPS measures are concerned. This conclusion appears obvious, at least from the importing countries' point of view. Where their health is concerned they will make no exception in terms of more favourable treatment for imported products, whatever their origin. Even though a number of S&D provisions appear in the SPS Agreement, they concern merely procedural aspects such as notifications and deadlines.
2. Under even fiercer attack from developing countries are private standards in importing countries. Unfortunately, the present legal instruments hardly constitute a promising avenue for intervention against what some exporters consider as explicit or implicit discrimination.
3. Regional and bilateral trade agreements often contain provisions for dealing with NTBs and SPS problems. However, LDCs are hardly ever parties to such agreements. Moreover, such agreements may contain useful institutional arrangements for discussing and solving trade problems, including through recourse to dispute settlement procedures. However, hardly any of these agreements 'adds' substance to the

⁹⁷ Benin, Eritrea, Mozambique and Togo.

obligations, which their parties have accepted under the relevant WTO Agreements.

4. Action at the regional and national levels seems to be more promising, at least in the short and medium term. It is also a prerequisite for successful trading. Indeed, exporting countries and operators at all levels bear the main responsibility, in institutional and regulatory terms, for living up to importers' conditions and expectations. One example is the Southern African Development Community (SADC).⁹⁸ SADC comprises eight LDCs and its Secretariat is based in Gaborone (Botswana). It undertakes considerable technical work especially in the field of agriculture, and one focus, and rightly so, is on SPS matters. In 2004, SADC adopted a 'Plan of Action' comprising different measures for institutional and technical improvements in plant protection for its Member States.⁹⁹
5. At a company-level, foreign direct investment has emerged as a way to promote the agricultural exports of LDCs to the EU and, indirectly, to Switzerland (*cf.* 5.2.3. *infra*).

3. LDCs' Market Access Conditions in Switzerland

3.1. Tariffs

Since 1 April 2007, all but two products originating in LDCs have been enjoying duty-free and quota-free market access in Switzer-

⁹⁸ The Southern African Development Community (SADC) has the following Member States: Angola,* Botswana, the Democratic Republic of Congo,* Lesotho,* Madagascar,* Malawi,* Mauritius, Mozambique,* Namibia, South Africa, Swaziland, United Republic of Tanzania,* Zambia* and Zimbabwe. The eight countries with an asterisk (*) are LDCs. SADC has its own Directorate for Food, Agriculture and Natural Resources: <http://www.sadc.int/fanr/index.php> (24.06.08).

⁹⁹ Plant Protection Plan of Action, Evaluation sheet, November 2004.

land. Following two earlier, intermediate steps, this market opening is particularly meaningful in view of the highly protected Swiss market for agricultural goods. For the Swiss scheme within the GSP, LDCs are those designated as such by the UN General Assembly.¹⁰⁰ However, country graduation usually follows EC schedules (e.g. Cape Verde will only be graduated by 2010).

For three reasons, the Swiss DFQF could be very important for the beneficiary countries:

1. MFN tariffs in all other countries are lower for most such goods. In other words, the tariff gap between MFN rates and duty-free access for LDCs is probably the highest in the world.
2. Likewise, the Swiss FTAs contain very few meaningful agricultural market access benefits.¹⁰¹
3. Switzerland's GSP represents few if any real market openings for developing countries. It has hardly any notable impact on agricultural imports.¹⁰²

In the following Sub-sections we present two limitations to this opening (3.1.1.), the Swiss GSP (3.1.2.), and the market access in some FTAs (3.1.3.). We can then determine the effective tariff advantage for exports from LDCs to Switzerland (3.1.4.).

3.1.1. *Tariffs for LDCs*

For all products originating in LDCs, DFQF access has been granted since 1 April 2007. This is an autonomous measure; in other words it is not based on bilateral or multilateral agreements with beneficiary countries.¹⁰³ In addition, Switzerland also extends

¹⁰⁰ Cf. *supra* Chapter 1 *in fine*.

¹⁰¹ UNCTAD (1999).

¹⁰² Khorana Sangeeta (2007).

¹⁰³ Cf. Annex 1 of the Ordinance (Zollpräferenzenverordnung RS 632.911).

DFQF treatment to those heavily indebted countries (HIPC) participating in the World Bank-led debt relief programme.^{104,105}

Actually, the WTO Hong Kong Ministerial in November 2005 adopted a decision under which developed WTO Members undertook to grant such treatment to 97% of all LDCs' products by 2008.¹⁰⁶ Switzerland, by following the EC's EBA, had already taken two of the three steps towards implementing this decision. Pending the outcome of the Doha Development Round, however, the WTO Decision cannot be considered as legally binding on its Members. The words 'on a lasting basis' also indicate that this commitment is not of the same quality as a scheduled tariff binding. In strictly legal terms, but subject to the provisions in the above-mentioned Enabling Clause, all preference-giving Members are therefore free to implement the Hong Kong Decision regarding LDCs preferences – unless the decision is included, in mandatory terms, in the Single Undertaking at the end of the Doha Round. They could probably even rescind their own version of DFQF, for instance if several other countries do not implement the Hong Kong Decision. Of course, a certain political or peer-pressure applies to all developed WTO Members, regardless of the legal status of the Hong Kong Decision.

¹⁰⁴ Cf. art.6 para 2 of the Ordinance ("Pays qui ont adhéré à une initiative internationale de désendettement et qui ne sont pas encore désendettés"). At present, the only two countries in that category are the Republic of the Congo and Côte d'Ivoire. However, if more countries join the HIPC club, they will also benefit from DFQF treatment in Switzerland.

¹⁰⁵ Debt Relief Initiative for Heavily Indebted Poor Countries (HIPC), created in 1996, and the Multilateral Debt Relief Initiative (MDRI), created in 2006 (cf. Progress report dated September 27, 2007, at <http://siteresources.worldbank.org/INTDEBTDEPT/ProgressReports/21656521/HIPCProgressReport20070927.pdf> - 24.06.08)

¹⁰⁶ Decision on Measures in Favour of Least-Developed Countries (*in* WT/MIN(05)/DEC, Annex F, para 36, *emphasis added*):

'We agree that developed-country Members shall, and developing-country Members declaring themselves in a position to do so should:

(a) (i) Provide *duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability*'.

In concrete terms, this difference between an autonomous measure and a tariff binding listed in a country's WTO tariff schedule, has two implications:

1. A safeguard measure, i.e. a temporary suspension of a tariff preference, can probably not be challenged under WTO rules.
2. Exceptions are possible, not for geographical coverage but for certain products.

Switzerland has foreseen both a safeguard clause, and two temporary product exceptions to DFQF.

A. *Safeguards*

According to the implementing Ordinance, safeguard measures by way of a suspension or a withdrawal of the tariff preference can be taken at any time by the competent Ministry, i.e. the Federal Department of Economic Affairs. The conditions for such a suspension are laid down in the Ordinance.¹⁰⁷

There is an obvious potential conflict of interest between national agricultural interests and the trade development objective. Nevertheless, there are also certain limitations on the discretionary power of the competent Minister. A safeguard measure can only be taken in the eventuality of 'unusual import surges' combined with an increase in domestic production and/or stagnating consumption likely to lead to a 'domestic price collapse'. While these provisions

¹⁰⁷ Art.8, paras 1 and 2 of the Ordinance (*emphasis and parenthesis added*):

“Invocation de la clause de sauvegarde

¹ Le DFE (i.e. the Minister) peut prendre, pour trois mois au plus, les mesures prévues à l'art. 2, al. 2, de la loi du 9 octobre 1981 sur les préférences tarifaires (safeguard clause), en ce qui concerne les produits agricoles des chapitres 1, 2, 4 à 8, 10 à 12 et 15 à 17 du tarif des douanes. Ce faisant, il met en balance les besoins de l'agriculture suisse et les intérêts de la politique économique extérieure.

² Pour déterminer si les intérêts de l'agriculture sont lésés, l'Office fédéral de l'agriculture et le Secrétariat d'Etat à l'économie fixent des critères communs. Figurent au nombre de ces critères *une hausse inhabituelle des quantités importées, une augmentation de l'offre domestique et une stagnation de la demande indigène qui conduisent ou risquent de conduire à un effondrement des prix des producteurs indigènes.*”

are open to criticism from a development-friendly viewpoint, they at least have the advantage of ensuring a quick decision. This latter point is particularly important, for domestic producers, when seasonal and perishable products are involved. At the same time, however, such safeguards can only be taken on the basis of short-term and reliable data on trade, production and price; information on domestic farm-gate prices and production volumes appears to be especially difficult to collect. For whatever reason, by May 2008 Switzerland had not taken such a safeguard measure.

In addition, a safeguard decision by the Minister must be confirmed by the Parliament, which in Switzerland has the final authority for all tariff decisions. Like all such decisions by the legislature, safeguard measures are also subject to a facultative referendum. However, such endorsements (or refusals, in extremely rare situations, not related to safeguards) take place only once a year – and are likely to intervene only at a time when the safeguard measure in question has already lapsed, or when it has lost its protectionist function.

B. Two temporary exceptions: Sugar and broken rice

Like in the EC, there are two, although temporary, exceptions to the full tariff-free treatment. Sugar, and rice for animal feeding purposes are still subject to reduced duties; they will become duty-free during the year 2009.¹⁰⁸ This is because the EC's DFQF foresees the same exceptions until 2009; given the respective market sizes, a different treatment in Switzerland could indeed lead to considerable market distortions and spillovers.

Sugar in Switzerland

In Switzerland, the sensitivity reflected in terms of border protection is at least as high as in the EC, and even higher when it comes to domestic support measures, including stockholding for food security purposes. This explains why sugar from LDCs will be subject to stockholding fees even after it becomes duty-free, in Sep-

¹⁰⁸ 1 July 2009 for sugar (tariff number 1701.1100/9999), and 1 September 2009 for broken rice (tariff number 1006.4020), *cf.* Annex 3 to the Ordinance (Zollpräferenzenverordnung, Ordonnance fixant les droits de douane préférentiels en faveur des pays en développement RS 632.911).

tember 2009! On the other hand, Switzerland does not have any particular, historical links to developing country suppliers, and can therefore limit government intervention to the protection and promotion of domestic sugar production and processing. Unlike in the EU, Swiss sugar imports from LDCs do not benefit from guaranteed prices. This means that such imports are very unlikely to rise before the end of EC price support to sugar from LDCs in September 2012.¹⁰⁹ Furthermore, even though developing countries that are not LDCs benefit from a preferential duty-free quota of 20'000t and a tariff reduction of 7 francs for over-quota supplies, this opening is limited. Indeed, under its 'Protocol 2' Agreement with the EC for processed agricultural products, Switzerland has agreed to maintain market prices that are substantially equal to those in the EU.¹¹⁰ In other words, import preferences making domestic sugar prices cheaper than in the EC are not allowed.

3.1.2. *Tariffs for other developing countries (GSP)*

Switzerland, like all developed and some developing countries, grants autonomous tariff preferences to all developing and transition countries. For agricultural products, fewer than 500 tariff lines (out of around 2,500) are covered by such preferences.¹¹¹ In addition, many of these preferences are purely symbolic, such as for in-quota-tariffs, which in Switzerland are already very low.¹¹²

In comparison with MFN suppliers, some of these preferences may still afford developing countries an advantage over competitors from developed countries (outside FTAs). At the same time, GSP

¹⁰⁹ After that date, only a price information system based upon the current system would provide for market transparency. EC price guarantees for ACP countries which are not LDCs already ended in 2008. Most sugar from LDCs will therefore continue to go to the EC at least until 2012, because Swiss (and other) importers cannot offer such guaranteed prices.

¹¹⁰ This obligation towards the EU even led to a suspension of GSP treatment for sugar (10,000t at a rate of MFN minus SFR 22). On 7 December 2007, this quota was reintroduced for 2008. Both measures drew loud protests from Swiss development NGOs (cf.

<http://www.alliancesud.ch/francais/pagesnav/H.htm>)

¹¹¹ For a complete list of preferences, see Verordnung über die Präferenz-Zollansätze zugunsten der Entwicklungsländer (Annex 2: Liste der Präferenzen für Waren aus Entwicklungsländern), SR 632.911.

¹¹² As an example, in-quota-tariffs for most vegetables are only SFR 7/100kg.

preferences for other developing countries quite simply reduce the market access advantage resulting from the duty-free treatment for LDCs (the 'extra tariff mile').

3.1.3. *Tariffs in Free Trade Agreements (FTAs)*

Most Swiss FTAs with non-EC countries are concluded within the ambit of the European Free Trade Association (EFTA), established in 1960 and of which Iceland, Liechtenstein and Norway are also Member States.¹¹³

At present there are 16 FTAs in force, namely with Canada, Chile, Croatia, Egypt, Israel, Jordan, Republic of Korea, Lebanon, Macedonia, Mexico, Morocco, Palestinian Authority, Southern African Customs Union (SACU consisting of Botswana, Lesotho, Namibia, South Africa and Swaziland), Singapore, Tunisia and Turkey.¹¹⁴

Such agreements typically cover trade in industrial goods, including fish, and processed agricultural goods. For these, duties are eliminated on the industrial part of the product, but maintained on the value of the raw materials. Other rules, disciplines and concessions concern competition, intellectual property, services, investment, and public procurement.

Since the EFTA states do not have a common agricultural policy, concessions on basic agricultural products are negotiated bilaterally with each FTA partner, or group of partners. In no case do the tariff reductions or tariff-free quotas agreed in those bilateral agreements reflect real inroads into the Swiss tariff wall. In fact, governmental policy continues to be defensive insofar as there are no concessions which could put the Swiss agricultural policy objectives at risk. For instance, when the government submitted the FTA with the SACU for ratification to the Parliament, it argued that because all new concessions were granted in the form of tariff-rate quotas within the WTO-enshrined quantities, there was no

¹¹³ For the Agreement, and general information on EFTA cf. www.efta.int

¹¹⁴ All agreements are retrievable under <http://secretariat.efta.int/Web/legaldocuments/>, *ibidem* for the French, German and Italian versions of the bilateral agreements with Switzerland (accessed 24.06.2008).

impact on Swiss agriculture or on domestic production.¹¹⁵ In other words, Swiss FTAs in the field of agriculture, in the view of the government, are intended to be instruments of *trade diversion*, not of *trade creation*. For the trading partners, the interest in such agreements lies in the tariff advantage they can expect in regard of non-FTA suppliers.

