

IV. TRADE POLICIES BY SECTOR

(1) INTRODUCTION

1. Switzerland and Liechtenstein have followed a piecemeal approach to their trade reforms. The nature and pace of implementation have tended to vary according to sector. Important reforms have liberalized market access considerably in several manufacturing and services subsectors. The bilateral mutual recognition agreement with the EU, and amendments to competition legislation and to sectoral regulations (e.g. on pharmaceutical products and motor vehicles) have further liberalized the Swiss manufacturing sector since 2000, at least as far as Swiss-EU trade is concerned. In Liechtenstein, the liberalization reforms in manufacturing and services have largely been spurred by its 1995 EEA membership.

2. Several Swiss and Liechtenstein multinational companies are among the world's largest, and many competitive and innovative small and medium-sized export-based companies have developed with little or no government assistance. The main exceptions are the electricity and gas subsectors, and certain industries with low productivity, notably in food manufacturing, certain construction products and services, or salt production. Despite relatively high tariff protection, the textiles and clothing and (particularly) the footwear industry, have recorded the strongest contraction in value added in Swiss manufacturers over the past decade.

3. In agriculture, implementation of reforms has slowed since 2000. Switzerland (and through it Liechtenstein) continues to rank top among the OECD countries in terms of government support to agriculture, despite the ongoing gradual move away from price support towards direct payments. High border protection has contributed to maintaining domestic food prices high by international comparison. The heavy reliance of food industries on incentives reinforces their effective tariff protection through strong positive tariff escalation. Swiss export subsidies, when they were last notified in 1998, continued to be the second highest among WTO Members, and were likely to distort world markets of mainly cheese.

4. Switzerland and Liechtenstein have pursued the liberalization of services; the reforms have gone further than their multilateral commitments in certain areas, such as financial services. Certain Swiss insurance services, however, remain under monopoly. The supervision of financial services is presently under review in both Switzerland and Liechtenstein, with a view to regrouping their regulation under a single supervisory authority in each country. In addition, Liechtenstein has adapted its legislation to better combat money laundering. In telecommunications the positive effects of the liberalization for consumers are tangible; prices for telephone calls have declined and are now relatively low, compared with the average tariff in OECD countries and despite Swisscom's continuing *de facto* monopoly over certain telecommunications services. The number of postal services that remain under state monopoly in Switzerland and in Liechtenstein has been further reduced.

5. The agreement on land transport with the EU has led to further liberalization of market access to Switzerland's road and rail transport services, albeit on a reciprocal basis. As trade in professional services, and business services in general, relies to a large extent on the movement of physical persons, trade in professional services is likely to be stimulated by the substantial opening of Switzerland's labour market to EU/EFTA nationals since 2002. The tourism industry has also benefited from the opening of Switzerland's labour market; this is to contribute to reducing the high costs of labour resulting from quotas on the number of work permits granted to foreign workers in hotels and restaurants. Aside from the global air transport crisis, the collapse of the Swiss holding company, SAirGroup, was ascribed to its past expansionary strategy and, to a lesser extent, to the lack

of access to the EU market prior to the signing of the recent bilateral agreement on air transport with the EU. Despite the Swiss government subsidies, the creation of a new national airline and the 2002 agreement with the EU, the Swiss air transport subsector has yet to recover from the crisis. Construction services remain isolated from international competition and their costs continue to be high by international comparison.

(2) AGRICULTURE

(i) Overview

6. Agricultural production in Switzerland and Liechtenstein has continued to record a downward trend. In Switzerland in particular, the gross value of agricultural production was Sw F 9 billion in 2003, down from Sw F 10 billion in 2000 (Table IV.1).¹ Switzerland and Liechtenstein are net importers of agricultural and food (agri-food) products; imports of these products by Switzerland amounted to Sw F 8.5 billion in 2001. Main imports are fish, alcoholic beverages, certain meat products, and out-of-season vegetables. Agricultural exports by Switzerland reached Sw F 3.5 billion in 2001; they comprise mainly processed food products (HS Chapters 20 and 21), sugar, sugar confectionery, cocoa, coffee and their products (HS Chapters 9, 17, 18), tobacco and miscellaneous products (HS Chapters 13, 14, 24), and dairy products (HS Chapter 4).² Three quarters of imports and two thirds of exports are with the European Union.

Table IV.1
Switzerland: agricultural production, 1997-03
(Sw F million)

| Branch | Value | | | | | | |
|-------------------------------|--------|--------|-------|-------|-------|-------|-------------------|
| | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 ^a |
| Cereals | 771 | 750 | 624 | 619 | 490 | 513 | 428 |
| Potatoes | 229 | 201 | 191 | 207 | 192 | 194 | 178 |
| Sugar beet | 162 | 155 | 139 | 166 | 137 | 164 | 151 |
| Vegetables | 509 | 463 | 444 | 487 | 505 | 535 | 536 |
| Fruits | 532 | 620 | 573 | 658 | 552 | 561 | 534 |
| Plants and flowers | 916 | 952 | 900 | 882 | 819 | 834 | 790 |
| Wine | 336 | 362 | 401 | 421 | 429 | 407 | 388 |
| Total vegetable production | 5,056 | 4,932 | 4,462 | 4,797 | 4,348 | 4,576 | 4,067 |
| Milk | 2,737 | 2,751 | 2,508 | 2,559 | 2,605 | 2,544 | 2,360 |
| Bovines | 1,028 | 1,042 | 939 | 1,128 | 932 | 963 | 1,016 |
| Porcines | 1,227 | 1,112 | 1,033 | 1,081 | 1,085 | 1,045 | 1,082 |
| Poultry | 171 | 168 | 168 | 178 | 180 | 192 | 202 |
| Eggs | 190 | 190 | 171 | 173 | 175 | 185 | 184 |
| Total animal production | 5,453 | 5,366 | 4,905 | 5,199 | 5,065 | 5,018 | 4,933 |
| Total agricultural production | 10,510 | 10,298 | 9,367 | 9,995 | 9,413 | 9,593 | 9,000 |

a Provisional figures.

Source: OFAG (2003), *Rapport annuel*, Tableau 15.

7. Switzerland formulates agricultural policy for the customs union.³ Public expenditure on agriculture is considerable compared with the value added generated by the sector. The objectives of

¹ Federal Office for Agriculture (2003).

² Federal Office for Agriculture (2003), Chapter 1, p.19.

³ Liechtenstein has separate systems for direct payments (see below) and support of investment in the agricultural sector.

the policy, unchanged since 2000, are to ensure the conservation of natural resources and the maintenance of rural areas, as well as a decentralized use of the territory; to allow rural enterprises that meet "sustainable development" and "economic performance" criteria to earn, on average, an income that is comparable to that earned by the population working in other sectors of a same region⁴; and to "contribute substantially to the security of domestic food supplies", a constitutional priority generally understood as a high level of self-sufficiency (domestic production relative to total domestic consumption).⁵ This last objective, given geographical and climatic constraints, applies only to goods that are produced domestically, and is pursued under relatively high market access barriers. As a result, the self-sufficiency ratios average about 45% for products of vegetable origin, and 95% for animal products; they have remained broadly unchanged since 1995 (Table IV.2).⁶

Table IV.2
Switzerland: self-sufficiency in basic food products, selected years*
(Per cent)

| Product | 1991 | 1995 | 1999 | 2000 | 2001 | 2002 |
|--------------------------------|------|------|------|------|------|------|
| In digestible calories: | | | | | | |
| Cereals for bread | 126 | 134 | 99 | 89 | 102 | 82 |
| Cereals for fodder | 62 | 75 | 70 | 76 | 69 | 67 |
| Total cereals | 65 | 68 | 62 | 62 | 64 | 59 |
| Edible potatoes | 107 | 99 | 82 | 102 | 93 | 94 |
| Sugar | 44 | 42 | 58 | 63 | 47 | 61 |
| Fat and vegetable oils | 24 | 20 | 18 | 19 | 20 | 20 |
| Fruits | 60 | 71 | 68 | 80 | 71 | 76 |
| Vegetables | 53 | 55 | 52 | 51 | 53 | 56 |
| Milk for consumption | 97 | 97 | 97 | 97 | 97 | 97 |
| Butter | 91 | 93 | 88 | 85 | 88 | 98 |
| Cheese | 137 | 129 | 123 | 116 | 122 | 113 |
| Milk and dairy products | 110 | 110 | 111 | 110 | 107 | 107 |
| Veal | 99 | 97 | 95 | 92 | 98 | 98 |
| Beef | 94 | 92 | 88 | 85 | 96 | 89 |
| Pig-meat | 99 | 98 | 92 | 92 | 96 | 95 |
| Sheep | 44 | 46 | 46 | 35 | 39 | 41 |
| Poultry | 46 | 51 | 42 | 43 | 40 | 43 |
| Total meat | 80 | 79 | 70 | 68 | 71 | 70 |
| Eggs and products thereof | 44 | 45 | 47 | 48 | 47 | 42 |
| In digestible energy: | | | | | | |
| Vegetable products | 42 | 42 | 40 | 47 | 40 | 45 |
| Animal products, gross | 97 | 96 | 95 | 91 | 94 | 94 |
| Total products, gross | 62 | 61 | 58 | 62 | 58 | 61 |
| Total products, net | 58 | 57 | 54 | 55 | 53 | 56 |
| In value: | | | | | | |
| Total of food products | 72 | 71 | 63 | 63 | 62 | 63 |

* Self-sufficiency is defined as the ratio of domestic production to the sum of production plus imports less exports.

Source: Information provided by the Swiss Authorities.

8. Switzerland (and through it Liechtenstein) ranks top among the OECD countries in terms of government support to agriculture, both as a share of gross receipts from production and on a per

⁴ Federal Law on Agriculture (*Loi fédérale sur l'agriculture, Lagr, recueil systématique* (RS No. 910.1). All federal laws are available online at: <http://www.admin.ch/ch/f/rs/rs.html> under their RS number.

⁵ The Federal Constitution, Article 104.