From the viewpoint of the Swiss producers, this strategy has so far been rather successful. Of course, important MFN tariff reductions such as those likely to result from the implementation of the Doha Round, or from a bilateral agri-food FTA with the EC, would substantially change the situation and call for a revision of the Swiss border protection, including FTAs with and GSP treatment of third countries.

Again, what really matters for the market access of LDCs here is the question of whether the preferential tariff advantage granted by Switzerland to LDCs is being eroded by the EFTA/Swiss FTA concessions to third countries. The answer to this question can be found with the empirical approach chosen for this study. The new market potential in Switzerland for the products of LDCs is likely to be the highest where competing suppliers from non-LDCs enjoy no or only very limited FTA concessions.

3.1.4. *The resulting effective tariff advantage for LDCs' products*

To sum up the discussion in this section, the tariff advantage which LDCs agriculture exports enjoy today on the Swiss market for agricultural products can be easily determined. For all products of LDCs enjoying unlimited zero duties, their advantage equals the lowest rate applied to their next best-treated competitors, i.e. FTA, GSP or the 'normal' tariff applied to that product. We will analyse the actual usefulness of these advantages in Chapter 5.

3.2. Non-Tariff Measures

Before reaching definitive conclusions on the effectiveness of these new tariff advantages for LDCs, in terms of market access oppor-

¹¹⁵ Bericht zur Aussenwirtschaftspolitik 2006 vom 10. Januar 2007 (*in* BBl 2007 1012).

tunities, it is necessary to examine the NTB hindering or preventing agricultural imports to Switzerland.

Most of the Swiss NTBs are the same as those in the EU examined above.¹¹⁶ At least in theory, they apply to LDCs in the same way as they apply to other countries. This section will thus be very short.

On 6 December 1992, the Swiss people and cantons rejected a proposal to join the European Economic Area Agreement (EEA).¹¹⁷ After the refusal to join, the Swiss Government decided to implement many of the 'internal market' provisions contained in the Agreement. This implementation took place through both autonomous measures and mutual recognition agreements with the EC and with the other EFTA States.

On 21 June 1999, Switzerland and the EC concluded a bilateral Agreement on Agriculture, which entered into force on 1 June 2002.¹¹⁸ It contains a number of tariff concessions between the Parties (Annexes 1–3). For a large number of technical barriers to trade equivalency agreements based on the 'acquis communautaire' are listed in the Annexes 4–11.

All sanitary and phytosanitary provisions that apply to agricultural goods are contained in Annexes 4–6 and 11. They include phytosanitary products and seeds as well as both plant-based and animal-based feed, the latter being part of a large number of provisions applying to trade in live animals and animal products (Annex 11, the so-called Veterinary Agreement). The objective and effect of these (continuously evolving) agreements is to create internal market-like conditions for Swiss–EC agricultural trade. The general idea is one of mutual recognition of pertinent legislation on the basis of which a product produced or imported in one Party can be traded freely (i.e. without further border controls or certifi-

¹¹⁶ Cf. *supra* 2.2.

¹¹⁷ Agreement on the European Economic Area (OJ No L1 – 3.1.1994, p.3): http://secretariat.efta.int/Web/EuropeanEconomicArea/EEAAgreement/EEA_Agreement.pdf

¹¹⁸ Accord entre la Confédération suisse et la Communauté européenne relatif aux échanges de produits agricoles (cf. http://www.admin.ch/ch/f/rs/0_916_026_81/index.html).

cation) within the other Party. As an example, a plant with a 'phytosanitary passport' either obtained in the EC or in Switzerland can be transported across the territories of all EU Member States and of the Customs Union Switzerland–Liechtenstein.¹¹⁹ For animal-based products such as meat, the EC applies the principle of producer and product certification; here again, Switzerland will allow free access for products with such certificates. The Federal Veterinary Office as the competent body very simply quotes the relevant EC Regulation and Decisions in its circular letters or directives to importers.¹²⁰

Based on these agreements and the implementing legislation and practice, an importer today can presume that any agricultural product with access to the EU also has access to Switzerland – and vice-versa. In other words, if a given product today is imported into the EU it will also have access to the Swiss market, at the same non-tariff conditions.

For processed agricultural goods, a similar although less contractually regulated situation prevails. Swiss food law often closely emulates Community legislation and procedures for food processing, inspection, importing, handling, certification and marketing. It is true that there is so far no comprehensive bilateral agreement between Switzerland and the EC applying to foodstuffs and health. However, pending the successful negotiation of such an agree-

¹¹⁹ The Principality of Liechtenstein and Switzerland are joined in a Customs Union through an Agreement dating back to 1923 (Vertrag vom 29. März 1923 zwischen der Schweiz und Liechtenstein über den Anschluss des Fürstentums Liechtenstein an das schweizerische Zollgebiet, SR 0.631.112.514). As for the Agriculture Agreement between Switzerland and the EC, an agreement between the three Parties extends the provisions of the bilateral agreement to Liechtenstein, including any future additions and modifications (Zusatzabkommen vom 27. September 2007 zwischen der Schweizerischen Eidgenossenschaft, dem Fürstentum Liechtenstein und der Europäischen Gemeinschaft über die Einbeziehung des Fürstentums Liechtenstein in das Abkommen zwischen der Schweizerischen Eidgenossenschaft und der Europäischen Gemeinschaft über den Handel mit landwirtschaftlichen Erzeugnissen, SR 0.916.026.812).

¹²⁰ For example (http://www.bvet.admin.ch/ein_ausfuhr/?lang=en).
II-455 Änderung der Tiergesundheits- und Hygienebedingungen sowie der Zeugnisse für die Einfuhr von Fleischerzeugnissen aus Drittstaaten in die Schweiz (Entscheidung 2007/777/EG)

ment, a number of sectoral agreements apply, and in many other instances, Swiss legislation and practice closely follow developments in the EU.

4. Recent Performance of LDCs' Exports

We now look at the recent export performances of LDCs on various markets (4.1.), regardless of whether this occurred at the expense of other suppliers or of domestic production, or because of increased domestic consumption or re-exports. In order to identify those products with which LDCs could increase their exports to Switzerland we then analyse the relevant trade statistics for the EU and for Switzerland (4.2.).¹²¹

4.1. Trade Data¹²²

In this section, we examine recent trade developments in agricultural exports from LDCs to Switzerland (4.1.1.). Because of the small size of the Swiss market it is necessary, in order to analyse these figures, to compare them with exports from LDCs to the EC (4.1.2.) and to the world (4.1.3.). However, this section contains trade data only; a product-by-product analysis follows in Chapter 5.

4.1.1. LDCs' exports to Switzerland

A. Total exports

The exports from LDCs to Switzerland have always been very small. For all products taken together, supplies from LDCs in 2007 (SFR 503,121,740) represented only 0.26% of total imports (up from an average of 0.15% in the period 2002–2006).

¹²¹ A major limitation in the following section is that, due to resource constraints, only data for 2006 and 2007 are presented. Longer time-series might provide a more correct reflection of trade flows and market share developments.

¹²² Main source: Swissimpex (Statistics published by the Federal Customs Administration). Monika Meister's assistance in computing these figures is highly appreciated.

B. *Agricultural exports*

For agricultural products considered alone (chapters 1–24), the shares of LDCs in the Swiss market are still very low, but they are much higher in comparison with their total exports: while agricultural imports from all origins in 2007 totalled SFR 11,330,571,324, those from LDCs were SFR 78,779,752, i.e. 0.7% of total imports (slightly down from an average of 0.8% in the period 2002–2006).¹²³

2007 imports to Switzerland of agricultural supplies from LDCs worth over 1 million Swiss francs were limited to chapters:

- 03 (fish and seafood, SFR 3.6m)
- 06 (mainly roses, total imports SFR 8.7m)
- 08 (mainly pineapples and bananas, SFR 2.4m)
- 09 (coffee, SFR 18.3m)
- 15 (fats and oils, SFR 16.5m)
- 18 (cocoa, SFR 13.5m)
- 24 (tobacco, SFR 12.8m).

The tariff lines for which DFQF brought substantial tariff advantages for LDCs will be analysed below. However, it is very clear from the above ‘big picture’ that the import patterns of 2007 show no overall impact of DFQF.

A word of caution may be in order before a further analysis of these trade figures. Customs statistics are not always reliable indicators of the true origins, especially for commodities. For instance, almost 100 tonnes of raw coffee imports, i.e. more than 1%, are shown as being of EC origin – with Germany as the main supplier! For bananas, the Netherlands and Austria alone supplied 700 tonnes, more than twice the volume of all bananas from LDCs taken together. Some of the reasons for these ‘statistical blips’ are dis-

¹²³ Swissimpex dated 7.05.2008

cussed below (5.3.). However, it is obvious that quite a few more exports from LDCs than are recorded in customs statistics find their way to Swiss consumers, processors and food exporters.

A comparison of imports in 2007 with those in 2006 shows a mixed performance of the LDCs. Significant increases (for products with imports worth more than SFR 100,000) were notable only for cut flowers, bananas, coffee, coconut oil, palm oil and unmanufactured tobacco. At the same time, imports of seafood, pineapple, tropical fruits, groundnut oil, sugar, cocoa and tobacco refuse decreased. A general trend – whether or not reflective of the introduction of the zero tariffs – cannot be ascertained. It is therefore necessary to look at each product or product group separately.

C. *Individual products*

A more detailed look at exports from LDCs to Switzerland shows a rather uneven picture. There are indeed wide variations across the whole product range. However, it is quite apparent that many trade developments are unrelated to the new duty-free treatment, and this applies to both export increases and decreases. A few recent import increases could however be attributable to DFQF.

Import increases unrelated to DFQF

Substantial increases in the exports of a number of products from LDCs were recorded in 2007 – but these increases were not directly attributable to the new duty-free treatment. The most prominent example of this was *roses* (see box).

Sweet LDCs – Roses

The value of imports of roses from LDCs in 2007 (0603.1110-1130) increased in one year by 44% to SFR 8.48m. The majority of these roses originated from Tanzania¹²⁴ (and to a small extent Ethiopia), and apparently a sizeable part was imported by the main Swiss

¹²⁴ Tanzania ranked as the fourth-largest supplier of roses to Switzerland, with 329 tonnes and more than 10% of the total imports of SFR 43.8m, behind the Netherlands, Kenya and Ecuador.

retailer under the 'Max Havelaar' fair-trade label. LDCs' market shares for roses thus jumped to over 10% in 2007!

This example is remarkable in two respects:

1. For the in-quota tariff line concerned, the tariff advantage during the summer period is only SFR 12.50/100kg against roses from the EU. During the winter season, roses from the EU and those benefiting from GSP treatment can be imported duty-free.
2. LDC roses enjoy the biggest tariff advantage in those periods when only out-of-quota imports are allowed, because all their competitors pay SFR 2,450/100kg. Surprisingly though, the only imports under the corresponding tariff line came from other countries.¹²⁵

This seems to indicate that these LDC producers of roses are already competitive, in comparison with traditional developing countries, even without a tariff advantage. Moreover, importers appear to have overlooked the possibility of free imports from LDCs even when everybody else has to pay a prohibitive out-of-quota duty.

Two of the most important exports of LDCs to Switzerland also enjoyed substantial increases in 2007. However, here too DFQF played no role, simply because both of these products are already duty-free regardless of their origin:

1. *coffee* (+24% to SFR 18m)
2. *unmanufactured tobacco* (+50% to SFR 12.7m)

Import decreases unrelated to DFQF

On the other hand, in 2007 some decreases in imports from LDCs took place for products that usually have large import volumes:

¹²⁵ 382kg were imported from France and Ecuador – with a duty representing 76% of the import value! Virtually all LDC roses were imported under the in-quota tariff lines 0603.1110 and 0603.1130 (2006 = 0603.1041).

1. *pineapples* (-25% to SFR 1,064,774)
2. *cocoa beans* (-11% to SFR 13,497,704)

These import decreases happened regardless of the tariff situation, simply because for these products there are no preferential advantages for LDCs in comparison with the tariffs paid by other developing countries.

Nevertheless, a few import decreases did take place for products where certain tariff differentials apply:

1. *groundnut oil* (1508.1090): -30% to SFR 7,091,357
2. *raw beet sugar* (1701.1100): -38% to SFR 473,828

For groundnut oil, the present import duties are very low.¹²⁶ For sugar (with a low LDC import volume), there was no tariff difference between LDCs and developing countries; DFQF for sugar will only apply as from mid-2009.¹²⁷

Such import decreases may therefore indicate a lack of competitiveness, which can result in trade share losses. However, one-year changes and smallish trade volumes are insufficient evidence upon which to accept this hypothesis.

Import increases possibly due to DFQF

In order to assess the impact of the newly free access for LDCs to Switzerland, we need to focus on products with significant tariff differences.¹²⁸ Here again, LDCs' product performance shows a mixed picture:

1. In 2007, the import increases for products with significant tariff differentials were small in absolute terms, but nevertheless

¹²⁶ *cf.* 5.3. *infra*.

¹²⁷ *cf.* 2.1.2.A *supra*.

¹²⁸ The 'significance' of a tariff duty, of course, will differ from one product to another. In this study, we define 'significant' as above 5% of the average product value. As a matter of fact, many operators would consider currency fluctuation risks to be at least equivalent to a 5% tariff.

noteworthy for *plant bulbs*,¹²⁹ *tropical vegetables*,¹³⁰ *bananas*,¹³¹ and *mangoes*.¹³²

2. For oils and fats, supplies from LDCs also increased. However, rather than tariff differentials it was perhaps rather the changing aflatoxins contents and maximum residue limits which determined LDC performance over the last two decades. In 2007, imports of *sunflower oilseeds*¹³³, *palm oil*¹³⁴ and *coconut oil*¹³⁵ all increased – but they had been even higher in earlier decades. In future, trade patterns are likely to follow those in the EU, the more so because nowadays the same maximum residue limits for aflatoxins apply on both markets.
3. In the same family and somewhat surprisingly, *sesame seeds* from LDCs may have found a new market in Switzerland: there were new imports for oil production for human consumption (1207.4024¹³⁶); for other human consumption purposes there were import surges (1207.4091) – but starting from a very low trade volume, and without any tariff advantage.¹³⁷ On the other hand, some imports for feeding purposes have decreased since

¹²⁹ Tariff line 602.1000 +398% to almost SFR 99'696; 602.9099 +4283% to SFR 49'969.

¹³⁰ For example, 'other vegetables' (0709.9099) increased 16% to SFR 387'928.