⁶ *La Vie économique*, September 2003, p. 22.

capita basis. In 2003, Switzerland provided support to producers (Producer Support Estimate (PSE)) equivalent to 74% of gross receipts from agricultural products, almost two and a half the average of 31% for OECD countries, and nearly twice the level in the European Union, Switzerland's main trading partner (Table IV.3).⁷ The PSE remained broadly unchanged between 1995 and 2001, but has increased in recent years mainly because of the Swiss franc's appreciation *vis-à-vis* the euro and other major currencies, which resulted in a decline in equivalents in Swiss francs of prices set in foreign currencies, and a corresponding increase in border protection, as customs tariffs are specific. The OECD's Consumer Support Estimate for Switzerland is also among the highest of OECD countries, at 61% (in 2003) compared with an OECD average of 24%.

9. There has been a gradual reorientation of farm assistance since 1993, from price support measures towards direct payments. The focus was on abolishing guaranteed and administered prices, separating price policy from income policy, and increasing reliance on compensatory direct payments. Under the "Agricultural Policy 2002" (AP 2002) initiative, adopted by the Swiss Parliament in April 1998, further efforts were made to promote "environmental sustainability" and "market-oriented" reforms. Under AP 2002, ecological production conditions were introduced as eligibility criteria for direct payments, and farmers must now comply with "integrated farming" techniques, i.e. specified basic environmental standards (including on pesticide or fertilizer usage) and animal-friendly conditions. In 2003, such techniques were being used on approximately 96% of the land area suitable for agriculture, up from 84% in 2000. In addition, direct ecological payments, such as support for organic farming, increased significantly over the 1999-02 period, but still represent a small part of total support to agriculture (see Tables IV.5 and AIV.1 below). Organic agriculture as such is practised on a modest 11% of farms (10% of land area).⁸

10. While the authorities consider the ecological objectives of AP 2002 to have been partly met, this has not been the case of market-oriented reforms. Despite a sizeable decrease in producer prices over the past ten years as a result of the reorientation away from price support measures, these remain on average twice as high as in the European Union, and on average three times as high as on world markets. High border protection (mainly by means of prohibitive out-of-quota tariffs and very low tariff quota volumes relative to domestic consumption) to support agricultural production at high costs has contributed to maintaining consumer prices for most food products high by international comparison (Table IV.4), with effects on real incomes (mainly of the poorest segments of the population), as well as on other sectors of the economy, such as tourism.⁹ Furthermore, small falls in producer prices have not translated into lower consumer prices, and hence have not reflected the relative improvement in competitiveness of domestic products.¹⁰ As a result, consumers in Swiss border regions continue to rely on cross-border purchases of the most protected products (e.g. meat, alcoholic beverages, dairy products, and vegetable oils) for a large share of their food consumption.¹¹

⁷ OECD (2003). The PSE is an indicator of the annual value of gross transfers from consumers and taxpayers to agricultural producers, measured at the farm-gate level, arising from policy measures that support agriculture. In percentage terms, this value is expressed as a ratio of the value of total gross farm receipts, measured by the value of total production (at farm-gate prices), plus budgetary support. The CSE is an indicator of the annual value of gross transfers to (from) consumers of agricultural commodities, measured at farm-gate level, arising from policy measures which support agriculture. In percentage terms, this value is expressed as a ratio of the total value of consumption expenditure on commodities domestically produced, measured by the value of total consumption (at farm-gate prices). See Portugal (2002).

⁸ Bio Suisse, Annual Press Conference, 23 March 2004. Further information is available online at: <http://www.bio-suisse.ch>.

⁹ See WTO (2000) for details on why agricultural production costs are high in Switzerland and Liechtenstein.

¹⁰ *La Vie économique*, September 2003, p. 17.

¹¹ See also WTO (1996) on "food tourism".

Table IV.3
Producer and consumer support estimates, selected countries 1995-03

| | 1995 | 2000 | 2001 | 2002 | 2003 |
|--------------------------------|----------|----------|----------|----------|----------|
| PSE, all products | | | | | |
| Switzerland (euros million) | 5,094 | 4,910 | 4,940 | 5,292 | 4,941 |
| percentage of production | 72 | 72 | 72 | 74 | 74 |
| per capita (euros) | 724 | 684 | 683 | 732 | 683 |
| European Union (euros million) | 100,795 | 96,146 | 99,295 | 100,577 | 108,251 |
| percentage of production | 37 | 34 | 34 | 35 | 37 |
| per capita (euros) | 272 | 256 | 269 | 272 | 293 |
| United States (euros million) | 17,538 | 53,901 | 57,170 | 43,343 | 34,675 |
| percentage of production | 11 | 22 | 23 | 19 | 18 |
| per capita (euros) | 67 | 196 | 203 | 147 | 122 |
| OECD (euros million) | 211,980 | 262,991 | 254,534 | 243,717 | 229,473 |
| percentage of production | 32 | 32 | 31 | 31 | 32 |
| per capita (euros) | 196 | 235 | 226 | 216 | 204 |
| CSE, all products | | | | | |
| Switzerland (euros million) | -3,837 | -3,644 | -3,259 | -3,569 | -3,383 |
| percentage of consumption | -66 | -63 | -59 | -62 | -61 |
| per capita (euros) | -545 | -507 | -459 | -493 | 468 |
| European Union (euros million) | -52,223 | -48,585 | -47,963 | -52,299 | -55,450 |
| percentage of consumption | -28 | -27 | -25 | -28 | -30 |
| per capita (euros) | -141 | -129 | -130 | -141 | -150 |
| United States (euros million) | -6,153 | 4,703 | -642 | 6,741 | 7,732 |
| percentage of consumption | -5 | 3 | -0 | 4 | 5 |
| per capita (euros) | -23 | 17 | -0.5 | 24 | 27 |
| OECD (euros million) | -142,172 | -160,374 | -147,178 | -148,400 | -137,168 |
| percentage of production | -26 | -25 | -23 | -24 | -24 |
| per capita (euros) | -131 | -143 | -129 | -130 | -122 |

Source: OECD, *Agricultural Policies in OECD Countries, Monitoring and Evaluation*, various issues.

11. Since 2000, Swiss legislation on Agriculture has undergone another partial revision, under the heading Agricultural Policy 2007 (AP 2007). The stated objectives of AP 2007 are to improve the competitiveness of the agri-food industry, whilst guaranteeing its sustainability and multi-functionality. As a result of this revision, the Federal Law on Agriculture (LAg) was modified as of 1 January 2004, together with 42 ordinances and other legislation. AP 2007 continues the gradual move away from price support towards direct payments. It also provides increased tax benefits, new investment assistance measures, and financial assistance for redeployment away from agriculture. Overall, the new regulations marginally reduce, to Sw F 13.8 billion, the total financial package in favour of the sector over the 2004-07 period, from Sw F 14 billion over 2000-03. In Liechtenstein, a law on the support of investment in the agriculture sector (in force since 1 January 2001) provides farmers with start-up loans for constructions that are "reasonable in price and flexible in use".

Table IV.4
Consumer prices of animal and vegetal products, selected years

| Product | Countries | 1990/92 | 2000 | 2002 | 2003 |
|-------------------------|-------------------------------------|---------|----------------|-------|-------|
| Animal products | | | | | |
| | | | (SwF/litre) | | |
| Milk | Switzerland | 1.85 | 1.55 | 1.56 | 1.53 |
| | EU-4 | 1.30 | 1.09 | 1.13 | 1.16 |
| | - max | 1.82 | 1.77 | 1.83 | 1.96 |
| | United States | 1.04 | 1.24 | 1.13 | 0.98 |
| | | | (SwF/kg.) | | |
| Cheese | Switzerland (Emmental) | 20.15 | 20.18 | 20.33 | 20.89 |
| | EU-4 (EU-4 with B, without F) | 15.98 | 12.65 | 12.38 | 12.82 |
| | - max | 20.68 | 17.13 | 17.00 | 18.25 |
| | United States (Cheddar) | 11.14 | 14.26 | 14.47 | 11.71 |
| Butter | Switzerland | 13.76 | 11.76 | 12.24 | 11.97 |
| | EU-4 | 9.04 | 8.01 | 7.64 | 7.94 |
| | - max | 12.90 | 12.01 | 11.40 | 11.88 |
| | United States | 5.96 | 9.38 | 10.54 | 8.34 |
| Roast beef | Switzerland | 26.34 | 27.73 | 26.35 | 27.16 |
| | EU-4 | 16.00 | 14.92 | 14.40 | 15.37 |
| | - max | 24.32 | 23.93 | 22.68 | 24.20 |
| | United States | 9.26 | 10.95 | 11.95 | 10.94 |
| Roast pork | Switzerland | 18.43 | 18.60 | 19.35 | 19.90 |
| | EU-4 | 11.80 | 10.99 | 11.20 | 11.44 |
| | - max | 13.67 | 12.43 | 13.25 | 14.05 |
| | United States | - | - | - | - |
| Pork chop | Switzerland | 19.88 | 19.80 | 20.40 | 21.32 |
| | EU-4 | 10.62 | 9.24 | 9.39 | 9.65 |
| | - max | 12.43 | 10.36 | 10.36 | 10.88 |
| | United States | 10.02 | 12.54 | 11.67 | 9.27 |
| Ham | Switzerland | 25.56 | 27.13 | 30.24 | 29.99 |
| | EU-4 | 22.13 | 19.70 | 20.20 | 21.01 |
| | - max | 27.15 | 23.17 | 23.99 | 26.30 |
| | United States | 8.85 | 10.39 | 9.67 | 8.57 |
| Fresh chicken | Switzerland | 8.41 | 8.49 | 9.35 | 8.90 |
| | EU-4 | 5.72 | 4.93 | 5.05 | 5.20 |
| | - max | 6.17 | 3.86 | 5.90 | 6.65 |
| | United States | 2.74 | 3.99 | 3.68 | 3.07 |
| | | | SwF/0.25 litre | | |
| Cream | Switzerland | 3.58 | 2.79 | 2.79 | 2.91 |
| | EU-3 (EU-4 with B, without F and I) | 1.25 | 0.95 | 0.95 | 0.95 |
| | - max | 2.53 | 1.64 | 1.59 | 1.69 |
| | United States | - | - | - | - |
| | | | SwF/piece | | |
| Eggs | Switzerland | 0.57 | 0.58 | 0.61 | 0.61 |
| | EU-4 (EU-4 with B, without F) | 0.25 | 0.25 | 0.24 | 0.26 |
| | - max | 0.33 | 0.34 | 0.34 | 0.37 |
| | United States | 0.10 | 0.15 | 0.14 | 0.12 |
| Vegetal products | | | | | |
| | | | SwF/0.5 litre | | |
| White bread | Switzerland | 2.09 | 1.83 | 1.74 | 1.80 |
| | EU-4 | 1.49 | 1.50 | 1.47 | 1.56 |
| | - max | 2.98 | 2.98 | 2.90 | 3.12 |
| | United States | 1.12 | 1.73 | 1.74 | 1.48 |
| | | | Sw F/litre | | |
| Vegetal oil | Switzerland (sunflower oil) | 5.05 | 3.96 | 3.88 | 4.30 |
| | EU-4 (EU-4 with B, without G) | 2.81 | 2.34 | 2.32 | 2.48 |
| | - max | 3.56 | 2.51 | 2.46 | 2.71 |
| | United States (salad oil) | 2.26 | 3.25 | 3.70 | 3.37 |