¹³¹ 803.0000 +32% to SFR 273'776 (and more than double the volume in 2006). Banana supplies from LDCs have been erratic over the last five years, ranging from SFR 153 to 682 Million *per annum*. In addition, this figure represents only 0.24% of Switzerland's total banana imports (SFR 11'122'038). This market share is very small although the LDCs' tariff advantage over most other suppliers is SFR 14/100kg (only Lesotho and Mexico enjoy zero tariffs like LDCs).

¹³² 804.5000 +43% to SFR 905'049. This import increase is unlikely attributable to the tariff advantage over other suppliers of only SFR 1/100kg.

¹³³ Tariff line 1206.0024

¹³⁴ 1511.1090 +654% to SFR 1'903'078

¹³⁵ 1513.1190 +79% to SFR 7'334'271

¹³⁶ (,for the production of oil fit for human consumption, by pressing'): +705% to SFR 233'219 (LDCs suppliers = Uganda with SFR 169'677, and Mali with SFR 63'542)

¹³⁷ +2,610% (SFR 54'932 with totals imports at SFR 2'108'977, main LDC supplier = Uganda).

2005 (1207.4021¹³⁸). Incidentally, the problem with imports for human consumption is the same as for sugar: under its 'Protocol 2' Agreement with the EC for processed agricultural products, Switzerland has agreed to maintain factory-gate prices substantially equal to those in the EU. In other words, import preferences making the costs of food production cheaper than in the EC are not allowed.

The relatively high labour content in free on board (FOB) prices may explain why especially low-wage LDCs enjoy increasing market shares for such commodities. However, even low wages do not guarantee market shares.

Year-to-year changes in the market shares of LDCs may indicate a trend, especially when a new factor such as DFQF plays an important role. However, they are not sufficient proof of such a trend, even less so when the import market is as small as that of Switzerland. In the following two Sub-sections we therefore look at the performance of LDCs on their main markets, *i.e.* the EC and the world.

4.1.2. *LDCs' exports to the European Union*

The value of agricultural exports from LDCs to the EC in 2007 totalled SFR 23,274m.¹³⁹ In his most recent report to the European Parliament, Trade Commissioner Mandelson admits that "their relative share in imports to the EU has fallen in the face of competition from other countries, and, in particular, from other DCs."¹⁴⁰ The main reasons, according to the European Commission, are a lack of competitiveness and supply-side capacities.

Listed in order of importance, exports from LDCs to the EC in 2007 concerned chapters:

¹³⁸ 'For the production of oil, for feeding purposes': LDCs supplies had actually started in 2005 (SFR 63'461) but they decreased to SFR 28'316 in 2007 (still from Uganda) when a new supplier emerged in India (SFR 73'358).

¹³⁹ See Selected Trade Data in the Annex. The LDCs list is that of Switzerland, *i.e.* Côte d'Ivoire is included as a HIPC.

¹⁴⁰ European Commission (2008).

- 18 (cocoa, €1,314.1m, major suppliers Côte d'Ivoire, Guinea, Togo)
- 03 (fish and seafood, €969.1m, major suppliers Bangladesh, Senegal, Tanzania, Mauritania and others)
- 09 (coffee, €569.2m, major suppliers Ethiopia and Uganda)
- 24 (tobacco, €373.3m, major suppliers Malawi, Mozambique, Tanzania)
- 08 (fruits, €288.0m, major suppliers Côte d'Ivoire, Uganda, Bangladesh)
- 17 (sugar, €187.7m, major suppliers Tanzania and Mozambique)
- 16 (mainly fish products, total €178.9m, major suppliers Côte d'Ivoire and Madagascar)
- 06 (cut flowers, €130.1m, major suppliers Uganda and Ethiopia)
- 07 (vegetables, €100.8m, major suppliers Bangladesh, Ethiopia, Senegal and others).

4.1.3. *LDCs exports to the world*

According to the UN Comtrade Database, in 2006, world imports from LDCs totalled US\$95,732m for all agricultural products (chapters 1–24). The largest trade in terms of monetary value, by order of importance, took place in chapters

- 03 (fish and seafood, \$2,467m) – by far the biggest importer was the EU, followed by Thailand, Japan, the USA, Côte d'Ivoire and Saudi Arabia
- 09 (coffee and tea, \$1,269m) – the biggest importers were the EU, Japan, the USA and Saudi Arabia
- 07 (vegetables and tubers, \$787m) – with a wide spectrum of importers: by far the biggest importer was India (\$528m), followed by the EU, Pakistan, Malaysia and Saudi Arabia

(each between \$10m and \$100m); Ethiopia, Japan, Thailand, and South Africa imported between \$5m and \$10m; Korea, Singapore, China, Qatar and Yemen more than \$2m; finally, the USA, Côte d'Ivoire, Ghana, Mauritius and Morocco had imports between \$1m and \$2m

- 24 (tobacco, \$722m) – almost half of this trade went to the EU, with the other half going to Russia, USA, Singapore, Japan, Turkey, South Africa, Côte d'Ivoire, Australia and China (each >\$10m); imports from other LDCs in Malawi (\$50m) and Mozambique (\$10m) were probably for further processing and re-export. Tobacco, in fact, is today the most South–South-traded agricultural commodity after coffee.

It is difficult to say how much further liberalization in importing developing countries would promote LDCs' trade. However, the implementation of the Hong Kong Ministerial Decision on DFQF would certainly help. Unfortunately, that decision commits only industrialised countries, and even these countries only have to grant DFQF for 97% of their tariff lines. In fact, it already appeared at the time of the negotiation preceding that decision that 3% of DFQF exceptions could make a big difference in actual LDC market access, for instance on the US or Canadian textile markets, or for fish and seafood exports to Japan.

4.2. Analysis

4.2.1. *European Union*

Treatment of LDCs before DFQF was already near to duty free: during the period 1999–2003 only 3% of exports from LDCs were not duty-free in the EU, *i.e.* 72% were MFN duty free, and 25% were covered by either Cotonou or EBA preferences.¹⁴¹ During that period, their modest share of total EU imports grew from 1.2 to 1.3%. While exports from LDCs to the EU grew by 33%, more advanced developing countries increased theirs by 48%. Yet, it was the LDCs that are not ACP which had the highest growth rates of

¹⁴¹ Opening the Door p.17

exports to the EU, with more than 57%.¹⁴² Bangladesh, in particular, even had the highest growth rate of all developing countries in terms of preferential exports to the EU (170%).¹⁴³

At the same time, 673 tariff lines became duty-free on an MFN basis, thereby annihilating the tariff advantage in comparison with all other preference (and FTA) regimes for those products.¹⁴⁴ Compared with ACP countries which are not LDCs, the preference enjoyed by LDCs covered only 7% of the EC's roughly 2,500 agricultural tariff lines at eight digit levels: 40% of these lines are not MFN duty free, but 33% enjoy Cotonou preferences with zero-duty quotas or seasonal restrictions, and only 5% are not covered by any Cotonou preferences.¹⁴⁵

While preference levels for LDCs are the largest, their actual trade remains very limited, and the highest preferential trade volumes are those of larger and richer developing countries.

In summary, it is apparent that DFQF did not bring about new trading opportunities for LDCs' supplies. The one commodity where significant new imports took place was sugar with a 40% increase in imports, reaching €183.5m.

This is not surprising. In fact, the EC already had quite an 'open tariff door', and that door was largely open even to non-LDC beneficiaries of its GSP. It remains to be seen, of course, whether the removal of all tariffs and quotas for the last two remaining products, i.e. sugar and rice, will change this situation.

In case of drastic import surges, the EC could of course be tempted to apply its quotas, or its safeguard clause, and suspend preferen-

¹⁴² Between 1999 and 2003, Afghanistan, Bangladesh, Cambodia, Laos, Myanmar, the Maldives and Nepal saw their combined exports increase from €2.8 to €4.3billion, accounting for 3.2% of total developing country imports into the EU.

¹⁴³ Previously, Bangladesh had experienced serious difficulties in meeting the EC's sanitary requirements for its supplies, especially for seafood, one of its main export items.

¹⁴⁴ Opening the Door p.14.

¹⁴⁵ *Ibid.* p.23.

tial treatment. However, if an LDC was involved, the likelihood of a Commission or Council coming to such a decision seems rather small, especially since these preferences are no longer autonomous, having been enshrined in the EPA since 1 January 2008.

By way of a *ceterum censeo*, all SPS measures still apply also to LDCs, which, as shown above, are in an especially difficult position for crossing these barrages.

4.2.2. *Switzerland*

The absolute level of agricultural imports from LDCs into Switzerland is very small. Therefore, even small quantitative changes can be significant, percentage-wise. However, they hardly indicate reliable trends and opportunities for LDCs to trade.

On the basis of the most recent trade statistics, it appears that the Swiss version of EBA has not so far changed the general pattern of agricultural imports from LDCs, either in overall volumes or for the main products concerned.

The next chapter will therefore focus on a few products with preferential tariff differences. It is for these products, and their direct substitutes, that DFQF could bring about real trade opportunities, at least for the time being, and as long as they are not subject to SPS prohibitions.

5. Potential for increased LDCs' Exports to Switzerland

Given adequate information and efficient distribution channels, an importer will normally choose a supplier in the country where products are offered, at a comparable quality, at cost, insurance and freight (CIF) prices below those of competing products from other countries. Tariff differences will obviously play an important role (including tariffs for limited quantities, or tariffs with seasonal variations). Thanks to DFQF, there now is a new hole in the tariff wall (5.1.). Unfortunately, a large part of that hole is plastered with SPS measures (5.2.). Nevertheless, a small opening remains (5.3.).

5.1. The hole in the tariff wall

As will be clear from the previous sections, there are only a few products where LDCs have significant market shares in Europe. Even fewer products saw increasing imports from LDCs in 2007. Moreover, quite a few of these increases cannot be attributed to the new hole in the tariff wall. Some imports even decreased despite already being duty-free. This latter development might indicate that the supplying countries concerned were no longer competitive.

Of course, it is only over a number of years that a measure such as the DFQF access can have a tangible impact on LDCs' supplies (and only in the absence of Swiss safeguards measures). This is where trade promotion activities should come in. They should however focus on the most promising products and countries. Before identifying such products it is necessary to consider the 'cordon sanitaire' likely to prevent imports on a continuous basis.

5.2. The cordon sanitaire

As this study shows, the biggest obstacle in Europe for increased imports, especially from LDCs, are the numerous sanitary (5.2.1.) and phytosanitary (5.2.2.) obstacles in place. The sanitary and phytosanitary barriers are actually so high that it is easier to identify those products which are not affected by such obstacles! But there is a small hole in the wall (5.2.3.).

5.2.1. Sanitary obstacles

As explained above (2.2.1.), all animal-based products from so-called 'third countries' require certification of producers and/or processors. Some large developed and developing country suppliers have managed to obtain such certificates based on mutual recognition agreements and/or directly at company-level. However, there are virtually no LDCs with processing facilities certified for

export to the EU,¹⁴⁶ and thus to Switzerland! There are only two exceptions to this deplorable state of affairs:

1. For *fish and fishery products*, a number of companies have been certified in Bangladesh, Cap Verde, Gambia, Guinea, Côte d'Ivoire,¹⁴⁷ Madagascar, the Maldives, Mauritania, Mozambique, Senegal, Tanzania, and Uganda.
2. Four Bangladeshi companies are certified for certain animal casings.¹⁴⁸

That is all! In other words, there is virtually no legal possibility for imports of live animals, meat, meat products, dairy products or honey from any LDC into any European country. Even products containing only traces of animal-based products, such as certain types of compound feed, fall under sanitary restrictions and are thus off-bounds in the whole of Europe.

5.2.2. *Phytosanitary obstacles*

The situation is somewhat better for plant-based products. As has been shown above (2.2.1.F) product certification, where needed, applies at the national level. This means that producers and traders have to ascertain conformity for each product and country (or even region), but not by way of certificates for each supplier as for animal-based products. Phytosanitary regulations for imports from third-countries in the EC (and in Switzerland) concern – *inter alia* – specific

- diseases (*e.g.* potato wart disease)
- toxins (*e.g.* aflatoxins),
- harmful organisms (*e.g.* the potato cyst eelworm),

¹⁴⁶ Cf. http://circa.europa.eu/irc/sanco/vets/info/data/listes/list_all.html (last visited on 10 March 2008).

¹⁴⁷ Côte d'Ivoire today enjoys LDCs treatment in Switzerland (Art.6 of the GSP Ordinance); *cf. supra* 3.1.1.

¹⁴⁸ Cf. <http://circa.europa.eu/irc/sanco/vets/info/data/listes/15bd.pdf>

- undesirable substances (e.g. synthetic calcium aluminates),
or
- food and feed additives (e.g. salinomycin sodium)

As a result, plant-based products are traded much more than animal-based ones. Significant phytosanitary border measures in Europe apply mostly to living plants, seeds and some roots and tubers such as potatoes.

As noted previously, Switzerland applies the same phytosanitary import regulations as the EU. Regulations on feedstuffs, for instance, can easily be found at the website of the competent authority, the Agroscope Liebefeld-Posieux Research Station ALP.¹⁴⁹

5.2.3. *FDI as a Trojan horse against SPS obstacles*

In the face of what amounts to a European cordon sanitaire there is one instrument emerging as a way of letting producers in LDCs break into the European food and feed market: foreign direct investment (FDI). This is particularly important for agricultural products for which trade liberalisation is lagging behind, because new FDI in production and in processing plants in LDCs often depends on export outlets. The challenge then is to ensure product access including through all the non-tariff barriers. Foreign capital and expertise can thus promote production standards meeting European product safety regulations.

Often, public sector involvement facilitates what are otherwise often risky ventures. As an example, the European Investment Bank as the long-term lending institution of the EU has for a number of years financed investment projects, including some in LDCs. The projects in Benin, Cape Verde, Chad, Madagascar, Malawi, Mozambique and Tanzania concern sugar refineries, oil palm processing plants, fish packers, slaughterhouses and cashew nut and cotton processing; they also often address production constraints and pre-harvesting operations.¹⁵⁰ Clearly, in cases where technical and

¹⁴⁹ <http://www.alp.admin.ch/themen/00587/00626/index.html?lang=de>

¹⁵⁰ For a list of such projects cf.
<http://www.eib.org/projects/loans/index.htm>

commercial skills from the importing country are part of the investment effort, chances for market penetration into that market improve. Perhaps it is such market-led initiatives which offer the best prospects for seeing more of the products of LDCs in Europe.