Table IV.4 (cont'd)

| Product | Countries | 1990/92 | 2000 | 2002 | 2003 |
|----------------------------|-------------------------------------|---------|------|------|------|
| White flour | Switzerland | 2.05 | 1.75 | 1.60 | 1.71 |
| | EU-4 (EU-4 with B, without F) | 1.10 | 0.91 | 0.92 | 0.94 |
| | - max | 1.67 | 1.00 | 1.10 | 1.17 |
| | United States | 0.75 | 1.08 | 1.07 | 0.92 |
| Potatoes | Switzerland | 1.43 | 1.87 | 2.08 | 2.16 |
| | EU-3 (EU-4 without B) | 0.92 | 1.00 | 1.06 | 1.16 |
| | - max | 1.27 | 1.50 | 1.58 | 1.66 |
| | United States | 1.04 | 1.41 | 1.69 | 1.36 |
| Sugar | Switzerland | 1.65 | 1.41 | 1.47 | 1.59 |
| | EU-3 (EU-4 with B, without G and F) | 1.75 | 1.54 | 1.44 | 1.51 |
| | - max | 1.89 | 1.66 | 1.60 | 1.66 |
| | United States | 1.22 | 1.52 | 1.44 | 1.25 |
| Apples Golden Delicious | Switzerland | 3.15 | 3.40 | 3.81 | 3.67 |
| | EU-4 | 3.16 | 2.37 | 2.59 | 2.76 |
| | - max | 3.25 | 2.72 | 2.99 | 3.25 |
| | United States | 2.58 | 3.42 | 3.25 | 2.91 |
| Pears | Switzerland | 3.25 | 3.36 | 3.60 | 3.69 |
| | EU-4 | 3.43 | 2.75 | 2.87 | 2.97 |
| | - max | 3.62 | 3.17 | 3.36 | 2.68 |
| | United States | 2.52 | 3.59 | 3.42 | 2.94 |
| Bananas | Switzerland | 2.52 | 2.83 | 3.06 | 3.06 |
| | EU-4 | 2.61 | 2.17 | 2.14 | 2.15 |
| | - max | 3.56 | 2.46 | 2.51 | 2.49 |
| | United States | 1.45 | 1.87 | 1.74 | 1.51 |
| Carrots | Switzerland | 1.91 | 1.78 | 2.09 | 2.26 |
| | EU-5 (EU-4 with B) | 1.71 | 1.32 | 1.43 | 1.44 |
| | - max | 2.32 | 1.55 | 1.75 | 1.78 |
| | United States | 1.35 | - | - | - |
| Onions | Switzerland | 1.86 | 1.94 | 2.56 | 2.39 |
| | EU-5 (EU-4 with B) | 1.54 | 1.48 | 1.65 | 1.70 |
| | - max | 1.75 | 1.92 | 2.27 | 2.42 |
| | United States | 1.29 | - | - | - |
| Tomatoes | Switzerland | 3.73 | 3.50 | 3.75 | 3.67 |
| | EU-5 (EU-4 with B) | 3.60 | 3.37 | 3.46 | 3.60 |
| | - max | 4.41 | 3.81 | 4.45 | 4.72 |
| | United States | 3.29 | 5.15 | 4.54 | 4.48 |

Note: EU-4 is Switzerland's neighbouring countries: Austria (A); France (F); Germany (G); and Italy (I). B is Belgium, and max is the highest price recorded among the EU countries.

Source: Federal Office for Agriculture (2003), *Rapport annuel*.

12. The AP 2007 reforms focus essentially on domestic support; they include the gradual elimination of milk production quotas, introduce additional flexibility in the milk market, and aim to address over-production in the wine and horticultural subsectors through various conversion programmes. In addition, they contain the necessary provisions that would permit the Federal Council to allow further shifts away from price support payments towards direct payments, for example in the context of WTO negotiations.¹² AP 2007 also plans the progressive introduction of auctions for meat tariff quotas as of 2005 (see below). AP 2007 does not change the granting of export subsidies by Switzerland.

13. In a decision that runs counter to the reduction of trade-distorting support, direct payments under AP 2007 are no longer to be a degressive function of cultivated land and number of animals. However, the authorities have indicated that, because of budget cuts, this decision will not be put into

¹² *La Vie économique*, September 2003, p. 6.

practice during 2004-07. In addition, the Federal Council has set a maximum amount of direct payments per unit of labour (*unité de main-d'oeuvre standard*).¹³

14. Since 2001, Switzerland has liberalized its bilateral trade in certain processed agricultural products with the EU. Few effective changes in market access or trade flows have resulted so far from the bilateral agreement on trade in agricultural products with the EU, which entered into force in July 2002 (Chapter II(4)(ii)(b)). The agreement provides for reciprocal preferential treatment on, *inter alia*, cheese and some other dairy products, fruit and vegetables, and meat specialities. In particular, full tariff and export subsidy elimination is scheduled for bilateral trade in cheese as of 2007.¹⁴ In addition, the bilateral agreement will forbid the mixing of Swiss red wines with foreign wines as of 2005, although the latter may continue to be mixed with other Swiss wines. It provides for harmonization of Swiss and EU legislation on liquor.¹⁵

15. The bilateral agreement on agriculture between Switzerland and the EU does not yet apply to Liechtenstein. The authorities note that Liechtenstein now faces a situation where, because of the bilateral Swiss-EU agreement, imports of agricultural products from the EU can be marketed in Liechtenstein, but exports of agricultural products from Liechtenstein to the EU do not enjoy the same (preferential) customs concessions and technical regulations as those applied to Swiss agricultural products. The Liechtenstein authorities have indicated that they intend to negotiate another supplementary agreement in order to solve this problem.

(ii) Specific policy measures

(a) Domestic support

16. In Switzerland and Liechtenstein, domestic support encompasses product-related subsidies consisting mainly of product-related (market) support, and other producer subsidies (Table IV.5). Under the framework plan for government support, annual amounts of public expenditure on agriculture were to be gradually reduced¹⁶, but such a trend has not been visible since 2000. However product-related support, with the most distortive impact on markets, decreased sizeably in 2003.

17. Liechtenstein has a separate direct payments system. Under an Exchange of Notes (RS 0.916.051.41) between Liechtenstein and Switzerland, Liechtenstein reimburses some Sw F 2 million to Switzerland for access by its firms to the Swiss processing facilities, mainly for milk. In Liechtenstein, direct payments increased from Sw F 8 million in 2000 to Sw F 10.6 million in 2003; this amounts to Sw F 42.742 per person employed in agriculture (full-time or part-time). A new law regulating Liechtenstein's dairy market is to enter into force on 1 January 2005, covering market research, quality control, development of infrastructure, processing and marketing.

¹³ *Loi fédérale sur l'agriculture, modification du 20 juin 2003*. Available at <http://www.admin.ch/ch/f/as/2003/4217.pdf>.

¹⁴ Federal Office for Agriculture (2003), p. 263.

¹⁵ *Ordonnance sur les denrées alimentaires* (RS 817.02), Annex 7 and 8.

¹⁶ WTO (2000).

Table IV.5
Switzerland: financial support to agriculture, and economic indicators, 1990-03
(Million Sw F)

| | 1990/92 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 ^a |
|--|---------|-------|-------|-------|-------|-------|-------------------|
| Total public expenditure on agriculture | 3,048 | 3,926 | 4,197 | 3,727 | 3,962 | 4,067 | 3,907 |
| - price and market support | 1,685 | 1,203 | 1,318 | 955 | 902 | 979 | 798 |
| - of which support to the dairy market | 1,127 | 967 | 1,052 | 716 | 666 | 754 | 560 |
| - direct payments | 772 | 2,126 | 2,286 | 2,114 | 2,334 | 2,429 | 2,435 |
| - of which ecological payments | .. | 796 | 439 | 361 | 413 | 452 | 455 |
| - Other expenditure ^a | 590 | 597 | 594 | 658.3 | 727 | 660 | 674 |
| - of which: export subsidies | 94 | 137 | 129 | 112 | 98 | 115 | 115 |
| Memo item: non-product-related subsidies | 878 | 2,343 | 2,582 | 2,386 | 2,609 | 2,714 | 2,696 |
| Agricultural income (factors income) | 6,062 | 5,356 | 4,977 | 5,154 | 4,788 | 4,955 | 4,545 |
| Net value added at factor prices | 5,228 | 3,323 | 2,728 | 3,091 | 2,506 | 2,573 | 2,177 |

.. Not available.

a Includes grants and loans for structural improvements, investment credits, and research.

Source: Federal Office for Agriculture, *Rapport agricole*, various issues; and data provided by the authorities.

18. OECD estimates confirm that the reliance on both market price support, and on output payments, has decreased; nevertheless, market price support and output payments still accounted for 68% of the total producer support estimate in 2002. The share of input payments remained stable at 4% in 2002. These three forms of support are the most distorting, because they have the greatest effects in stimulating production and often contribute to environmental pressure; they are also the least effective in targeting income to farmers or in specific environmental benefits.¹⁷ The largest share of producer support in value terms is directed to the milk subsector¹⁸, followed by beef and veal, and pig meat. Payments based on historical entitlements (e.g. area, animal numbers, yields) account for 17% of the value of producer support. As they are not a function of output, their effects on production and trade are less trade distortive.