These projects, to the extent that they are export-oriented, obviously have the EU as their primary target. There is no promotion programme aiming specifically at Swiss FDI in LDCs. Probably few if any such projects would be economically viable, at least on a large scale, for instance investment in a sugar refinery.¹⁵¹ There are examples of small-scale investments, often by compatriots living in Switzerland, for instance in vegetable production. To the extent that such investments hitherto have had to focus on off-seasonal trade, the new duty-free access could help these ventures to supply such products the whole year round.

5.3. The potential additional LDCs' market access

Considering the formidable obstacles to the access of LDCs to Europe, it appears that DFQF could make only a small contribution to trade increases, either in the EU or in Switzerland. Recent trade performance confirms this view (4.2.). This Section identifies a few products with further import potential on the Swiss market. Indeed, in 2007, there were some new imports from LDCs; for some of them, preferences may have played a role. A look at such products shows a diverse, albeit empirical if not speculative picture.

1. *Cut flowers*: LDCs' market shares for cut flowers are on the increase worldwide – even without the new tariff preferences. Traditionally, developing countries have been less competitive for high-value flowers – even for tropical flowers such as orchids. In addition, LDCs compete with other developing countries. Nevertheless, if present trends continue, LDC producers can expect to make further inroads in Switzerland as well – repeating Tanzania's success with

¹⁵¹ Exceptionally, some holding companies registered in Switzerland have made investments for instance in groundnut refining in The Gambia, or cotton spinning in Sudan.

roses¹⁵² – and thanks to DFQF they can do so the whole year round, unlike their competitors from other countries.

2. For some *live plants* such as unrooted cuttings and slips (0602.1000), Ethiopia and Uganda together jumped over the SFR 100,000 limit in 2007. However, their tariff advantage is only SFR 6.20/100kg, and *nil* for EC and GSP suppliers.
3. *Fresh vegetables*: Seasonal tariffs vary in Switzerland even more than in the EU, with in-quota-tariff quantities sometimes allocated on a weekly basis. For distant producers such frequent regime changes represent virtual import prohibitions, especially when the corresponding out-of-quota tariff is prohibitively high. LDC exporters enjoy a new competitive advantage in the sense that they can offer a continuous duty-free supply of those vegetables which they can produce all year round.

The only tariff line for fresh vegetables with sizeable (and increasing) amounts supplied by LDCs were ‘other vegetables’ (0709.9099). Even there, only Togo has mustered yearly supplies with a value over SFR 100,000 since 2003.

4. *Fresh fruits*: As previous studies have shown, the market for fresh produce is particularly difficult for newcomers.¹⁵³ This means that the ‘open seasonal door’ for LDCs created by DFQF will be a necessary but not sufficient argument for new trade.
 - a. Fresh fruit subject to seasonal tariffs could develop into an export for LDCs. As for vegetables, there would be no need for DFQF advantages. Candidates for such new trade may be *fresh table grapes* (0806), *apples and pears* (0808), *apricots, cherries, peaches and plums* (0809), and berries, including of course out-of-quota *strawberries* (0810.1019).

¹⁵² For roses *cf.* 4.1.1.C *supra*.

¹⁵³ Taverney (2006).

- b. For *pineapples* (0804.3000), LDC producers had no tariff advantage against GSP suppliers, even before DFQF. Perhaps for this reason they have faced declining market shares since 2003.
 - c. Few bananas are imports from LDCs (0803.0000). Only Uganda and Côte d'Ivoire have supplied more than SFR 100,000 worth of bananas since 2003, with total market shares of LDCs remaining under 1%.¹⁵⁴
5. There may be a new market potential, for similar reasons as for cut flowers, for *semi- or fully-processed fruits and vegetables*:
- a. *fruits for processing, including dried fruits and nuts* (0811-0814)
 - b. *vegetables for processing, frozen* (0710), provisionally preserved (0711) or dried (0712-0713)
 - c. *fruits (and vegetables) already processed, including as jams and juices* (chapters 2005-2009).

As of today, the only LDCs' supplies worth over SFR 100,000 are some *processed vegetables* (2005.9941). This tariff line is perhaps a clue to further such trade, because it combines a definite tariff advantage with relatively labour-intensive production.¹⁵⁵

6. For *coffee* (0901.1100) and *vanilla* (0905.0000) LDCs traditionally enjoy market shares ranging from 5 to slightly over 10% – even without a tariff advantage, a fact which indicates the quality of their products especially in a market with increasing competition from new producers.

¹⁵⁴ Interestingly, but of course wrongly, banana imports with Dutch and Austrian origins (sic!) were much higher than total quantities from LDCs, according to Swiss import statistics for 2006 and 2007.

¹⁵⁵ The MFN rate is 59.50/100kg, EC and FTA suppliers pay 24.50 – and there is no tariff reduction under the GSP.

7. For *oils and fats* in general, most of the tariffs applied are presently very low, and therefore represent no advantage for LDC suppliers. One small exception is just one tariff line for sunflower oilseeds (1206.0024 'sunflower seeds, whether or not broken, not hulled, for the production of oil fit for human consumption, by pressing'): for such seeds, suppliers with MFN, FTA and GSP origins pay SFR 50.25/100kg – and it is the only sunflower tariff line with imports from LDCs.¹⁵⁶

The low tariffs applied for oils and fats – as well as for *cereals* – might of course easily change if the presently booming world market prices return to their previous low levels. Swiss MFN tariffs for these products exceed 300% *ad valorem*, including for feedingstuffs. They could easily be re-introduced in order to protect domestic production. This would re-open the DFQF advantage for LDCs. However, such a scenario is highly unlikely, not only in view of present market trends (*inter alia*, in biofuels) but also because MFN and FTA tariffs are unlikely to remain where they are today.

8. Whether *sesame* will remain a key for opening the Swiss door for LDCs remains an open question.¹⁵⁷
9. *Fish and seafood* are a product group in which LDCs have significant market shares (with Bangladesh, Mozambique, Tanzania and Senegal as the main LDC suppliers), and with a few EC-certified exporters. However, since tariffs have been at zero for many years, these products are without DFQF promises and are therefore not further discussed here.
10. As in the EU, sugar supplies to Switzerland from LDCs account for between 5 and 10% of total imports.¹⁵⁸ The crucial

¹⁵⁶ Tanzania, with SFR 237'000, but this represents a market share of less than half a per cent of total imports.

¹⁵⁷ Cf. *Supra* 5.1.1.C.

¹⁵⁸ 1701.1100: 2007 imports were down 38% to SFR 473'828.

question here is whether DFQF treatment starting in late 2009 will bring more sugar from LDCs to the Swiss market.¹⁵⁹

The case for labelling

As the fabulous success of Tanzanian roses has shown, fair trade labels can play a useful role because they 'carry their origin' not only through to the consumer but also at customs offices requiring proof of origin for tariff classification purposes. Another example is the recent trade success of the so-called 'Inca Nut', picked in tropical forests by small farmers as a pharmaceutical, cosmetic and food, and thus contributing to preserving biodiversity.¹⁶⁰

Unlike other mass-produced items, such traceable goods must retain their statistical/customs origins even when they pass through commodity markets such as Amsterdam.¹⁶¹ This is not the case for, say, vegetable oils (or 'generic' cut flowers) which are traded on an 'any origin' basis. Trade data for such commodities are almost never reliable indicators of physical origins, whereas for labelled products, customs figures reflect true origins.

6. Conclusions and Recommendations

On the basis of the foregoing analysis and presentation of the import potential for increases in supply from LDCs we can draw some operational conclusions (6.1.), and then end this study with a number of recommendations for further action (6.2.).

6.1. Conclusions

Exports from LDCs to Switzerland remain very limited. Even given that full DFQF was only implemented on 1 April 2007, trade data so far show no clear trend, either for overall performance or for those products for which zero duties have created a significant tariff gap in favour of LDCs. One wonders whether nobody has noted the 'free ride through the tariff wall'. The most important

¹⁵⁹ Cf. *Supra* 3.1.1.B.

¹⁶⁰ Cf. *Neue Zürcher Zeitung* 17 April 2008, p.31.

¹⁶¹ As a new development in spring 2008, Max Havelaar-labelled bananas in Switzerland are sold with shipment numbers.

reason for this lack of trading response is of course the 'European cordon sanitaire' preventing virtually all animal-based and many plant-based products from LDCs being imported into Europe. Even so, our study has shown several underused market openings. It has also indicated some of the possibilities for more agricultural imports from LDCs.

Several factors explain the apparent lack of reaction to a distinct market opening:

- a. The real impediments to market access are NTBs. Tariffs are not the biggest obstacle to imports from LDCs.
- b. The competitiveness of products from LDCs, and operators' preferences (informed or not informed) play a decisive role.
- c. For an LDC exporter, Switzerland is too small a market to develop a strategy.
- d. Swiss importers lack sufficient information on the new import opportunities – or they consider their unilateral nature as insufficiently trustworthy for them (graduation and preference suspensions happen, and safeguards remain possible).

This study does not speculate on the likelihood of increased imports. Neither is it possible to forecast the nature of such increased imports, if any, i.e. trade creation, trade diversion, or increased consumption and re-exports. Obviously, the question of the Swiss Government's response to the scenario of trade creation plays a crucial role here: in such an eventuality, would there be recourse to safeguard measures in order to protect domestic producers? In addition, developments in the existing agreements with other trading partners erode the present tariff advantage enjoyed by LDCs, and the same will happen with the implementation of Doha Round results and/or improved GSP measures. On the other hand, any additional NTBs, especially sanitary and phytosanitary measures would preclude imports even where they are possible today; they

might hit LDCs' supplies particularly hard.¹⁶² It is precisely these countries which often do not have the technological and financial capacity to adapt to (new) standards and risks on their main export markets.

Conclusions regarding tariffs

LDCs wishing to gain access to the Swiss market for agricultural products today enjoy a window of opportunity. Because Switzerland has the world's highest agricultural tariffs, this window is unique. Unlike for their competitors (MFN, FTA and EU) no tariffs, no quotas and no seasonal restrictions apply to products originating in LDCs. However, this 'tariff window' will partly or totally close

- a. with the enactment of Doha Round results
- b. through new FTAs with other developing countries – provided such agreements foresee real concessions in agriculture
- c. through a Swiss–EC agro-food FTA
- d. upon enlargement of the Swiss GSP

Fortunately for LDCs – but regrettably so from a perspective of overall trade liberalisation – right now none of these scenarios is likely to fully materialise before 2015. However, when they do, the present preference advantage enjoyed by LDCs will erode, with only market factors deciding on their competitive position. Worse, some of the poorest countries and most sensitive sectors may suffer the biggest net losses from MFN tariff reductions. In the meantime, efforts to promote imports from LDCs can yield positive results if all actors participate in a co-ordinated way: policy makers, trade promoters, and operators from the farm gate to the retailers.

¹⁶² As an example, when Switzerland unilaterally adopted EC maximum residue limits on aflatoxins, back in the 1980s, groundnut cake imports from Senegal and The Gambia came to a complete standstill.

Conclusions regarding non-tariff barriers

The single biggest obstacles to trade expansion are the sanitary and phytosanitary measures preventing access for many products. Even when they are legal, and although they apply equally to all suppliers from overseas, as well as to producers in Europe, LDCs face two additional difficulties here:

- a. their mostly tropical climate involves additional sanitary risks (*e.g.* aflatoxins) and costs (*e.g.* for a cold chain operation over long distances);
- b. ever higher food safety standards demand ever better infrastructure, institutions and implementation procedures, for inspections, certification, ensuring traceability, etc. – the only good news here being that a product allowed into the EC now also has access to Switzerland.

Another problem are intercontinental differences, for instance in organic production where the EU, the USA and Japan each have their own special notions of what is 'organic'. Harmonization efforts are under way, both through MRA in FTA and at the international level, for instance with UNCTAD. However, for a Senegalese producer of organic vegetables, no progress is detectable here. In WTO terms, this is a possible TBT issue.

The problems are similar for private standards. The multiplication of these standards due to ever-increasing consumer sensitivities and new priorities makes production in remote countries more and more difficult. Efforts to harmonise such standards are particularly welcome news for LDCs. Even the much-criticised EurepGap has the advantage of at least a partial harmonisation of private standards in European countries. Yet, consumer organisations and retailers in the USA and in Japan still have other preferences and standards.

Harmonisation efforts may thus be Sisyphean work against ever-increasing importer sensitivities.

To sum up, the tariff window created for DFQF is significant, but it has not yet been used to a notable extent. Moreover, it is limited in

time, and, in addition, by two types of NTBs, in particular governmental SPS measures and private standards.

It is quite clear that only a comprehensive attempt at import and investment promotion in favour of LDCs can yield meaningful results. In view of the formidable NTBs hindering or preventing their exports outright, DFQF can only be part of a serious effort undertaken by a country such as Switzerland. Import promotion starts but cannot end with tariff preferences. Aid for trade encompasses a whole range of support measures, including technical assistance throughout the production, processing and marketing chain, institutional development, and sales promotion.

A number of recommendations may help to further the real intention of DFQF, namely to promote trade – and development – in the poorest countries on earth.

6.2. Recommendations

The recommendations derived from this study are directed at policy makers and investment and trade promoters.

Recommendations for policy makers

1. The overall impact of tariff preferences on trade and development is far from clear. Governmental and academic opinions on this issue range from the very positive to the outright counter-productive. For DFQF, a general evaluation may be a little simpler. Firstly, the window created by DFQF – both in the EU and in Switzerland – is of limited importance, because LDCs enjoy only few real tariff advantages versus GSP and FTA/EPA competitors. Secondly, the DFQF window is of limited duration, because autonomous tariff reductions as well as additional FTA and the Doha Round results will eventually close it. Thirdly, the European cordon sanitaire leaves precious few products of LDCs with a real market potential.
2. Under these circumstances, DFQF appears as a useful albeit limited and temporary, tool for trade and development promotion. It does not face the same ‘bad habit addiction’

problems often invoked against the GSP. Indeed, the inherent disadvantages of tariff preferences (as opposed to multi-lateral liberalization) play a lesser role precisely because of the time-limited opportunity such preferences represent today.

3. Furthermore, a gradual bottom-up enlargement of DFQF treatment for all non-FTA candidates would constitute a useful accompanying measure on the road to freer trade. Of course, such an enlargement may erode the little mileage LDCs have gained from DFQF with respect to their other developing country competitors. Such a strategy therefore needs careful planning. At the same time, far-reaching preferences would compensate for some of the relative disadvantages which developing countries face from the Swiss FTA and other tariff reductions. As part of such an 'all-out preferential strategy', safeguards (except for LDCs) and graduation (for fully competitive producers) would ensure a 'level playing field' for all – even including domestic producer and processor sensitivities.
4. A complete review of the Swiss GSP will be necessary when important MFN reductions are to be implemented, and/or if a Swiss-EC agro-food FTA is concluded. Under the latter scenario, third-country agricultural imports may disappear altogether without an appropriate adjustment of both tariff and non-tariff measures.
5. Rules of origin play less of a problem for basic commodities, where 'wholly obtained' is the rule, than for instance in textiles. Nevertheless, they can prevent regional integration and processing if cumulation between LDCs and neighbouring non-LDC countries, for instance in a Customs Union, is prohibited. And proof of origin for preferential access may simply be impossible, for instance for bulk commodities transiting through European ports. For these reasons, improvements for preferential rules of origin may constitute investment incentives even where LDCs only supply part of the final product.

Recommendations for investment and trade promotion activities

1. Judging from the available trade figures, information on the Swiss EBA has not reached Swiss importers, let alone LDC exporters. In any case, it did not produce any import surges between the inception of the DFQF programme in 2001, and its completion in April 2007. This is a task for many governmental agencies, including Swiss Embassies, but also for trade promoters. The latter should envisage specific promotion campaigns based on the market potential identified in this study.
2. There is a Swiss Import Promotion Programme, but apart from one case in Bangladesh, it apparently has no specific programmes for agricultural products from LDCs. Large-scale specific import promotion programmes may not pass a cost-benefit test. However, a 'single window' promotion effort would help; it could follow the lead established by the EC's Export Help Desk for developing countries.¹⁶³ Even some EU Member states have such windows, for instance the Netherlands with its Centre for the Promotion of Imports from Developing Countries (CBI).¹⁶⁴
3. Foreign direct investments can play an especially useful role in jumping the European cordon sanitaire. Even though investments in LDCs will normally require outlets on larger markets than that of Switzerland, this country is also home to some of the biggest foreign investment companies. Reaching out to them, by way of information on the new possibilities LDCs now enjoy in the whole of Europe might lead to some such new investments, and a corresponding increase in LDCs' trading opportunities.

¹⁶³ <http://exporthelp.europa.eu/> (02.07.08)

¹⁶⁴ <http://www.cbi.eu/> (02.07.08)

Annexes

1. Selected Trade Data
2. Acronyms
3. Literature
4. List of Contacts

Selected Trade Data

1. 2007 Swiss Imports from LDCs, Principal Suppliers, and Changes 2006-2007
2. 2007 EC Imports from LDCs, Principal Suppliers
3. 2006 World Agricultural Product Imports from LDCs

1. Swiss Imports from LDCs, Principal Suppliers, and Changes 2006-2007¹⁶⁵

| Zollkapitel / Tarifnummer | Bezeichnung | Importwert (in SFR) | Wichtigste LDCs- Lieferanten | Veränderung zu 2006 |
|------------------------------|-------------|------------------------|------------------------------------|------------------------|
|------------------------------|-------------|------------------------|------------------------------------|------------------------|

| | | | | |
|-----------|----------------------|---------------|--|-------------|
| 01 | LEBENDE TIERE | 33'797 | | 117% |
|-----------|----------------------|---------------|--|-------------|

| | | | | |
|-----------|---|---------------|--|-------------|
| 02 | FLEISCH UND GENIESSBARE SCHLACHTNEBENERZEUGNISSE | 29'861 | | -82% |
|-----------|---|---------------|--|-------------|

| | | | | |
|-----------|---|------------------|----------------------|-------------|
| 03 | FISCHE UND KREBS- TIERE, WEICHTIERE UND ANDERE WIRBEL- LOSE WASSERTIERE | 3'589'523 | | -14% |
| 0304.1990 | Seefischfilets und anderes Seefischfleisch, auch zerkleinert, frisch oder gekühlt | 199'909 | Senegal, Mauritius | -48% |
| 0306.1300 | Garnelen [Crevettes], auch ohne Panzer, einschl. Garnelen in ihrem Panzer, zuvor in Wasser oder Dampf gekocht, gefroren | 3'029'344 | Bangladesh, Mosambik | -5% |
| 0306.1900 | Krebstiere, geniessbar, auch ohne Panzer, einschl. Krebstiere in ihrem Panzer, zuvor in Wasser oder Dampf gekocht, gefroren (ausg. Langusten, Hummer, Garnelen und Krabben); Mehl, Pulver | 120'359 | Mosambik | -44% |

¹⁶⁵ Year 2007, tariff chapters 1-24, tariff lines within chapters show imports of more than SFR 100'000 (data downloaded on 29.02.2008, partly provisional; for this reason they may not match some of the data used for the product-by-product analysis)

Quelle: CH-Aussenhandelsstatistik 2008, LDCs's entsprechend der Schweizer Liste

| | | | | |
|--|---|--|--|--|
| | und Pellets von Krebstieren, geniessbar, gefroren | | | |
|--|---|--|--|--|

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|-----------|---|----------------|-------|------------------|
| 04 | MILCH UND MILCHERZEUGNISSE; VOGELEIER; NATÜRLICHER HONIG; GENIESSBARE WAREN TIERISCHEN URSPRUNGS, ANDERWEIT WEDER GENANNT NOCH INBEGRIFFEN | 147'743 | Samoa | 498% |
| 0405.1011 | Butter, frisch, nicht gesalzen, innerhalb des Zollkontingents Nr. 7 eingeführt | 147'019 | Samoa | Keine Importe 06 |

| | | | | |
|-----------|--|------------|--|-------------|
| 05 | ANDERE WAREN TIERISCHEN URSPRUNGS, ANDERWEIT WEDER GENANNT NOCH INBEGRIFFEN | 414 | | -58% |
|-----------|--|------------|--|-------------|

| | | | | |
|-----------|---|------------------|---------------------|------------|
| 06 | LEBENDE PFLANZEN UND WAREN DES BLUMENHANDELS | 8'705'826 | | 42% |
| 0602.1000 | Stecklinge, unbewurzelt, und Pfropfreiser | 99'696 | Äthiopien, Uganda | 398% |
| 0603.1110 | Rosen, frisch, geschnitten, zu Binde- oder Zierzwecken, vom 1. Mai bis 25. Oktober, innerhalb des Zollkontingents Nr. 13 eingeführt | 4'636'388 | Tansania, Äthiopien | 65% |
| 0603.1130 | Rosen, frisch, geschnitten, zu Binde- oder Zierzwecken, vom 26. Oktober bis 30. April | 3'843'618 | Tansania, Äthiopien | 24% |

| | | | | |
|-----------|--|----------------|--|------------|
| 07 | GEMÜSE, PFLANZEN, WURZELN UND KNOLLEN, DIE ZU ERNÄHRUNGSZWECKEN | 562'036 | | -6% |
|-----------|--|----------------|--|------------|

| | | | | |
|-----------|--|---------|-------------|-----|
| | VERWENDET WERDEN | | | |
| 0709.9099 | Gemüse, frisch oder gekühlt, a.n.g. | 387'928 | Togo,Uganda | 16% |

| | | | | |
|-----------|---|------------------|--------------------------------------|-------------|
| 08 | GENIESSBARE FRÜCHTE UND NÜSSE; SCHALEN VON ZITRUSFRÜCHTEN ODER VON MELONEN | 2'394'294 | | -10% |
| 0803.0000 | Bananen, einschl. Mehlba- nanen, frisch oder getrocknet | 273'776 | Côte d'Ivoire, Uganda | 48% |
| 0804.3000 | Ananas, frisch oder get- rocknet | 1'069'943 | Côte d'Ivoire, Togo | -25% |
| 0804.5000 | Guaven, Mangofrüchte und Mangostanfrüchte, frisch oder getrocknet | 905'049 | Côte d'Ivoire, Burkina Faso | 43% |

| | | | | |
|-----------|---|-------------------|--------------------------|------------|
| 09 | KAFFEE, TEE, MATE UND GEWÜRZE | 18'270'179 | | 23% |
| 0901.1100 | Kaffee, nicht geröstet, unentkoffeiniert | 18'001'591 | Äthiopien, Tan- sania | 24% |
| 0905.0000 | Vanille | 206'973 | Madagaskar, Kamerun | -14% |

| | | | | |
|-----------|-----------------|---------------|--|-------------|
| 10 | GETREIDE | 48'951 | | -33% |
|-----------|-----------------|---------------|--|-------------|

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|-----------|---|--------|--|------|
| 11 | MÜLLEREIERZEUGNISSE; MALZ; STÄRKE; INULIN; KLEBER VON WEI- ZEN | 15'390 | | -67% |
|-----------|---|--------|--|------|

| | | | | |
|-----------|---|----------------|----------|-------------|
| 12 | ÖLSAMEN UND ÖLHALTIGE FRÜCHTE; VERSCHIEDENE SAMEN UND FRÜCHTE; PFLANZEN ZUM GEWER- BE- ODER HEIL- GEBRAUCH; STROH UND FUTTER | 953'800 | | 107% |
| 1206.0024 | Sonnenblumenkerne, auch | 237'241 | Tansania | Keine |

| | | | | |
|-----------|--|---------|-----------------|------------|
| | geschrotet, ungeschält, zur Herstellung von Speiseöl durch Pressen | | | Importe 06 |
| 1207.4024 | Sesamsamen, auch geschrotet, zur Herstellung von Speiseöl durch Pressen | 233'219 | Uganda, Mali | 705% |
| 1211.9000 | Pflanzen, Pflanzenteile, Samen und Früchte der hauptsächlich zur Herstellung von Riechmitteln oder zu Zwecken der Medizin, Insektenvertilgung, Schädlingsbekämpfung oder dergleichen verwendeten Arten, frisch oder getrocknet, auch in Stücken, als Pulver oder sonst zerkleinert, a.n.g. | 365'402 | Sudan, Tansania | -10% |

| | | | | |
|-----------|--|------------|--|--------------|
| 13 | SCHELLACK; GUMMEN, HARZE UND ANDERE PFLANZENSÄFTE UND PFLANZENAUSZÜGE | 811 | | -100% |
|-----------|--|------------|--|--------------|

| | | | | |
|-----------|--|--------------|--|-------------------------|
| 14 | FLECHTSTOFFE UND ANDERE WAREN PFLANZLICHEN URSPRUNGS, ANDERWEIT WEDER GENANT NOCH INBEGRIFFEN | 4'096 | | Keine Importe 06 |
|-----------|--|--------------|--|-------------------------|

| | | | | |
|-----------|--|-------------------|------------------------|------------|
| 15 | TIERISCHE UND PFLANZLICHE FETTE UND ÖLE; ERZEUGNISSE IHRER SPALTUNG; GENIESSBARE VERARBEITETE FETTE; WACHSE TIERISCHEN UND PFLANZLICHEN URSPRUNGS | 16'526'811 | | 14% |
| 1508.1090 | Erdnussöl, roh (ausg. solches zu Futterzwecken) | 7'091'357 | Senegal | -30% |
| 1511.1090 | Palmöl, roh (ausg. solches zu Futterzwecken) | 1'903'078 | Kambodscha, Madagaskar | 654% |
| 1513.1190 | Kokosöl [Kopraöl], roh (ausg. solches zu Futter- | 7'334'271 | Mosambik | 79% |

| | | | | |
|--|----------|--|--|--|
| | zwecken) | | | |
|--|----------|--|--|--|

| | | | | |
|-----------|--|---------------|--|-------------|
| 16 | ZUBEREITUNGEN VON FLEISCH, FISCHEN ODER VON KREBSTIEREN, WEICHTIEREN UND ANDEREN WIRBELLOSEN WASSERTIEREN | 97'322 | | -65% |
|-----------|--|---------------|--|-------------|

| | | | | |
|-----------|--|----------------|--------|-------------|
| 17 | ZUCKER UND ZUCKERWAREN | 508'215 | | -37% |
| 1701.1100 | Rohrzucker, roh, ohne Zusatz von Aroma- oder Farbstoffen | 473'828 | Malawi | -38% |

| | | | | |
|-----------|---|-------------------|--|-------------|
| 18 | KAKAO UND ZUBEREITUNGEN AUS KAKAO | 13'519'198 | | -11% |
| 1801.0000 | Kakaobohnen und Kakaobohnenbruch, roh oder geröstet | 13'497'704 | | -11% |

| | | | | |
|-----------|---|---------------|--|-------------|
| 19 | ZUBEREITUNGEN AUS GETREIDE, MEHL, STÄRKE ODER MILCH; BACKWAREN | 21'259 | | 165% |
|-----------|---|---------------|--|-------------|

| | | | | |
|-----------|--|----------------|----------------------------|------------|
| 20 | ZUBEREITUNGEN VON GEMÜSE, FRÜCHTEN, NÜSSEN ODER ANDEREN PFLANZENTEILEN | 288'765 | | 71% |
| 2005.9941 | Gemüse, ohne Essig oder Essigsäure zubereitet oder haltbar gemacht, ungefroren, in Behältnissen von =< 5 kg (ausg. homogenisierte Gemüse, Tomaten, Pilze, Trüffel, Kartoffeln, Sauerkraut, Erbsen [Pisum sativum], Bohnen [Vigna spp., Phaseolus spp.], Spargel, Oliven, Zuckermais [Zea mays var. saccharata], Bambussprossen, Gemüse-mischungen sowie Produkte mit Zucker haltbar gemacht) | 126'807 | Côte d'Ivoire, Kongo (RDK) | 24% |

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| 21 | VERSCHIEDENE LEBENSMITTEL-ZUBEREITUNGEN | 73'214 | | 9% |
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| 22 | GETRÄNKE, ALKOHOLHALTIGE FLÜSSIGKEITEN UND ESSIG | 142'502 | | 80% |
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| 23 | RÜCKSTÄNDE UND ABFÄLLE DER LEBENSMITTELINDUSTRIE; ZUBEREITETES FUTTER | 0 | | Keine Importe 06 |
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| 24 | TABAK UND VERARBEITETE TABAKERSATZSTOFFE | 12'845'745 | | 43% |
| 2401.2010 | Tabak, teilweise oder ganz entrippt, sonst unverarbeitet, zur gewerbmässigen Herstellung von Zigaretten, Zigarren, Rauchtabak, Kau-, Rollen- und Schnupftabak | 12'576'447 | Malawi, Tansania | 44% |
| 2401.3010 | Tabakabfälle, zur gewerbmässigen Herstellung von Zigaretten, Zigarren, Rauchtabak, Kau-, Rollen- und Schnupftabak | 141'342 | Tansania | -33% |

TOTAL 2007

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| 01-97 | | 503'086'032 | | 25% |
| 01-24 | | 78'779'752 ¹⁶⁶ | | 11% |

¹⁶⁶ For comparison purposes: Agricultural products (chapters 1-24) imported from all LDCs were

SFR 71'082'677 (2002),

SFR 75'814'193 (2003),

SFR 59'288'084 (2004),

SFR 75'706'240 (2005), and

SFR 70'337'297 (2006).