19. The most recent notification of domestic support measures by Switzerland (on behalf of the Customs Union) to the WTO Committee on Agriculture dates back to 1998. This has led to an incomplete picture of domestic support trends (WTO methodology) for the years in which reforms were undertaken, reduced transparency, and hindered a timely discussion of trends in support to agriculture.¹⁹ The latest Swiss notification reported a total current Aggregate Measurement of Support (AMS, known as "Amber" support) of about Sw F 3.3 billion for that year. The ceiling for such support, as committed to in the WTO, is Sw F 4.6 billion (Table IV.6).

¹⁷ OECD (2003), p. 22.

¹⁸ Support to milk production consists of payments to farmers for milk that is converted into cheese, and of subsidies to processing companies that transform milk. Ten companies receive 80% of overall payments (Sw F 343.9 million) to milk processing industries, the remainder (Sw F 84.5 million) is allocated to other milk processing enterprises. Commission de gestion du Conseil des Etats, *Paiements de la Confédération en faveur de l'agriculture – une analyse des bénéficiaires des principaux types de paiement*, Rapport du 3 Juillet 200., Available at: <http://www.admin.ch/ch/f/ff/2002/731.pdf>.

¹⁹ See, for example, WTO document G/AG/R/31, 27 August 2002.

Table IV.6
Usage of domestic support categories, export subsidies and export credits, 1995-00
 (Sw F million)

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|---|--------------|--------------|--------------|--------------|------------|------------|
| Total domestic support | 7,006 | 6,635 | 6,533 | 6,449 | .. | .. |
| Green box | 2,719 | 2,972 | 3,088 | 3,176 | .. | .. |
| De minimis | | 0 | 0 | 0 | .. | .. |
| Current total AMS ^a | 4,287 | 3,663 | 3,445 | 3,273 | .. | .. |
| - Memo item: AMS commitment level | 5,143 | 4,966 | 4,789 | 4,611 | .. | .. |
| Total export subsidies | .. | 456 | 429 | 423 | 436 | 318 |
| Of which : actually subsidized exports of dairy products (tonnes) | .. | 60,021 | 57,562 | 53,916 | 73,660 | 61,690 |
| Annual commitment for dairy products (tonnes) | .. | 73,177 | 70,423 | 67,669 | 64,915 | 62,161 |
| Memo item: total exports of dairy products (tonnes) | .. | 66,700 | 68,008 | 72,116 | 99,013 | 68,590 |
| Export credits | 0 | 0 | 0 | 0 | 0 | 0 |

.. Not available.

a Aggregate Measurement of Support.

Source: WTO Notifications.

(b) Tariffs

20. Agriculture is the most tariff protected sector; this resulted partially from the tariffication of quantitative restrictions during the Uruguay Round. The simple average tariff for agriculture (Major Division 1 of ISIC, Revision 2) is 28.6% (down from 33.5% in 2000). Using the WTO definition, the simple average is 36.2% (up from 34.3% in 2000). These figures are to be compared with overall tariff averages of 9.3% in 2004 and 8.9% in 2000. Some 28 tariff quotas (established under the WTO Agreement on Agriculture) apply to 282 tariff lines, i.e. 3.4% of all lines at the HS eight-digit level (section (d) below). Simple average in-quota and out-of-quota tariffs on products subject to tariff quotas are currently 11.2% and 118.8%, compared with 13.2% and 116.1% respectively in 2000. As all tariffs are specific, their *ad valorem* equivalents (used to assess the level of tariff protection) may change as a result of fluctuations of various factors, including import prices in Sw F (i.e. world prices and/or exchange rates).²⁰

21. The average tariffs mask considerably higher tariff protection granted to products competing with domestic production: the highest rates in 2004 are presented in Table AIV.2. The maximum applied rate (on an AVE basis) is 1,705.1% and applies to out-of-quota imports of edible offal of bovine animal (frozen), other than tongue or liver; rates higher than 400% continue to apply to meat of bovine animals, meat of swine, edible offal, certain dairy products and live plants, and specified edible vegetables, roots, and tubers, such as leek. Such levels of tariff protection have obvious consequences on consumer price levels, and Swiss and Liechtenstein prices exceed average prices of a large number of agricultural products in neighbouring countries (Table IV.4).

22. Sizeable volumes of imports of certain products enter the country despite prohibitive tariff rates. This apparent contradiction is the result of tariff concessions granted on a number of imported products (*allègement douanier selon l'emploi*) on the basis of their end-use (Chapter III(2)(ii)(c)): for example following the abolition of the state monopoly on bread flour, since 1 July 2001, this product

²⁰ See WTO (2000) for details.

may be imported subject to payment of the MFN duty of Sw F 1.43 per kg. (i.e. an AVE of 382%) or a lower tariff of Sw F 0.40 per kg. (107%) if imported under Swiss end-use provisions.

23. Customs tariffs on most domestically produced fruit and vegetable products are set on a seasonal basis to prevent imports during the periods of domestic harvests, whilst allowing imports when domestic production is not available. In some cases, the "out-of-season" period can be very short. For example, carrots imported during the two weeks from 11 to 25 May are subject to a duty of Sw F 4 per 100 kg.; during the rest of the year, the corresponding (out-of-quota) duty is Sw F 710 per 100 kg., except if imported within the WTO-bound quota of 166,076 tonnes that includes all vegetables, i.e. about 23 kg. annually per capita (see Table IV.7 below).

24. Unilateral tariff reductions in favour of 49 least developed countries (LDCs) in 2002 did not translate into any notable changes in agricultural imports.²¹ The second round of tariff reductions in 2004 could, according to the authorities, provide substantial tariff advantages to LDCs: since April 2004, LDCs are entitled to MFN (out-of-quota, if applicable) tariff reductions by 55-75% on agricultural products. As a result, the authorities expect larger quantities of products to be exported from LDCs, mainly tobacco, leather, sugar, and oilseeds. Access under tariff quotas has also been expanded for LDC suppliers (see below).

(c) Price controls

25. In July 2001, the Government's involvement in the bread-cereal market was reduced considerably. The obligation to sell to the Government was abolished, as were the Government's obligation to purchase the crops and the guaranteed prices. The bread and feed cereal markets were unified, and domestic prices are now market-determined under high in-quota and out-of-quota tariffs (see Table IV.7 below). A target price for milk producers was abolished on 1 January 2004.²²

26. The complex system of "indicative" or "threshold" prices (*prix-seuils*) remains in place under the *Ordonnance sur les produits agricoles* - OIAgr (RS 916.01, Annex 2) with a view to maintaining the duty-inclusive import prices of certain agricultural goods within certain brackets (Table AIV.3). The ultimate objective of the system is to ensure stable domestic prices. Accordingly, threshold prices combine estimated c.i.f import prices and customs duties to bring import prices into line with the local prices of the goods. The Federal Department of Economy also determines a permissible bracket for fluctuations of the actual duty-inclusive import prices around the threshold or the indicative prices. Customs duties on the products are adjusted quarterly to keep duty-inclusive import prices within the price brackets.²³ In 2004, threshold prices were 5-10% lower than in 2000.

27. The system currently applies to animal feeding stuffs and seeds, although any product may be included. It insulates producers of the goods from world market price signals and negatively affects end-users if it contributes to maintaining high prices – as has generally been the case.²⁴ In general, the quarterly modification of applied duties considerably reduces the predictability of the tariff. The

²¹ Federal Office for Agriculture (2003), p. 263.

²² RS 916.350.2.

²³ Federal Law on Agriculture, Article 20. The methods for estimating the import price and the permissible bracket for fluctuations are determined by the Federal Council. The current bracket is Sw F 3 per 100 kg. (unchanged since 2000).

²⁴ Federal Office for Agriculture (2003), p.176, and "*Développement des mesures de politique agricole – Optimisation des mesures dans le domaine de la production et des ventes, Rapport intermédiaire du groupe de travail "marchés*", à l'intention de la Commission consultative agricole, Bern, 30 March 2001. This system has also drawn criticism from cereal producers (see Fédération suisse des producteurs de céréales online information. Available at: <http://www.blw.admin.ch/aktuell/medien/f/0309093.pdf>).

annual average value of imports subject to the threshold/indicative price system was Sw F 280 million over 2000-03. According to the authorities, some 10% of the lines covered by this scheme are duty free.

28. The Price Compensation Scheme is aimed at compensating for high domestic prices (of locally produced raw materials used as inputs by domestic agri-industries) resulting from agricultural policy measures.²⁵ It consists of tariff protection for locally processed agricultural products, and "export refunds". The refunds are granted to the extent of the price differences of the raw materials used in the production of processed agricultural goods for exports. For mainly imported raw materials, the refunds correspond to the border charges paid. Under the scheme, MFN import duties on the processed products consist of an industrial element and an agricultural element. The agricultural element is designed to offset the difference between the domestic and world prices (generally the EU's). It is determined on the basis of a standard recipe for each group of products within a tariff heading, and adjusted quarterly to price differences. The industrial element is fixed by the Swiss Federal Council for the customs territory. If the sum of the agricultural and industrial element is higher than the tariff bound at the WTO, the latter applies. Only the agricultural element is levied on imports from countries eligible for preferential tariff treatment under bilateral trade agreements covering processed agricultural products. The processed agricultural products eligible for this type of tariff protection comprise: yoghurt containing cocoa (HS Chapter 4); frozen sweet corn (HS Chapter 7); sugar confectionery (HS Chapter 17); chocolate and other food preparations containing cocoa (HS Chapter 18); pastry cooks' products and preparations of cereals, flour, starch, or milk (HS Chapter 19); other food preparations (HS Chapter 21); and mannitol (HS Chapter 29). The raw materials are those used as inputs in the production of these goods, excluding: raw materials that cannot be produced in the customs territory, such as rice, coffee and cocoa; mixtures of raw materials; raw materials filled in retail packing; raw materials processed into unusual foodstuffs; and imported mixtures not falling under HS Chapters 4 and 11.

(d) Tariff quotas

WTO tariff quotas commitments

29. In the Uruguay Round, Switzerland and Liechtenstein committed to a total of 28 tariff quotas (Table IV.7). In 2002, the three quotas covering wine were merged, although this has not yet been reflected in their WTO schedules.²⁶ In practice, some of the tariff quotas are allocated on the basis of sub-groups. The fill ratios in 2001 well exceeded 100% for several groups of products: bovine semen, potatoes, cut flowers, vegetables, products from fruit with pips, egg products, and durum wheat. According to the authorities, this was in response to demand developments.