2. EC Imports from LDCs, Principal Suppliers¹⁶⁷

| Zollkapitel / Tarifnummer | Bezeichnung | Importwert (in EUR) | Wichtigste LDCs- Lieferanten |
|------------------------------|---|------------------------|------------------------------------|
| 01 | LEBENDE TIERE | 1'319'642 | |
| 02 | FLEISCH UND GENIESSBARE SCHLACHTNEBENERZEUGNISSE | 282'864 | |
| 03 | FISCHE UND KREBSTIERE, WEICHTIERE UND ANDERE WIRBELLOSE WASSERTIERE | 969'146'209 | |
| 0302 | FISCHE, GENIEßBAR, FRISCH ODER GEKÜHLT (AUSG. FISCHFILETS UND ANDERES FISCHFLEISCH DER POS. 0304) | 86'626'598 | |
| 03022300 | SEEZUNGEN 'SOLEA-ARTEN', FRISCH ODER GEKÜHLT | 6'018'443 | Mauretanien, Senegal |
| 03023290 | GELBFLOSSENTHUN 'THUNNUS ALBACARES', FRISCH ODER GE- KÜHLT (AUSG. ZUM INDUSTRIEL- LEN ZUBEREITEN ODER HALTBAR- MACHEN) | 11'729'265 | Republik Jemen, Senegal |
| 03026919 | SÜBWASSERFISCHE, GENIEßBAR, FRISCH ODER GEKÜHLT (AUSG. SALMONIDEN, AALE UND KARPFFEN) | 9'963'043 | Uganda, Tan- sania |
| 03026999 | SEEFISCHE, GENIEßBAR, FRISCH ODER GEKÜHLT (AUSG. SALMONI- DEN, PLATTFISCHE, THUNFISCHE, ECHTER BONITO, HERINGE, KA- BELJAU, SARDINEN, SARDINELLEN, SPROTTEN, SCHELLFISCH, KÖH- | 57'679'549 | Senegal, Mauretanien |

¹⁶⁷ Year 2007, tariff chapters 1-24, tariff lines within chapters show im-
ports of more than €1mio

Source: EUROSTAT, 2008 (tentative data available at the beginning of
2008), for final data cf. <http://epp.eurostat.ec.europa.eu/newxtweb/>.

However, the compiled data concern all countries enjoying Swiss DFQF
treatment => cf. T@res (<http://xtares.admin.ch>)

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| | LER, MAKRELEN, HAIE, AALE, EUTHYNNUS-ARTEN, ROT-, GOLD- UND TIEFENBARSCHE DER SEBASTES-ARTEN, DER ART BOREOGADUS SAIDA, MERLAN, LENG, PAZIFISCHER POLLACK UND POLLACK, SARDELLEN, SEEBRASSEN, SEEHECHTE, BRACHSENMAKRELEN, SEETEUFEL, BLAUER UND SÜDLICHER WITTLING, SCHWERTFISCH, ZAHNFISCHE, STÖCKER, ROSA KINGKLIP, MEERBARSCHE UND GOLDBRASSEN) | | |
| 0303 | FISCHE, GENIEßBAR, GEFROREN (AUSG. FISCHFILETS UND ANDERES FISCHFLEISCH DER POS. 0304) | 100'577'426 | |
| 03033300 | SEEZUNGEN 'SOLEA-ARTEN', GEFROREN | 6'310'108 | Mauretanien, Senegal |
| 03033970 | PLATTFISCHE 'PLEURONECTIDAE, BOTHIDAE, CYNOGLOSSIDAE, SOLEIDAE, SCOPHTHALMIDAE UND CITHARIDAE', GEFROREN (AUSG. HEILBUTTE, SCHOLLEN ODER GOLDBUTT, SEEZUNGEN, FLUNDERN UND RHOMBOSOLEA-ARTEN) | 6'508'899 | Mauretanien, Senegal |
| 03034290 | GELBFLOSSETHUN 'THUNNUS ALBACARES', GEFROREN (AUSG. ZUM INDUSTRIELLEN ZUBEREITEN ODER HALTBARMACHEN) | 15'329'255 | Senegal, Kap Verde |
| 03036100 | SCHWERTFISCH 'XIPHIAS GLADIUS', GEFROREN | 11'304'948 | Senegal, Mauretanien |
| 03037919 | SÜBWASSERFISCHE, GENIEßBAR, GEFROREN (AUSG. SALMONIDEN, AALE UND KARPFFEN) | 23'506'958 | Myanmar, Bangladesch |
| 03037998 | SEEFISCHE, GENIEßBAR, GEFROREN (AUSG. SALMONIDEN, PLATTFISCHE, THUNFISCHE, ECHTER BONITO, HERINGE, KABELJAU, SARDINEN, SARDINELLEN, SPROTTE, SCHELLFISCH, KÖHLER, MAKRELEN, HAIE, AALE, MEERBARSCHE, SEEHECHTE, FISCHE DER EUTHYNNUS-ARTEN, ROT-, GOLD- UND TIEFENBARSCHE [SEBASTES-ARTEN], FISCHE DER | 14'917'720 | Jemen, Senegal |

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| | ART BOREOGADUS SAIDA, MERLAN, LENG, PAZIFISCHER POLLACK UND POLLACK, FISCHE DER ART ORCYNOPSIS UNICOLOR, SARDELLEN, SEEBRASSEN, BRACHSENMAKRELEN, SEETEUFEL, BLAUER UND SÜDLICHER WITTLING, SCHWERTFISCH, ZAHNFISCHE, STÖCKER, NEUSEELÄNDISCHER GRENADIER, ROSA KINGKLIP, FISCHE DER ARTEN PELOTREIS FLAVILATUS UND PELTORHAMPHUS NOVAEZEALANDIAE) | | |
| 0304 | FISCHFILETS UND ANDERES FISCHFLEISCH, AUCH FEIN ZERKLEINERT, FRISCH, GEKÜHLT ODER GEFROREN | 278'255'758 | |
| 03041919 | FISCHFILETS VON SÜßWASSERFISCHEN, FRISCH ODER GEKÜHLT (AUSG. VON FORELLEN DER ARTEN 'SALMO TRUTTA, ONCORHYNCHUS MYKISS, ONCORHYNCHUS CLARKI, ONCORHYNCHUS AGUABONITA UND ONCORHYNCHUS GILAE', VOM PAZIFISCHEN LACHS, ATLANTISCHEN LACHS UND DONAULACHS) | 144'889'032 | Tansania, Uganda |
| 03041939 | FISCHFILETS VON SEEWASSERFISCHEN, FRISCH ODER GEKÜHLT (AUSG. VOM SCHWERTFISCH, VON ZAHNFISCHEN, VOM KABELJAU, VON FISCHEM DER ART BOREOGADUS SAIDA SOWIE VOM KÖHLER, ROTBARSCH, GOLDBARSCH UND TIEFENBARSCH) | 53'697'168 | Malediven, Senegal |
| 03042919 | FISCHFILETS VON SÜßWASSERFISCHEN, GEFROREN (AUSG. VON FORELLEN DER ARTEN 'SALMO TRUTTA, ONCORHYNCHUS MYKISS, ONCORHYNCHUS CLARKI, ONCORHYNCHUS AGUABONITA UND ONCORHYNCHUS GILAE', VOM PAZIFISCHEN LACHS, ATLANTISCHEN LACHS UND DONAULACHS) | 40'293'503 | Tansania, Uganda |
| 03042945 | FISCHFILETS VON THUNFISCHEN DER GATTUNG THUNNUS UND VON FISCHEM DER EUTHYNNUS-ARTEN, | 7'349'357 | Jemen, Malediven |

| | GEFROREN | | |
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| 03042999 | FISCHFILETS VON SEEWASSERFISCHEN, GEFROREN (AUSG. SCHWERTFISCH, ZAHNFISCHEN, KABELJAU, FISCHEN DER ART BOREOGADUS SAIDA, KÖHLER, SCHELLFISCH, ROT-, GOLD- ODER TIEFENBARSCH [SEBASTES-ARTEN], MERLAN, LENG, THUNFISCHEN, FISCHEN DER EUTHYNNUS-ARTEN, MAKRELEN, FISCHEN DER ART ORCYNOPSIS UNICOLOR, SEEHECHTEN, HAIEN, SCHOLLEN ODER GOLDBUTT, FLUNDERN, HERINGEN, SCHEEFSNUT, SEETEUFEL, PAZIFISCHEN POLLACK ODER NEUSEELÄNDISCHEN GRENADIER) | 22'164'472 | Senegal, Mauretanien |
| 0306 | KREBSTIERE, GENIESSBAR, AUCH OHNE PANZER, LEBEND, FRISCH, GEKUEHLT, GEFROREN, GETROCKNET, GESALZEN ODER IN SALZLAKE, EINSCHL. KREBSTIERE IN IHREM PANZER, ZUVOR IN WASSER ODER DAMPF GEKOCHT; MEHL, PULVER UND PELLETS VON KREBSTIEREN, GENIESSBAR | 375'922'936 | |
| 03061340 | ROSA GEIBELGARNELEN 'PARAPENAEUS LONGIROSTRIS', AUCH OHNE PANZER, GEFROREN, EINSCHL. GARNELEN IN IHREM PANZER, ZUVOR IN WASSER ODER DAMPF GEKOCHT | 10'663'240 | Senegal, Angola |
| 03061350 | GEIBELGARNELEN 'PENAEUS SPP.', AUCH OHNE PANZER, GEFROREN, EINSCHL. GARNELEN IN IHREM PANZER, ZUVOR IN WASSER ODER DAMPF GEKOCHT (AUSG. ROSA GEIBELGARNELEN) | 233'594'113 | Bangladesch, Mosambik |
| 03061380 | GARNELEN, AUCH OHNE PANZER, GEFROREN, EINSCHL. GARNELEN IN IHREM PANZER, ZUVOR IN WASSER ODER DAMPF GEKOCHT (AUSG. GARNELEN DER FAMILIE PANDALIDAE, GARNELEN DER GATTUNG CRANGON, ROSA GEI- | 116'266'165 | Bangladesch, Mosambik |

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| | BELGARNELEN [PARAPENAEUS LONGIROSTRIS] UND GEIBELGARNELEN [PENAEUS SPP.] | | |
| 0307 | WEICHTIERE, GENIESSBAR, AUCH OHNE SCHALE, LEBEND, FRISCH, GEKUEHLT, GEFROREN, GETROCKNET, GESALZEN ODER IN SALZLAKE, EINSCHL. WIRBELLOSE WASSERTIERE, ANDERE ALS KREBSTIERE UND WEICHTIERE, SOWIE MEHL, PULVER UND PELLETS VON WIRBELLOSEN WASSERTIEREN, ANDEREN ALS KREBSTIEREN, GENIESSBAR | 122'010'990 | |
| 03074918 | TINTENFISCHE 'SEPIA OFFICINALIS UND ROSSIA MACROSOMA', AUCH OHNE SCHALE, GEFROREN | 33'159'163 | Senegal, Mauretaniien |
| 03075910 | KRAKEN 'OCTOPUS-ARTEN', AUCH OHNE SCHALE, GEFROREN | 75'573'420 | Mauretaniien, Senegal |

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| 04 | MILCH UND MILCHERZEUGNISSE; VOGELEIER; NATÜRLICHER HONIG; GENIESSBARE WAREN TIERISCHEN URSPRUNGS, ANDERWEIT WEDER GENANNT NOCH INBEGRIFFEN | 425'505 | |
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| 05 | ANDERE WAREN TIERISCHEN URSPRUNGS, ANDERWEIT WEDER GENANNT NOCH INBEGRIFFEN | 2'635'948 | |
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| 06 | LEBENDE PFLANZEN UND WAREN DES BLUMENHANDELS | 130'129'394 | |
| 0602 | PFLANZEN, LEBEND 'EINSCHL. IHRER LEBENDEN WURZELN', STECKLINGE UND PFROPFREISER SOWIE PILZMYCEL (AUSG. BULBEN, ZWIEBELN, KNOLLEN, WURZELKNOLLEN UND WURZELSTÖCKE SOWIE ZICHORIENPFLANZEN UND -WURZELN) | 36'158'773 | Uganda, Äthiopien |
| 06021090 | STECKLINGE, UNBEWURZELT, UND PFROPFREISER (AUSG. VON REBEN) | 33'559'823 | Uganda, Äthiopien |
| 0603 | BLUMEN UND BLÜTEN SOWIE DEREN | 93'573'980 | |

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| | KNOSPEN, GESCHNITTEN, ZU BINDE- ODER ZIERZWECKEN, FRISCH, GE- TROCKNET, GEBLEICHT, GEFÄRBT, IMPRÄGNIERT ODER ANDERS BEAR- BEITET | | |
| 06031100 | ROSEN 'BLUMEN UND BLÜTEN SO- WIE DEREN KNOSPEN', GESCHNIT- TEN, ZU BINDE- ODER ZIERZWE- CKEN, FRISCH | 83'346'635 | Äthiopien, Uganda |

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| 07 | GEMÜSE, PFLANZEN, WUR- ZELN UND KNOLLEN, DIE ZU ERNÄHRUNGSZWECKEN VERWENDET WERDEN | 100'843'562 | |
| 0702 | TOMATEN, FRISCH ODER GEKÜHLT | 8'992'289 | |
| 07020000 | TOMATEN, FRISCH ODER GEKÜHLT | 8'992'289 | Senegal, Äthiopien |
| 0708 | HÜLSENFRÜCHTE, AUCH AUSGE- LÖST, FRISCH ODER GEKÜHLT | 35'128'284 | |
| 07081000 | ERBSEN 'PISUM SATIVUM', AUCH AUSGELÖST, FRISCH ODER GEKÜHLT | 7'862'005 | Sambia, Madagaskar |
| 07082000 | BOHNEN 'VIGNA-ARTEN, PHASEO- LUS-ARTEN', AUCH AUSGELÖST, FRISCH ODER GEKÜHLT | 27'218'720 | Äthiopien, Senegal |
| 0709 | GEMÜSE, FRISCH ODER GEKÜHLT (AUSG. KARTOFFELN, TOMATEN, GEMÜSE DER ALLIUM-ARTEN, KOHL- ARTEN DER GATTUNG BRASSICA, SALATE DER ART LACTUCA SATIVA UND CICHORIUM-ARTEN, KAROTTEN, SPEISEMÖHREN, SPEISERÜBEN, ROTE RÜBEN, SCHWARZWURZELN, KNOLLESELLERIE, RETTICHE UND ÄHNL. GENIEBBARE WURZELN, GURKEN UND CORNICHONS SOWIE HÜLSENFRÜCHTE) | 27'806'262 | |
| 07096099 | FRÜCHTE DER GATTUNGEN 'CAPSI- CUM' ODER 'PIMENTA', FRISCH ODER GEKÜHLT (AUSG. ZUM INDUSTRIEL- LEN HERSTELLEN VON CAPSICIN, VON ALKOHOLHALTIGEN CAPSICUM- OLEORESINEN, VON ÄTHERISCHEN ÖLEN ODER VON RESINOIDEN SOWIE GEMÜSEPAPRIKA ODER PAPRIKA | 6'349'969 | Uganda, Sam- bia |

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| | OHNE BRENNENDEN GESCHMACK) | | |
| 07099060 | ZUCKERMAIS, FRISCH ODER GEKÜHLT | 6'979'032 | Sambia, Senegal |
| 07099090 | GEMÜSE, FRISCH ODER GEKÜHLT (AUSG. KARTOFFELN, TOMATEN, GEMÜSE DER ALLIUM-ARTEN, KOHL-ARTEN DER GATTUNG BRASSICA, SALATE DER ART LACTUCA SATIVA UND CICHORIUM-ARTEN UND ANDERE SALATE, KAROTTEN, SPEISEMÖHREN, SPEISERÜBEN, ROTE RÜBEN, SCHWARZWURZELN, SELLERIE, RETTICHE UND ÄHNL. GENIEßBARE WURZELN, GURKEN UND CORNICIONS, HÜLSENFRÜCHTE, ARTISCHOCKEN, SPARGEL, AUBERGINEN, PILZE, TRÜFFELN, FRÜCHTE DER GATTUNGEN CAPSICUM ODER PIMENTA, GARTENSPINAT, NEUSEELANDSPINAT, GARTENMELDE, MANGOLD, KARDE, OLIVEN, KAPERN, FENCHEL, ZUCKERMAIS UND ZUCHINI) | 13'869'511 | Bangladesch, Togo |
| 0713 | 0713 HÜLSENFRÜCHTE, GETROCKNET UND AUSGELÖST, AUCH GESCHÄLT ODER ZERKLEINERT | 20'544'920 | |
| 07133390 | GARTENBOHNEN 'PHASEOLUS VULGARIS', GETROCKNET UND AUSGELÖST, AUCH GESCHÄLT ODER ZERKLEINERT (AUSG. ZUR AUSSAAT) | 10'412'657 | Äthiopien, Madagaskar |

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| 08 | GENIEßBARE FRÜCHTE UND NÜSSE; SCHALEN VON ZITRUSFRÜCHTEN ODER VON MELONEN | 287'967'421 | |
| 0801 | KOKOSNÜSSE, PARANÜSSE UND KASCHU-NÜSSE, FRISCH ODER GETROCKNET, AUCH OHNE SCHALEN ODER ENTHÄUTET | 17'831'062 | |
| 08013200 | KASCHU-NÜSSE, FRISCH ODER GETROCKNET, OHNE SCHALE | 14'390'440 | Mosambik, Tansania |
| 0802 | SCHALENFRÜCHTE, FRISCH ODER GETROCKNET, AUCH OHNE SCHALEN ODER ENTHÄUTET (AUSG. | 5'301'583 | |

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| | KOKOSNÜSSE, PARANÜSSE UND KASCHU-NÜSSE) | | |
| 0803 | BANANEN, EINSCHL. MEHLBANANEN, FRISCH ODER GETROCKNET | 131'038'539 | Côte d'Ivoire, Uganda |
| 08030019 | BANANEN, FRISCH (AUSG. MEHLBANANEN) | 128'273'751 | Côte d'Ivoire, Uganda |
| 0804 | DATTELN, FEIGEN, ANANAS, AVOCADOFRÜCHTE, GUAVEN, MANGOFRÜCHTE UND MANGOSTANFRÜCHTE, FRISCH ODER GETROCKNET | 94'846'569 | |
| 08043000 | ANANAS, FRISCH ODER GETROCKNET | 44'344'155 | Côte d'Ivoire, Benin |
| 08045000 | GUAVEN, MANGOFRÜCHTE UND MANGOSTANFRÜCHTE, FRISCH ODER GETROCKNET | 50'235'962 | Côte d'Ivoire, Senegal |
| 0810 | ERDBEEREN, HIMBEEREN, BROMBEEREN, JOHANNISBEEREN, STACHELBEEREN UND ANDERE GENIEBBARE FRÜCHTE, FRISCH (AUSG. SCHALENFRÜCHTE, BANANEN, DATTELN, FEIGEN, ANANAS, AVOCADOFRÜCHTE, GUAVEN, MANGOFRÜCHTE, MANGOSTANFRÜCHTE, PAPAYAFRÜCHTE, ZITRUSFRÜCHTE, WEINTRAUBEN, MELONEN, ÄPFEL, BIRNEN, QUITTEN, APRIKOSEN [MARILLEN], KIRSCHEN, PFIRSICHE, PFLAUMEN UND SCHLEHEN) | 32'274'288 | |
| 08109030 | TAMARINDEN, KASCHU-ÄPFEL, JACKFRÜCHTE, LITSCHIS UND SAPOTPFLAUMEN, FRISCH | 31'992'260 | Bangladesch, Madagaskar |

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| 09 | KAFFEE, TEE, MATE UND GEWÜRZE | 569'177'888 | |
| 0901 | KAFFEE, AUCH GERÖSTET ODER ENTKOFFEINIERT; KAFFEESCHALEN UND KAFFEEHÄUTCHEN; KAFFEEMITTEL MIT BELIEBIGEM KAFFEEGEHALT | 519'432'547 | |
| 09011100 | KAFFEE, NICHTGERÖSTET, UNENTKOFFEINIERT | 519'128'307 | Äthiopien, Uganda |

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| 0902 | TEE, AUCH AROMATISIERT | 21'121'581 | |
| 09024000 | TEE, SCHWARZ 'FERMENTIERT' UND TEILWEISE FERMENTIERTER TEE, AUCH AROMATISIERT, IN UNMITTELBAREN UMSCHLIESSUNGEN MIT EINEM INHALT VON > 3 KG | 20'688'347 | Tansania, Malawi |
| 0905 | VANILLE | 19'479'288 | |
| 09050000 | VANILLE | 19'479'289 | Madagaskar, Uganda |

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| 10 | GETREIDE | 28'126'449 | |
| 1007 | KÖRNER-SORGHUM | 21'625'652 | |
| 10070090 | KÖRNER-SORGHUM (AUSG. HYBRID-KÖRNER-SORGHUM ZUR AUSSAAT) | 21'625'652 | Sudan |

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| 11 | MÜLLEREIERZEUGNISSE; MALZ; STÄRKE; INULIN; KLEBER VON WEIZEN | 2'756'346 | |
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| 12 | ÖLSAMEN UND ÖLHALTIGE FRÜCHTE; VERSCHIEDENE SAMEN UND FRÜCHTE; PFLANZEN ZUM GEWERBE- ODER HEILGEBRAUCH; STROH UND FUTTER | 76'090'887 | |
| 1207 | ÖLSAMEN UND ÖLHALTIGE FRÜCHTE, AUCH GESCHROTET (AUSG. GENIEßBARE SCHALENFRÜCHTE, OLIVEN, SOJABOHNEN, ERDNÜSSE, KOPRA, LEINSAMEN, RAPS- ODER RÜBSENSAMEN UND SONNENBLUMENKERNE) | 30'822'653 | |
| 12072090 | BAUMWOLLSAMEN, AUCH GESCHROTET (AUSG. ZUR AUSSAAT) | 11'639'812 | Côte d'Ivoire, Burkina Faso |
| 12074090 | SESAMSAMEN, AUCH GESCHROTET (AUSG. ZUR AUSSAAT) | 16'736'926 | Äthiopien, Sudan |
| 1211 | PFLANZEN, PFLANZENTEILE, SAMEN UND FRÜCHTE DER HAUPTSÄCHLICH ZUR HERSTELLUNG VON RIECHMITTELN ODER ZU ZWECKEN DER MEDIZIN, INSEKTENVERTILGUNG, SCHÄDLINGSBEKÄMPFUNG UND DERGL. | 5'206'284 | |

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| | VERWENDETEN ART, FRISCH ODER GETROCKNET, GESCHNITTEN, GEMAHLEN ODER ÄHNLICH FEIN ZERKLEINERT | | |
| 1212 | JOHANNISBROT, ALGEN, TANGE, ZUCKERRÜBEN UND ZUCKERROHR, FRISCH, GEKÜHLT, GEFROREN ODER GETROCKNET, AUCH GEMAHLEN; STEINE UND KERNE VON FRÜCHTEN SOWIE ANDERE PFLANZLICHE WAREN, EINSCHL. NICHTGERÖSTETER ZICHORIENWURZELN DER VARIETÄT 'CICHORIUM INTYBUS SATIVUM', DER HAUPTSÄCHLICH ZUR MENSCHLICHEN ERNÄHRUNG VERWENDETEN ART, A.N.G. | 9'942'774 | |
| 12129970 | STEINE UND KERNE VON FRÜCHTEN SOWIE ANDERE PFLANZLICHE WAREN, EINSCHL. NICHTGERÖSTETER ZICHORIENWURZELN DER VARIETÄT CICHORIUM INTYBUS SATIVUM, DER HAUPTSÄCHLICH ZUR MENSCHLICHEN ERNÄHRUNG VERWENDETEN ART, A.N.G. | 8'793'585 | Sudan, Burkina Faso |
| 12SS | VERTRAULICHER VERKEHR DES KAPITTELS 12 | 22'385'217 | |

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| 13 | SCHELLACK; GUMMEN, HARZE UND ANDERE PFLANZENSÄFTE UND PFLANZENAUSZÜGE | 66'351'368 | |
| 1301 | SCHELLACK SOWIE NATÜRLICHE GUMMEN, HARZE, GUMMIHARZE, BALSAME UND ANDERE OLEORESINE | 60'112'624 | |
| 13012000 | GUMMI ARABICUM | 56'410'023 | Tschad, Sudan |
| 1302 | PFLANZENSÄFTE UND PFLANZENAUSZÜGE, PEKTINSTOFFE, PEKTINATE UND PEKTATE, AGAR-AGAR UND ANDERE SCHLEIME UND VERDICKUNGSSTOFFE VON PFLANZEN, AUCH MODIFIZIERT | 6'238'744 | |

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| 14 | FLECHTSTOFFE UND ANDERE WAREN PFLANZLICHEN URSPRUNGS, ANDERWEIT WEDER GENANNT NOCH | 3'290'210 | |
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| INBEGRIFFEN | | | |
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| 15 | TIERISCHE UND PFLANZLICHE FETTE UND ÖLE; ERZEUGNISSE IHRER SPALTUNG; GENIESSBARE VERARBEITETE FETTE; WACHSE TIERISCHEN UND PFLANZLICHEN URSPRUNGS | 92'896'507 | |
| 1508 | ERDNUSSÖL UND SEINE FRAKTIONEN, AUCH RAFFINIERT, JEDOCH CHEMISCH UNMODIFIZIERT | 56'403'331 | |
| 15081090 | ERDNUSSÖL, ROH (AUSG. ZU TECHNISCHEN ODER INDUSTRIELLEN TECHNISCHEN ZWECKEN) | 54'910'887 | Senegal, Gambia |
| 1511 | PALMÖL UND SEINE FRAKTIONEN, AUCH RAFFINIERT, JEDOCH CHEMISCH UNMODIFIZIERT | 8'459'421 | |
| 15111090 | PALMÖL, ROH (AUSG. ZU TECHNISCHEN ODER INDUSTRIELLEN TECHNISCHEN ZWECKEN) | 8'233'471 | Salomonen, Togo |
| 1513 | KOKOSÖL 'KOPRAÖL', PALMKERNÖL UND BABASSUÖL SOWIE DEREN FRAKTIONEN, AUCH RAFFINIERT, JEDOCH CHEMISCH UNMODIFIZIERT | 13'509'970 | |
| 15132190 | PALMKERNÖL UND BABASSUÖL, ROH, IN UNMITTELBAREN UMSCHLIEßUNGEN MIT EINEM GEWICHT DES INHALTS VON > 1 KG ODER IN ANDERER AUFMACHUNG (AUSG. ZU TECHNISCHEN ODER INDUSTRIELLEN TECHNISCHEN ZWECKEN) | 7'506'066 | Côte d'Ivoire |
| 1515 | 1515 PFLANZENFETTE UND FETTE PFLANZENÖLE, EINSCHL. JOJOBAÖL SOWIE DEREN FRAKTIONEN, AUCH RAFFINIERT, JEDOCH CHEMISCH UNMODIFIZIERT (AUSG. SOJAÖL, ERDNUSSÖL, OLIVENÖL, PALMÖL, SONNENBLUMENÖL, SAFLORÖL, BAUMWOLLSAMENÖL, KOKOSÖL [KOPRAÖL], PALMKERNÖL, BABASSUÖL, RÜBÖL [RAPS- UND RÜBSENÖL] UND SENFSAMENÖL) | 9'196'968 | |