30. Tariff quotas are administered by means of a non-automatic licensing system. Tariff quota shares are allocated on the basis of, *inter alia*, a *prise en charge* system, traders' past imports, auctions, the first-come-first-served (FCFS) method, or pro-rata method (Table IV.8). Overall, there has been a shift towards the FCFS method, and away from the *prise en charge*, which makes tariff quota allocations to importers conditional on the purchase of similar local products in a set proportion. Under the *prise en charge* system, imports may exceed tariff-quota quantities (i.e. a fill ratio exceeding 100%) if importers undertake to purchase sufficient quantities of local goods. However, the proportion may be changed on a yearly basis, notably in case of strong import pressure. This system, given its local-content requirements, has been the subject of debate in previous TPRs of Switzerland and Liechtenstein.

²⁵ *Ordonnance concernant les éléments mobiles et les taux des droits de douane applicables à l'importation de produits agricoles transformés*, RS 632.111.722.

²⁶ RS 916.140.

Table IV.7
Tariff quotas, 2004

| | Product description | Average tariff rate ^a 2004 (%) | | Quota commitment ^b | Fill ratio 2001 (%) | Fill ratio 2002 (%) |
|----|--|--|------------------|----------------------------------|------------------------|------------------------|
| | | In-quota | Out-of- quota | | | |
| 1 | Live horses, asses, mules and hinnies (units) | 1.2 | 85.6 | 3,322 | 92 | 88 |
| 2 | Live bovines (units) | 2.4 | 59.4 | 20 | 0 | 2,465 |
| 3 | Live swine (units) | 4.2 | 226.0 | 50 | 0 | 0 |
| 4 | Live goats and sheep (units) | 1.3 | 46.4 | 187 | 80 | 110 |
| 5 | Meat (beef, sheep, goat, horse) (tonnes) | 20.6 | 173.5 | 22,500 ^c | 100 ^e | 115 |
| | | | | | (a): 301 | 361 |
| | | | | | (b): 198 | 222 |
| | | | | | (c): 153 | 155 |
| | | | | | (d): 117 | 108 |
| 6 | Other meat (pork and poultry) | 7.3 | 153.1 | 54,500 | 97 | 96 |
| 7 | Dairy products, in milk equivalent (tonnes) | 6.5 | 71.7 | 527,000 | 102 | 84 |
| 8 | Casein (tonnes) | 0.7 | 33.5 | 697 | 55 | 60 |
| 9 | Birds' eggs, in shell (gross tonnes) | 26.7 | 34.2 | 33,735 | 81 | 81 |
| 10 | Dried egg products (tonnes) | 26.8 | 36.8 | 977 | 85 | 90 |
| 11 | Other egg products (gross tonnes) | 30.6 | 94.8 | 6,866 | 168 | 170 |
| 12 | Bull sperm (doses) | 1.0 | 50.0 | 20,000 | 3,183 | 3,095 |
| 13 | Cut flowers (gross tonnes) | 1.6 | 335.9 | 4,590 | 150 | 161 |
| 14 | Potatoes and products (tonnes) | 13.0 | 80.7 | 22,250 | 193 | 132 |
| 15 | Vegetables (tonnes) | 4.6 | 125.4 | 166,076 | 122 | 126 |
| 16 | Frozen vegetables (tonnes) | 34.3 | 105.0 | 4,500 | 102 | 119 |
| 17 | Apples, pears, quinces, fresh (tonnes) | 2.4 | 85.8 | 15,810 | 97 | 109 |
| 18 | Fresh apricots, cherries, plums etc (tonnes) | 2.5 | 58.5 | 16,340 | 113 | 109 |
| 19 | Other fresh fruit (tonnes) | 0.8 | 45.4 | 13,360 | 82 | 90 |
| 20 | Fruit for cider (tonnes) | 4.2 | 78.4 | 172 | 100 | 62 |
| 21 | Products from fruit with pips (tonnes) | 15.3 | 57.1 | 244 | 311 | 269 |
| 22 | Grapes for pressing and grape juice (hectolitres) | 31.5 | 143.3 | 100,000 | 86 | 87 |
| 23 | White wine in bottles (hectolitres) | 18.9 | 39.7 | 45,000 | | |
| 24 | Red wine, other than industrial wine (hectolitres) | 13.6 | 13.2 | 1,620,000 | } 108 | } 106 |
| 25 | White wine, in bulk | 25.0 | 58.0 | 30,600 | | |
| 26 | Durum wheat, undenatured (tonnes) | 2.9 | 199.7 | 110,000 | 118 | 95 |
| 27 | Bread cereals and other cereals for human consumption (tonnes) | 51.6 | 120.4 | 70,000 | 98 | 82 |
| 28 | Coarse grains for human consumption (tonnes) | 12.3 | 112.6 | 70,000 | 73 | 60 |

a Average based on *ad valorem* equivalents.

b WTO Schedule LIX – Switzerland and Liechtenstein Part I Section I-B (or I-A). For HS codes, see WTO document G/AG/N/CHE/28, 27 June 2002.

c Of which at least:

(a) 2,000 tonnes from tariff items 0201.1011, 1091, 2011, 2091, 3011, 3091; 0202.1011, 1091, 2011, 2091, 3011, 3091; 0206.1011, 2110

(b) 1,200 tonnes from tariff items 0201.1011, 1091, 2011, 2091, 3011, 3091; 0202.1011, 1091, 2011, 2091, 3011, 3091 (high quality beef)

(c) 4,500 tonnes from tariff items 0204.1010, 2110, 2210, 2310, 3010, 4410, 4210, 4310

(d) 4,000 tonnes from tariff item 0205.0010

Source: WTO notifications in document series G/AG/N/CHE/, and information provided by the authorities.

Table IV.8
Administration of tariff quotas, , 2004

| TQ* | Product | Tariff quota | Beneficiaries/eligibility requirements | Allocation procedure |
|-----|---|----------------|--|---|
| 1 | Live horses, asses, mules | 3,322 animals | No limitation | First-come-first-served ^a |
| 2 | Live bovines | 20 animals | Breeder | First-come-first-served, except live bovines (auction) |
| 3 | Live swine | 50 animals | | |
| 4 | Live goats and sheep | 187 animals | | |
| 5 | Meat (beef, sheep, goat, horse) | 22,500 tonnes | No limitation | <i>Prise en charge</i> ^b ; auction |
| 6 | Other meat (pork and poultry) | 54,482 tonnes | No limitation | <i>Prise en charge</i> ^b ; auction |
| 7 | Dairy products (milk equivalent) | 527,000 tonnes | Producers and manufacturers | <i>Prise en charge</i> ; first-come-first served |
| 8 | Casein | 697 tonnes | No limitation | Unlimited |
| 9 | Eggs in shell | 33,735 tonnes | No limitation | First-come-first served |
| 10 | Dried egg products | 977 tonnes | | Unlimited |
| 11 | Other egg products | 6,866 tonnes | | |
| 12 | Bull sperm | 20,000 doses | Recognized insemination organizations | First-come-first-served |
| 13 | Cut flowers | 4,590 tonnes | No limitation | Past imports; <i>prise en charge</i> |
| 14 | Potatoes and products | 22,250 tonnes | | <i>Prise en charge</i> ; auction |
| 15 | Vegetables | 166,076 tonnes | | Past imports ^c ; <i>prise en charge</i> ; <i>pro rata</i> ^d |
| 16 | Apples, pears, quinces, fresh | 15,800 tonnes | | |
| 17 | Frozen vegetables | 4,500 tonnes | | <i>Prise en charge</i> ; past imports |
| 18 | Apricots, cherries, etc. fresh | 16,340 tonnes | | Past imports ^b ; <i>prise en charge</i> ; <i>pro rata</i> |
| 19 | Other fruit, fresh | 13,360 tonnes | | |
| 20 | Fruit for cider production | 172 tonnes | | Auction |
| 21 | Products from fruit with pips | 244 tonnes | | |
| 22 | Grapes for pressing and grape juice | 100,000 hl | Licensed wine traders | Unlimited |
| 23 | White wine in bottles | 45,000 hl | | |
| 24 | Red wine | 1,620,000 hl | | First-come-first served |
| 25 | White wine in bulk | 30,600 hl | | |
| 26 | Durum wheat, undenatured | 110,000 tonnes | Importers licensed by reserve suisse | Unlimited, with conditions |
| 27 | Bread cereals and other cereals for human consumption | 70,000 tonnes | | Auction |
| 28 | Coarse grain | 70,000 tonnes | | Unlimited, with conditions |

* Tariff quota category as notified to the WTO.

a Except for horses other than for breeding (auction).

b *Prise en charge*: quota shares contingent upon purchases of local goods.

c Past imports: quota shares allocated as a function of commercial activity, purchases or imports during the preceding year.

d Pro rata: quota allocation depends on the quantities requested by individual importers.

Source: WTO (2000), *Trade Policy Review: Switzerland and Liechtenstein*.

31. In 2002, allocation of the tariff quota for white wine and for "asses, mules and hinnies" changed to a first-come-first served basis, from the auction system. An auction system was introduced for live bovines; for eggs in shell, the shares have been, allocated on a "first-come-first-served" basis since 2002, replacing the "*prise en charge*" method. Changes also took place in the method used to allocate the annual tariff quota of 70,000 tonnes of bread cereals and other cereals for human consumption: since July 2001, the tariff quota has been auctioned off instead of being conditional on the "*prise en charge*" system; the authorities indicate that the allocation method will be changed to first-come-first-served on 1 January 2005. The tariff quota volumes for potatoes were expanded in 2004; however, with a quota commitment of less than 6 kg. per capita annually, access to this product remains limited; this may explain the self-sufficiency rate of 100% and the price difference of 100% with neighbouring countries (Tables IV.2 and IV.4).

32. A number of additional changes were made to the administration of tariff quotas in November 2003.²⁷ In particular, Internet facilities are now in place to submit offers for tariff quota allocation by auction. Further, in the case of tariff quota allocation by auction, as from 1 January 2005, a bank or other guarantee will replace the current system, which requires immediate full payment. Also, requests for allocation of tariff quotas need no longer be submitted before the first working day of December preceding the period of the quota allocation. In cases where an importer does not use up to 90% of the allocated tariff quota, in the following period, the importer will be allocated only 50% of the quantity effectively imported. The taxes levied for customs clearance of each consignment have also been modified.

33. Specified quantities of the tariff quotas on wine, meat, and dairy products are reserved for individual supplying countries.²⁸ However, Switzerland and Liechtenstein have made less use of this type of reserved access by international comparison: suppliers from WTO Members have in general equal access to most quotas.

34. As noted above, AP 2007 provides for changes regarding tariff quotas for all livestock and meat products. In particular, auctions are being introduced gradually for allocation of all tariff quotas by 2007, except for 10% of the sheep and beef quota, which will remain conditional on "*prise en charge*". In 2005 and 2006, one third and two thirds of tariff quota volumes are to be auctioned off. This will not change the size of the tariff quotas. Provisions for greater flexibility in the administration of the tariff quota for butter have also been included under PA 2007, with a larger number of importers authorized to import butter, and quota shares no longer reserved for downstream producers and for the food industry.²⁹

Preferential tariff quotas

35. The agreement on agriculture between the EU and Switzerland provides for complete liberalization of bilateral trade in cheese after a five-year transition period. It also provides for duty-free access, generally under tariff quota, for a range of horticultural and meat products, and for cut flowers (Chapter II(4)(ii)). Preferential tariff quotas are also in place on imports of feathers, soft drinks, and tobacco from Turkey; and of olive oil from Jordan.³⁰

36. The preferential (duty-free) tariff quotas on cane sugar from developing countries (opened in 1997 in addition to WTO commitments) was increased from 5,000 tonnes per year to 7,000 tonnes, effective 1 April 2001.³¹ In March 2004, preferential quotas of combined 5,000 tonnes were opened for certain oilseeds and oil products from least developed countries.³²

²⁷ *Ordonnance générale sur l'importation de produits agricoles, modification du 26 novembre 2003*. Available at <http://www.admin.ch/ch/f/as/2003/5397.pdf>.

²⁸ See WTO document G/AG/N/CHE/13/Add. 1, 29 June 1999 for details on quantities of the products reserved for Benelux, France, Italy, the United States, and the European Communities as an entity.

²⁹ Under the current regime, butter producers hold the import rights; they import only in case of domestic shortages.

³⁰ *Administration fédérale des douanes*, online information. Available at <http://www.afd.admin.ch/firmer/import/kontingente.php>.

³¹ *Ordonnance du 29 janvier 1997 fixant les droits de douane préférentiels en faveur des pays en voie de développement*, RS 632.911, as amended.

³² RS 632.911.

(e) Special safeguards

37. Switzerland and Liechtenstein have retained the right to invoke the special safeguard clause under Article 5 of the WTO Agreement on Agriculture for all imports subject to tariff quotas. This allows the authorities to restrict imports by means of additional duties when prices fall below, or imports exceed, given thresholds. Such a safeguard duty was levied on imports of pig meat and its by-products from 1 May to 31 December 1999. The special safeguard provisions were not invoked by Switzerland in 2000-01. No information has been notified for the years 2002 and 2003. According to the authorities, the special safeguard provisions have not been invoked since 2000.

(f) Import licensing and labelling requirements

38. Imports of agricultural products are subject to licensing requirements for the purpose of tariff quota management, as well as for health, sanitary, phytosanitary, or compulsory reserve stock requirements (Chapter III(2)(v)(b)). Imported goods produced in a manner prohibited in Switzerland must be labelled as such (Chapter III(2)(vii)).³³

(g) Export subsidies and other export assistance

39. Under the WTO Agreement on Agriculture, Switzerland and Liechtenstein have made commitments to reduce export subsidies on a number of products. Accordingly, expenditure on these export subsidies has been capped since 2000: dairy products, Sw F 284 million in 2000; cattle and horses, Sw F 22 million; fruit, Sw F 17 million; potatoes, Sw F 2 million; and processed agricultural products, Sw F 115 million.³⁴ The export subsidies generally consist of direct contributions to reduce export prices or, under the price compensation scheme, refunds to reduce higher input costs (section (c) above). The price compensation scheme has been described as expensive to administer and resulting in considerable amounts of expenditure on export subsidies.³⁵

40. Data from notifications to the WTO show that among WTO Members, Switzerland reports the second highest amount of export subsidies after the European Union.³⁶ Over the 1996-00 period, about two thirds of the value of the export subsidies notified were spent on dairy products, and most of the remainder on other processed agricultural products. On average, over this period, 82% of Switzerland's dairy exports were carried out under subsidies. In 1999, Switzerland had invoked the flexibility provisions under Article 9.2 of the WTO Agreement on Agriculture to exceed its annual commitment level on subsidized exports of dairy products by 8,745 tonnes. Given Switzerland's position as the world's fifth exporter of dairy products (with exports valued at Sw F 545.4 million in 2002), Swiss export subsidies are likely to significantly distort world trade in dairy products, notably cheese.

41. Switzerland has not reported information on its export subsidies to the WTO for any period after the year 2000 (Table IV.6), thus precluding any meaningful recent analysis or comparison. Data available from domestic sources indicate that export subsidies granted to cheese, other dairy products,

³³ Article 18 of the Federal Law on Agriculture and *Ordonnance relative à la déclaration de produits agricoles issus de modes de production interdits en Suisse*.

³⁴ WTO Schedule LIX – Switzerland and Liechtenstein, 15 April 1994.

³⁵ See Département fédéral des affaires étrangères, *Fact sheets: négociations bilatérales II Suisse – UE*, online information. Available at: <http://www.europa.admin.ch/nbv/expl/factsheets/f/index.htm#agri> and [<http://www.europa.admin.ch/nbv/expl/factsheets/f/agri.pdf>].

³⁶ See, for example, WTO document G/AG/NG/S/12/Rev.1, 12 March 2001.

and livestock fell from Sw F 105 million in 2001 to Sw F 80 million in 2002.³⁷ Those on "processed agricultural products" reached Sw F 115 million.

42. Switzerland has reported that officially supported export credits were not requested for agricultural exports during 1997-01.³⁸ According to the authorities, no requests were made for the period 2001-03.

43. According to the Liechtenstein authorities, few Liechtenstein food processing companies benefit from the Swiss export subsidy scheme. This is due to the size of the Liechtenstein economy and that some of the subsidized goods are neither produced nor exported by Liechtenstein.

(3) MANUFACTURING AND ENERGY

(i) Manufacturing

(a) Main features

44. Several Swiss multinational companies are among the world's largest; they are mainly in the petro-chemical industry, including pharmaceuticals (e.g. Novartis, Roche), in machinery and electronics (e.g. ABB), and in food (e.g. Nestle). Their low-technology mass-production is now mostly carried out abroad. In addition, many competitive and innovative small and medium-sized companies also depend on exports and operate with little or no government assistance, in subsectors such as, medical and pharmaceutical research-based industries, and precision engineering combined with high-technology electronics (see Chapter I). However, there remain many small enterprises with low productivity, notably in food manufacturing, or salt production, that depend on regulation for their survival. Reflecting high domestic wages and other production costs, the tendency has continued in recent years to transfer certain manufacturing activities to countries with lower production costs.³⁹ There were concomitant shifts towards high technology branches such as biotechnology and high-precision medical equipment.

45. There have been many legislative and regulatory changes since 2000 that are likely to facilitate Switzerland's trade in manufactured products. The first is the bilateral agreement with the EU on mutual recognition in relation to conformity assessment, in effect since June 2002. The agreement eliminates duplication in the field of conformity assessment procedures required for the marketing of products in Switzerland and in the EU (Chapters II(4)(ii)(c) and III(2)(vii)(b)). In addition, the scope of the law on cartels has been extended so as to prevent intellectual property right holders from restricting parallel imports through agreements between enterprises or abuses of dominant position. There have also been legislative amendments affecting trade in food products, medical drugs and motor vehicles.

46. In Liechtenstein, manufacturing accounts for around 46% of total employment; some 599 enterprises are operating.⁴⁰ Almost all production is exported (about half to the EU). Metal-working, vacuum engineering, precision tools, food products, electronic systems, and artificial teeth and dentistry are the most important branches. Most technical barriers to Liechtenstein's trade with the other members of the EEA have been eliminated since the entry into force of the EEA in 1995. The MCSM provides for parallel imports of patented products (including drugs) or other products subject to EEA technical regulations that are different from those of Switzerland.

³⁷ Federal Office for Agriculture (2003), Table A29.

³⁸ WTO document G/AG/W/56/Add.1, 3 February 2003.

³⁹ See for example *Le Temps*, 24 June 2004, "La chimie bâloise est morte".

⁴⁰ The figures correspond to the secondary sector as a whole.

47. In 2002, the Government set up a Competence Centre at the Liechtenstein University of Applied Sciences (Fachhochschule Liechtenstein) to support SMEs in their start-up phase. The Centre advises young professionals and companies in the growth phase on business planning and management; arranges contacts with financial institutions, investors or potential business partners, provides financial support; and promotes the transfer of technology and knowledge. The Centre is financed by the Government and by Innovation Group Liechtenstein. Criteria for granting support include high added value, availability of know-how, and potential synergies with the Liechtenstein business community. In addition, the authorities indicate that Liechtenstein contemplates the establishment of cross-border regional "trade parks" for SMEs, taking into account the comparative advantages in the region, including on salaries, profit taxation or availability of building sites.

48. The level of MFN tariff protection in the Customs Union remains low at 2.3% for non-agricultural products (WTO definition), and at 7.7% for the manufacturing sector (ISIC definition). These averages mask tariff peaks of 15-25% on, *inter alia*, salt, shampoo, tooth paste, bath preparations, wooden pallets, certain papers, and textile products. Non-agricultural products with AVE tariffs exceeding 25% include fish fats and oils, certain fabrics and worn clothes (see below), and beryllium waste and scrap⁴¹ (Tables III.2 and AIII.1).