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| 16 | ZUBEREITUNGEN VON FLEISCH, FISCHEN ODER VON KREBSTIEREN, WEICHTIEREN UND ANDEREN WIRBELLOSEN WASSERTIEREN | 178'906'956 | |
| 1604 | FISCHE, ZUBEREITET ODER HALTBAR GEMACHT SOWIE KAVIAR UND KAVIARERSATZ, AUS FISCHEIERN GEWONNEN | 172'899'555 | |
| 16041411 | THUNFISCHE UND ECHTER BONITO, ZUBEREITET ODER HALTBAR GEMACHT, GANZ ODER IN STUECKEN, IN PFLANZENÖL (AUSG. FEIN ZERKLEINERT) | 66'830'584 | Côte d'Ivoire, Madagaskar |
| 16041416 | FILETS GENANNT 'LOINS' VON THUNFISCHEN ODER ECHTEM BONITO, ZUBEREITET ODER HALTBAR GEMACHT (AUSG. IN PFLANZENÖL) | 10'770'006 | Salomonen, Malediven |
| 16041418 | THUNFISCHE UND ECHTER BONITO, ZUBEREITET ODER HALTBAR GEMACHT (AUSG. FEIN ZERKLEINERT, FILETS GENANNT 'LOINS' SOWIE IN PFLANZENÖL) | 92'234'274 | Côte d'Ivoire, Madagaskar |
| 1605 | KREBSTIERE, WEICHTIERE UND ANDERE WIRBELLOSE WASSERTIERE, ZUBEREITET ODER HALTBAR GEMACHT | 5'970'694 | |

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| 17 | ZUCKER UND ZUCKERWAREN | 187'707'210 | |
| 1701 | ROHRZUCKER UND RÜBENZUCKER UND CHEMISCH REINE SACCHAROSE, FEST | 159'158'495 | |
| 17011110 | ROHRZUCKER, ROH, OHNE ZUSATZ VON AROMA- ODER FARBSTOFFEN, ZUR RAFFINATION BESTIMMT | 133'034'167 | Tansania, Mosambik |
| 17011190 | ROHRZUCKER, ROH, OHNE ZUSATZ VON AROMA- ODER FARBSTOFFEN (AUSG. ZUR RAFFINATION) | 22'126'729 | Malawi, Sam- bia |
| 1703 | MELASSEN AUS DER GEWINNUNG ODER RAFFINATION VON ZUCKER | 28'450'597 | |
| 17031000 | ROHRZUCKERMELASSE AUS DER GEWINNUNG ODER RAFFINATION | 28'355'144 | Äthiopien, Sudan |

| VON ROHRZUCKER | | | |
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| 18 | KAKAO UND ZUBEREITUNGEN AUS KAKAO | 1'314'145'883 | |
| 1801 | KAKAOBOHNEN UND KAKAOBOHNENBRUCH, ROH ODER GERÖSTET | 871'143'610 | |
| 18010000 | KAKAOBOHNEN UND KAKAOBOHNENBRUCH, ROH ODER GERÖSTET | 871'143'610 | Côte d'Ivoire, Togo |
| 1802 | KAKAOSCHALEN, KAKAOHÄUTCHEN UND ANDERER KAKAOABFALL | 6'534'133 | |
| 18020000 | KAKAOSCHALEN, KAKAOHÄUTCHEN UND ANDERER KAKAOABFALL | 6'534'133 | Guinea, Côte d'Ivoire |
| 1803 | KAKAOMASSE, AUCH ENTFETTET | 202'416'287 | |
| 18031000 | KAKAOMASSE, UNENTFETTET | 191'168'612 | Guinea, Côte d'Ivoire |
| 18032000 | KAKAOMASSE, GANZ ODER TEILWEISE ENTFETTET | 11'247'672 | Côte d'Ivoire |
| 1804 | KAKAOBUTTER, KAKAOFETT UND KAKAOÖL | 180'299'717 | |
| 18040000 | KAKAOBUTTER, KAKAOFETT UND KAKAOÖL | 180'299'717 | Côte d'Ivoire |
| 1805 | KAKAOPULVER OHNE ZUSATZ VON ZUCKER ODER ANDEREN SÜSSMITTELN | 22'908'145 | |
| 18050000 | KAKAOPULVER OHNE ZUSATZ VON ZUCKER ODER ANDEREN SÜßMITTELN | 22'908'146 | Côte d'Ivoire, Madagaskar |
| 1806 | SCHOKOLADE UND ANDERE KAKAOHALTIGE LEBENSMITTELZUBEREITUNGEN | 30'843'991 | |
| 18062010 | SCHOKOLADE UND ANDERE KAKAOHALTIGE LEBENSMITTELZUBEREITUNGEN, IN BLÖCKEN, STANGEN ODER RIEGELN MIT EINEM GEWICHT VON > 2 KG ODER FLÜSSIG, PASTENFÖRMIG, ALS PULVER, GRANULAT ODER IN | 27'859'343 | Côte d'Ivoire |

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| | ÄHNL. FORM, IN BEHÄLTNISSEN ODER UNMITTELBAREN UMSCHLIEBUNGEN MIT EINEM INHALT VON > 2 KG, MIT EINEM GEHALT AN KAKAOBUTTER VON >= 31 GHT ODER MIT EINEM GESAMTGEHALT AN KAKAOBUTTER UND MILCHFETT VON >= 31 GHT (AUSG. KAKAOPULVER) | | |
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| 19 | ZUBEREITUNGEN AUS GETREIDE, MEHL, STÄRKE ODER MILCH; BACKWAREN | 4'068'347 | |
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| 20 | ZUBEREITUNGEN VON GEMÜSE, FRÜCHTEN, NÜSSEN ODER ANDEREN PFLANZENTEILEN | 9'420'936 | |
| 2005 | GEMÜSE, ZUBEREITET ODER HALTBAR GEMACHT (ANDERS ALS MIT ZUCKER, ESSIG ODER ESSIGSÄURE), UNGEFROREN (AUSG. TOMATEN, PILZE UND TRÜFFELN) | 6'656'262 | |
| 20055900 | BOHNEN 'VIGNA-ARTEN UND PHASEOLUS-ARTEN', ZUBEREITET ODER HALTBAR GEMACHT (ANDERS ALS MIT ESSIG ODER ESSIGSÄURE), UNGEFROREN (AUSG. AUSGELÖST) | 5'171'773 | Madagaskar |

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| 21 | VERSCHIEDENE LEBENSMITTELZUBEREITUNGEN | 25'528'374 | |
| 2101 | AUSZÜGE, ESSENZEN UND KONZENTRATE AUS KAFFEE, TEE ODER MATE UND ZUBEREITUNGEN AUF DER GRUNDLAGE DIESER WAREN ODER AUF DER GRUNDLAGE VON KAFFEE, TEE ODER MATE; GERÖSTETE ZICHORIEN UND ANDERE GERÖSTETE KAFFEEMITTEL SOWIE AUSZÜGE, ESSENZEN UND KONZENTRATE HIERAUS | 23'435'326 | |
| 21011119 | AUSZÜGE, ESSENZEN UND KONZENTRATE AUS KAFFEE, MIT EINEM GEHALT AN AUS KAFFEE STAMMENDER TROCKENMASSE VON < 95 GHT 'PASTENFÖRMIG ODER FLÜSSIG' | 22'952'136 | Côte d'Ivoire, Tansania |

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| 22 | GETRÄNKE, ALKOHOLHALTIGE FLÜSSIGKEITEN UND ESSIG | 4'916'205 | |
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| 23 | RÜCKSTÄNDE UND ABFÄLLE DER LEBENSMITTELINDUSTRIE; ZUBEREITETES FUTTER | 12'535'427 | |
| 2305 | ÖLKUCHEN UND ANDERE FESTE RÜCKSTÄNDE AUS DER GEWINNUNG VON ERDNUSSÖL, AUCH GEMAHLEN ODER IN FORM VON PELLETS | 7'306'585 | |
| 23050000 | ÖLKUCHEN UND ANDERE FESTE RÜCKSTÄNDE AUS DER GEWINNUNG VON ERDNUSSÖL, AUCH GEMAHLEN ODER IN FORM VON PELLETS | 7'306'585 | Senegal |

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| 24 | TABAK UND VERARBEITETE TABAKERSATZSTOFFE | 373'383'624 | |
| 2401 | TABAK, UNVERARBEITET; TABAKABFÄLLE | | |
| 24011090 | TABAK, UNENTRIPPT (AUSG. FLUE-CURED, LIGHT-AIR-CURED, FIRE-CURED, DARK-AIR-CURED SOWIE SUN-CURED ORIENTTABAK) | 6'120'823 | Tansania, Mosambik |
| 24012010 | FLUE-CURED VIRGINIA-TABAK, TEILWEISE ODER GANZ ENTRIPPT, SONST UNVERARBEITET | 39'009'367 | Sambia, Tansania |
| 24012020 | LIGHT-AIR-CURED BURLEY-TABAK, EINSCHL. BURLEYHYBRIDEN, TEILWEISE ODER GANZ ENTRIPPT, SONST UNVERARBEITET | 24'214'949 | Malawi, Mosambik |
| 24012050 | LIGHT-AIR-CURED TABAK, TEILWEISE ODER GANZ ENTRIPPT, SONST UNVERARBEITET (AUSG. BURLEY- UND MARYLANDSORTEN) | 167'659'288 | Malawi, Mosambik |
| 24012080 | FLUE-CURED TABAK, TEILWEISE ODER GANZ ENTRIPPT, SONST UNVERARBEITET (AUSG. VIRGINIASORTEN) | 100'008'479 | Malawi, Tansania |
| 24012090 | TABAK, TEILWEISE ODER GANZ ENTRIPPT, SONST UNVERARBEITET (AUSG. FLUE-CURED, LIGHT- | 8'326'930 | Malawi, Tansania |

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| | AIR-CURED, FIRE-CURED, DARK-AIR-CURED SOWIE SUN-CURED ORIENTTABAK) | | |
| 24013000 | TABAKABFÄLLE | 10'494'685 | Malawi, Tanzania |
| Total 1-24 | | 23'273'740'704 | |

3. World Agricultural Product Imports from LDCs, by tariff chapter¹⁶⁸

| Tariff chapter | Description | Value in USD |
|----------------|--|----------------|
| 01 | Live animals | 209'491'129 |
| 02 | Meat and edible meat offal | 25'169'374 |
| 03 | Fish and crustaceans, molluscs and other aquatic invertebrates | 2'466'721'143 |
| 04 | Dairy produce; birds eggs; natural honey | 17'404'007 |
| 05 | Products of animal origin, not elsewhere specified | 19'951'110 |
| 06 | Live trees and other plants; | 142'562'532 |
| 07 | Edible vegetables and certain roots and tubers | 787'164'844 |
| 08 | Edible fruit and nuts; peel of citrus fruit or melons | 384'409'990 |
| 09 | Coffee, tea, mate and spices | 1'269'303'317 |
| 10 | Cereals | 116'747'813 |
| 11 | Products of the milling industry; malt; starches; inulin | 5'115'716 |
| 12 | Oil seeds and oleaginous fruits | 350'846'180 |
| 13 | Lac; gums, resins and other vegetable saps and extracts | 127'158'653 |
| 14 | Vegetable plaiting materials; vegetable products nes | 33'257'862 |
| 15 | Animal or vegetable fats and oils | 133'279'832 |
| 16 | Preparations of meat, of fish or of crustaceans | 122'187'319 |
| 17 | Sugars and sugar confectionery | 273'547'980 |
| 18 | Cocoa and cocoa preparations | 237'131'458 |
| 19 | Preparations of cereals, flour, starch or milk; bakers' wares | 11'808'638 |
| 20 | Preparations of vegetables, fruit or nuts | 21'319'615 |
| 21 | Miscellaneous edible preparations | 7'841'932 |
| 22 | Beverages, spirits and vinegar | 34'000'182 |
| 23 | Residues and waste from the food industries | 62'426'166 |
| 24 | Tobacco and manufactured tobacco substitutes | 721'736'179 |
| Total | | 95'732'438'460 |

¹⁶⁸ Year 2006. LDCs List according to UN Definition.

Source: UN Comtrade, 2008.

Acronyms

| | |
|--------|---|
| ACP | African, Caribbean and Pacific Group of States (http://www.acp.int) |
| AU | African Union (http://www.africa-union.org/root/au/index/index.htm) |
| CAP | Common Agricultural Policy (of the EU) |
| Codex | Codex Alimentarius (http://www.codexalimentarius.net/web/index_en.jsp) |
| DFQF | 'duty free quota free' treatment |
| EBA | Everything But Arms (initiative of the EU) – the resulting treatment being called 'duty free quota free' (DFQF) |
| EC | European Communities |
| ECE-UN | United Nations Economic Commission for Europe |
| EFSA | European Food Safety Agency |
| EFTA | European Free Trade Association (http://www.efta.int) |
| EU | European Union (EU-27) |
| EPA | Economic Partnership Agreements (of the EC, with ACP groups of countries) |
| FDA | Food and Drug Administration (USA) (http://www.fda.gov/default.htm) |

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| FDI | Foreign Direct Investment |
| FTA | Free Trade Agreements |
| GSP | Generalized System of Preferences |
| HIPC | Heavily Indebted Poor Countries |
| IPPC | International Plant Protection Convention (https://www.ippc.int/IPPC/En/default.jsp) |
| LDCs | Least Developed Countries |
| MFN | Most Favoured Nation (maximum tariffs granted to all WTO Members) |
| MRA | Mutual Recognition Agreement |
| NTBs | Non-Tariff Barriers |
| OIE | The International Animal Health Organization (Office International des Epizooties) (http://www.oie.int/eng/en_index.htm) |
| TBT | Technical Barriers to Trade |
| TRQ | Tariff-Rate Quota |
| SACU | South African Customs Union (Botswana, Lesotho, Namibia, Swaziland and South Africa) |
| SADC | Southern African Development Community (http://www.sadc.int/) |
| SPS | Sanitary and Phytosanitary Measures |

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| SR | Systematische Rechtssammlung des Bundesrechts: Classified Compilation of Federal Law, some legislation is also available in English: http://www.admin.ch/dokumentation/gesetz/index.html?lang=en |
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¹⁶⁹ For a summary, cf. *Journal of World Trade*, 41(5): 1073-1090, 2007

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List of Contacts

In the course of this study, interviews and/or written contacts were held with a number of people: policy makers, experts, operators, academics. They all deserve the author's highest appreciation for responding openly and readily to his many questions, supplying him with reports, statistics and other, sometimes case-sensitive information (use of the latter was obviously not made in a manner allowing trade- or company-sensitive data to be revealed to a larger public). Special thanks go to Monica Meister for having provided most of the statistical material used. To every possible extent accuracy and correct sourcing of information was sought. Any mistakes and, of course, responsibility for the analysis and conclusion remain the exclusive ownership of the author.

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