(b) Food products

49. Food manufacturing is the most protected activity of the Swiss and Liechtenstein economies (see section (2) above). Tariffs are in many cases prohibitive; strong positive tariff escalation ensures high effective protection of food industries. This is reinforced by incentive schemes, including tariff exemptions on imports of specified inputs (Chapters III(2)(c)), and IV(2)(ii)(c) and (g)).

(c) Textiles and clothing, and footwear

50. The textiles and clothing branch is dominated by small enterprises producing high-quality yarns, fabrics, and silk products, industrial textiles, and luxury clothing. The Swiss footwear industry has been dominated by one world-class company (Bally); in 1999, the company was sold and its production in Switzerland was terminated. The clothing and, particularly, the footwear branch have recorded the strongest contraction in value added among the Swiss manufacturing industries over the past decade. In clothing, the 2003 level of employment was at slightly over one third of the 1991 level. In 2000, the dollar value of Swiss exports of textiles, clothing and footwear was a third lower than its 1990 level (and a quarter lower when expressed in Swiss francs). Since then, the value of annual exports in Swiss francs has remained unchanged. Imports of textiles, clothing, and footwear were of approximately the same value in 2003 as in 1990 (US\$ 6 billion), perhaps reflecting a combination of rising import volumes and falls in world prices.

51. Textiles and clothing products are subject to relatively high duties, averaging over 8% for man-made filaments, and over 10% for knitted or crocheted fabrics. Tariffs exceed 25% on certain woven fabrics of synthetic filament yarn, synthetic yarn twine, knit fabrics, embroidered table linen, and worn clothes.⁴² Tariffs on footwear average 3.3%. Furthermore, reductions and refunds of customs duties are granted on imports of specified inputs. Switzerland and Liechtenstein have never resorted to quantitative restrictions on imports of textiles or clothing, although they retained the right

⁴¹ HS tariff items (and corresponding AVE duties) are: 1504.1098 (74%), 1504.2091 (72%), 5407.2000 (53%), 5607.4100 (35%), 5806.4000 (29%), 6005.9000 (56%), 6302.4090 (50%), 6309.0000 (153.4%), 7019.9090 (26%).

⁴² HS codes are 5407.2000 (53%), 5607.4100 (35%), 5806.4000 (29%), 6005.9000 (56%), 6302.4090 (50%), and 6309.0000 (153.4%). The parentheses indicate the AVE tariffs on the products.

to use the transitional safeguard mechanism under Article 6 of the WTO Agreement on Textiles and Clothing.

(d) Pharmaceutical products

52. The high price of medical drugs in Switzerland by European comparison has been analysed in 11 of the 13 annual reports published by the Price Inspector since 1991 (Chapter III(4)(iii)). According to recent estimates, Swiss pharmacists purchase medicines at factory prices 22% above the European average, despite the duty-free regime on the products.⁴³ Patented drugs show the highest price differences with neighbouring countries.⁴⁴ Between 1997 and 2002, prices of medical drugs increased rapidly, mainly through the substitution of old drugs with more expensive preparations. According to the Office fédéral de la statistique, expenditure on medical drugs as a share of household expenditure has increased from 1.37% in 1993 to 2.74% in 2004, mainly on account of price increases.

53. Since 2000, considerable efforts have been made by the Swiss Government to combat anti-competitive practices and stimulate trade as a way of reducing price levels. The law on compulsory health care insurance abolished the system whereby retail margins of pharmacists were expressed as a fixed percentage of drug prices. This percentage was an incentive for the sale of expensive drugs in particular. It was replaced by a system of compensation based on service. As a result, pharmacists are no longer discouraged from selling cheaper drugs, such as through parallel imports, drugs sold in co-marketing, or generic drugs. The cartel of trading companies active in the medical drugs market (Sanphar) was abolished in 2001, following a decision of the Competition Commission in 2000.

54. The bilateral MRA with the EU is expected to facilitate trade in medicinal products, by providing for the mutual recognition of GMP (good manufacturing practice) certificates and of batch certificates (including officially released batches) issued in the exporting party. Marketing authorizations, however, are not mutually recognized under this agreement and are, therefore, still required in Switzerland and in the EC. Efforts have also been made since 2000 to increase transparency in the market for medicinal products, including through the publication of prices and of lists of substitutable drugs produced under licence under another brand (co-marketing). A new law (LPTh), entered into force in 2002.⁴⁵

55. Until 2001, all pharmaceutical products (prescription and over-the-counter) had to be approved and registered by an inter-cantonal drug commission before being placed on sale in Switzerland. Under the LPTh, the regulatory competence for all products has been transferred from the cantons to the federal level for human and veterinary drugs and for medical devices. Pharmaceutical products now have to be approved and registered by the Swiss Agency for Therapeutic Products (Swissmedic) before being placed on sale in Switzerland. In Liechtenstein, the concept of parallel marketability prevails for pharmaceutical products: marketing approval can be obtained either according to EEA rules or according to the LPTh.⁴⁶

56. The LPTh has also facilitated parallel imports of medicinal products that are not protected by a patent. It provides for a simplified authorization procedure for an application to place on the market a medicinal product that is already authorized in Switzerland, and imported from a country with an

⁴³ Study by Interpharma, quoted in *LeTemps*, 18 June 2004.

⁴⁴ See *Monsieur prix* at: <http://www.monsieur-prix.ch>.

⁴⁵ *Loi fédérale sur les produits thérapeutiques* (LPTh), RS 812.21.

⁴⁶ This Act is applicable in Liechtenstein under a special bilateral agreement (Exchange of Notes of 11 December 2001 relating to the application of the Swiss legislation on therapeutic goods in Liechtenstein, LR 0.812.101, *Law Gazette* 190/2001).

equivalent authorization system. Swissmedic is responsible for the granting of simplified marketing authorizations.

57. Parallel imports of medicinal products protected by a patent, however, are not yet possible in Switzerland.⁴⁷ In 2001, an analysis was carried out by the Price Inspector on the effect of national exhaustion in patent law on prices of medical drugs.⁴⁸ The prices were found to be higher by international comparison for products protected by a patent. The Price Inspector has, on several occasions, called for the application of international exhaustion under patent law as one of the conditions for lower prices of medical drugs in Switzerland, as it would improve price competition through parallel imports. In November 2002, another study was carried out by the Federal Council on parallel imports and patent rights.⁴⁹ It concluded that international exhaustion was justified from the point of view of economical theory, but empiric evaluations had shown that the introduction of international exhaustion of patents would only have a minimal effect on the economy as a whole, and decided against this introduction.

(e) Motor vehicles

58. Trade in motor vehicles has been limited by non-tariff barriers for many years, even though Switzerland and Liechtenstein do not produce motor vehicles on a commercial scale. The trade restrictions consisted mainly of private business arrangements limiting competition. The Competition Commission (Comco) launched investigations on dealer contracts for distribution of motor vehicles and spare parts, and published decisions in 1997 and 2001. Subsequently, in November 2002, Comco published a communication specifically concerning motor vehicle distribution agreements⁵⁰, which mirrors the corresponding changes in the EU "block exemption" (from competition law) Directive of 2002.⁵¹ The communication was aimed at facilitating parallel imports of motor vehicles from EEA countries.

59. In principle, the new regulation eliminates the main barriers limiting trade in motor vehicles by dealers other than official representatives of manufacturers. It provides a choice between an exclusive distribution system, whereby the distributor is allocated a given territory or group of clients, or a selective system based on predefined qualitative or quantitative criteria. Distribution contracts with foreign manufacturers may no longer prohibit parallel imports. Motor vehicles can now be imported by independent garages, private dealers or customers, and no longer exclusively through representatives with exclusive rights conferred by manufacturers. In particular, EU dealers who were not allowed to sell into Switzerland may now do so. Similar changes have taken place in the market for spare parts, and garages are no longer obliged to purchase all supplies through "official" channels at fixed prices.

60. All vehicles and specified parts must still be homologated. Inspection by the local Cantonal Automobile Office (after completion of customs clearance for the motor vehicle) addresses, *inter alia*, pollutant emission, noise, brakes, lights and lighting, speedometer and tachometer readings, and make

⁴⁷ In addition, the *Ordonnance sur les dispositifs médicaux* (RS 812.213) precludes parallel imports of medical devices.

⁴⁸ Price Inspector (2001), "Protection par brevet sur le marché des médicaments", *Rapport annuel 2001 du Surveillant des prix*, RPW/DPC 2001/5 p. 929.

⁴⁹ *Importations parallèles et droit des brevets, Rapport du Conseil Fédéral en réponse au postulat de la CER-N (00.3612) et concernant les diverses réglementations coexistant sur le marché des médicaments à usage humain.*

⁵⁰ Comco online information. Available at: <http://www.weko.ch/site/f/gesetze/communications.Par.0001.Pic1.pdf>.

⁵¹ EU Directive 1400/2002.

of tyres. The inspection fee of around Sw F 50 to Sw F 80 (according to cantonal decrees) and, if necessary, costs incurred to bring the vehicle into compliance with the local regulations are borne by the owner. Sales of motor vehicles are subject to a 4% motor vehicle tax, in addition to the standard VAT. Import duties average 2% on an *ad valorem* equivalent basis.

61. The Swiss regulations on motor vehicles do not apply to imports from the other EEA member countries to Liechtenstein (following its membership in the EEA). However, according to the authorities, there are no noticeable price differences between Switzerland and Liechtenstein, and most commercial vehicle importers are responsible for both countries and treat them in the same way.

(ii) Energy

62. Switzerland and Liechtenstein do not produce fossil fuel. Therefore, around 81% of Switzerland's primary energy supply (fossil and fissile fuels) is imported. Swiss net energy imports amounted to 3.4% of total imports and 22.5% of total energy expenditures (taxes included). A detailed description of the measures affecting production, distribution, and trade in energy products and services, notably electricity, is contained in the previous TPR of Switzerland and Liechtenstein. In 2002, electricity market reform aimed at liberalizing the electricity market was rejected by popular vote after it had been adopted by Parliament. Since then, efforts continued to liberalize distribution whilst better regulating electricity transmission. The Swiss Federal Office of Energy is responsible for policies involving trade in energy products.⁵²

63. Switzerland and Liechtenstein have not made any commitment with respect to energy services *per se* under the GATS. However, under "Business services", both Switzerland and Liechtenstein have undertaken specific commitments on "Services incidental to mining, excluding prospection, surveying, exploration and exploitation (part of CPC 883 and part of 5115)".⁵³ Under the GATT, import duties have not been bound on gas, petroleum, and related products.

(a) Oil products

64. In Switzerland, crude oil accounted for 36% of total oil imports in 2003, oil products making up the difference. Crude oil is refined in two plants, owned by Petroplus and Tamoil. Seven large players (Agip, Avia, BP, Esso, Migrol, Shell and Tamoil) dominate the retail distribution market. The oil price is freely set by the companies. In Liechtenstein, oil products accounted for less than one quarter of the total value of energy imports in 2003, a decline from 27% in 1999. The Liechtenstein petroleum sub-branch is also operated by private companies, and the prices are also market-determined.

65. The same duties and taxes apply on energy in both Switzerland and Liechtenstein. The average customs tariff (on AVE basis) on petroleum and coal products is at less than 1%. The VAT is collected at the standard rate of 7.6% (up from 7.5% in 2000). VAT revenues on oil products totalled Sw F 0.85 billion. In addition, other duties and taxes apply to specified products. The mineral oil tax (Sw F 2.92 billion of revenues in 2003) is levied on all oil products and natural gas. A reform is being debated to allow for more differentiated rates based on environmental impact and CO₂ content, with full exemption for biofuels. The surtax (*surtaxe sur les huiles minerales*) is levied on transport fuels only (Sw F 1.96 billion in 2003). Together, these consumption taxes amounted to almost 10% of federal revenue in 2003. Tax rebates are granted to agricultural and concessionary public transport. Half of revenue from the mineral oil tax and all the revenue from the surtax are allocated to the construction and maintenance of the road network.

⁵² Swiss Federal Office of Energy online information. Available at: <http://www.swiss-energy.ch>.

⁵³ WTO documents GATS/SC/83 and GATS/SC/83A, 15 April 1994.

66. According to the International Energy Agency (IEA), Swiss heating oil prices are among the lowest in OECD member countries, due to the low tax component, thus discouraging energy saving or the use of alternative energies with lower CO₂ emissions. Gasoline prices in Switzerland are lower than in neighbouring countries. This coupled with the depreciation of the Swiss franc against the Euro in 2003, accentuated the so-called "fuel tourism".⁵⁴ An estimated 10% of Swiss transport fuel sales are for foreign vehicles, many of them transiting. Diesel, however, is more expensive in Switzerland than in neighbouring countries.

(b) Natural gas

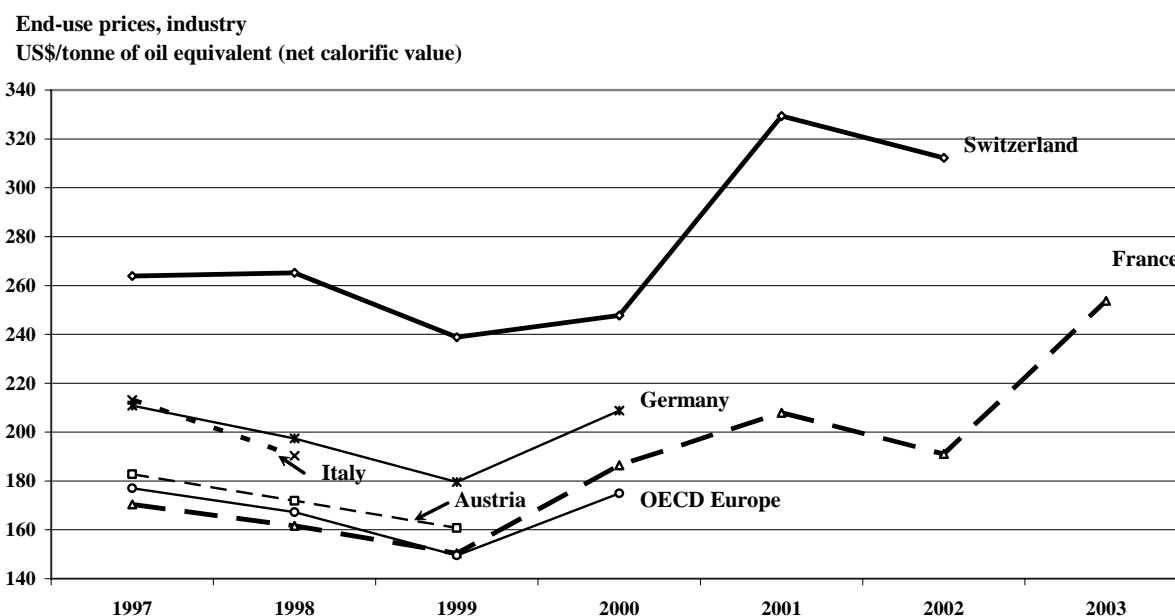
67. Sales of natural gas in Switzerland approached GWh34,000 in 2003, and are on an increasing trend. Imports from Germany, other European countries, and Russia supply the entire consumption as no gas is produced in Switzerland. Imports are duty free. Swissgas, a privately owned distribution company, is the major importer (72% of total imports of natural gas to Switzerland). The natural gas market is mostly under the *de facto* monopoly of cantons and municipalities, which own the majority of gas companies, including the seven largest with 50% of the market share. Even though both the pipeline law and the competition law of 2004 provide for third-party access, consumers are not in a position to choose their gas supplier because of lack of new foreign gas suppliers. The authorities ascribe this to the small size of the Swiss market and the absence of large industrial customers.

68. The prices of natural gas are either set or subject to approval by local authorities. The International Energy Agency (IEA) estimates that Swiss natural gas prices are among the highest in IEA member countries, owing to the topography, market size, low connection density and the fragmented market structure. These factors discourage market penetration of natural gas (Chart IV.1).

69. A state-owned company, Liechtensteinische Gasversorgung (LGV), distributes gas in Liechtenstein. At the time of the 2000 TPR, LGV held exclusive distribution rights over gas and set its price. The authorities have indicated, in the context of this review, that Liechtenstein has liberalized 35% of the natural gas market, and that large consumers of more than 10 GWh can profit from this liberalization.

⁵⁴ International Energy Agency (2003).

Chart IV.1
Price of natural gas in selected OECD countries, 1997-03



Source: International Energy Agency.

(c) Electricity

70. Electricity is the major source of energy produced in Switzerland. The majority of production is hydroelectric (about 56% of the total), from some 350 power plants. In addition, five nuclear power plants produce 40% of total electricity.⁵⁵ Other sources of electricity include waste, biomass (wood in particular), fossil-fired, solar, and wind energy. Total energy production was GWh 62,373 in 2003; imports reached GWh 42,352 and exports GWh 45,464. Trade in electricity is mostly with neighbouring countries: imports are mainly from French nuclear power plants, and exports are to Italy. Imports are duty-free. Imports or exports are not subject to licence.

71. The electricity branch is 72% owned by cantons and municipalities. Seven companies are vertically integrated and active mainly in production, transmission, and trade; 300 companies are active in production and distribution; 200 are (mostly) joint-owned by other utility companies and are active in production; and around 700 companies are mainly distributors and operate at municipal levels. Forty major firms account for more than 60% of total distribution. Related production, transmission, and distribution activities are still under *de facto* monopolies. Seven major electricity companies currently own the electricity grid.

72. Electricity is also the major source of energy produced in Liechtenstein: in 2003, total production of electricity was GWh 80,857 (some 25% of total electricity consumption). There has been a considerable increase in the number of electricity-producing entities: electricity is produced by

⁵⁵ Energie suisse online information. Available at: <http://www.energie-schweiz.ch/imperia/md/content/statistikperspektiven/elektrizitatsstatistik/3.pdf>.

six hydroelectric power stations (up from four in 1999); 17 solar power stations (up from 14 in 1999); and eight thermal stations using natural gas (up from one in 1999) and another using biogas.

73. Swiss electricity prices are set either by cantonal or communal authorities, or by companies, subject to approval by the Price Inspector (Chapter III(4)(iii)(d)). Therefore, the price differs between cantons and municipalities. Competition is not forbidden by law but has been prevented in practice by the absence of a third-party access obligation (see also below). This quasi-monopolistic situation and the imposition of various taxes, collected mostly at cantonal and/or communal levels, have contributed to relatively high average prices for small and medium-sized enterprises and households. In March 2004, a distribution company announced the cancellation of its contract with its monopoly supplier, claiming that its electricity could be "up to 40% cheaper if purchased on a free market".⁵⁶ However, the authorities indicate that large consumers with sufficient bargaining power are believed to have negotiated competitive prices.

74. In 1997, the average electricity price to Swiss industry was the second-highest amongst International Energy Agency member countries. In 2002, despite a considerable decrease, it was still the fourth highest, sizeably lower than in Italy but higher than in, *inter alia*, Austria, France, and Germany. In its 2003 review, the IEA still found electricity prices in Switzerland to be higher than the European average, particularly for small and medium-sized enterprises (Chart IV.2).⁵⁷ This was again ascribed to the taxes and charges set by the cantons and municipalities. The IEA also expressed concerns about the efficiency of the operation of many publicly owned small utilities companies and their considerable profits, noting that the current price-setting mechanisms lack transparency and enable cross-subsidies from one consumer group to another. In turn, high electricity tariffs potentially weaken external competitiveness of the Swiss industry. The authorities note that in contrast, household electricity prices are in line with the OECD average in purchasing power terms, and lower than the prices in three of Switzerland's neighbouring countries.

75. A major blackout occurred, in Italy and in certain southern regions of Switzerland early in the morning of 28 September 2003; it fuelled the debate on the regulation of electricity transmission and trade in Europe. Switzerland's cross-border trade takes place on the basis of quotas, negotiated by national transmission regulators on the basis of both physical transmission capacity and commercial criteria. Deviations of actual loads on cross-border transmission lines in excess of allocated trading quotas can lead to problems of the type that occurred in September 2003.⁵⁸ Yet in the absence of a Swiss regulator and an independent Swiss transmission system operator, French and Italian regulators negotiate quotas directly with the various proprietors of Swiss transmission lines without involving the Swiss federal authorities (Federal Office of Energy, SFOE). In this context, the SFOE has recommended the creation of a regulator and an independent transmission system operator to negotiate with operators in neighbouring countries and the EU Commission, and the passage of a comprehensive federal law on the electricity industry.

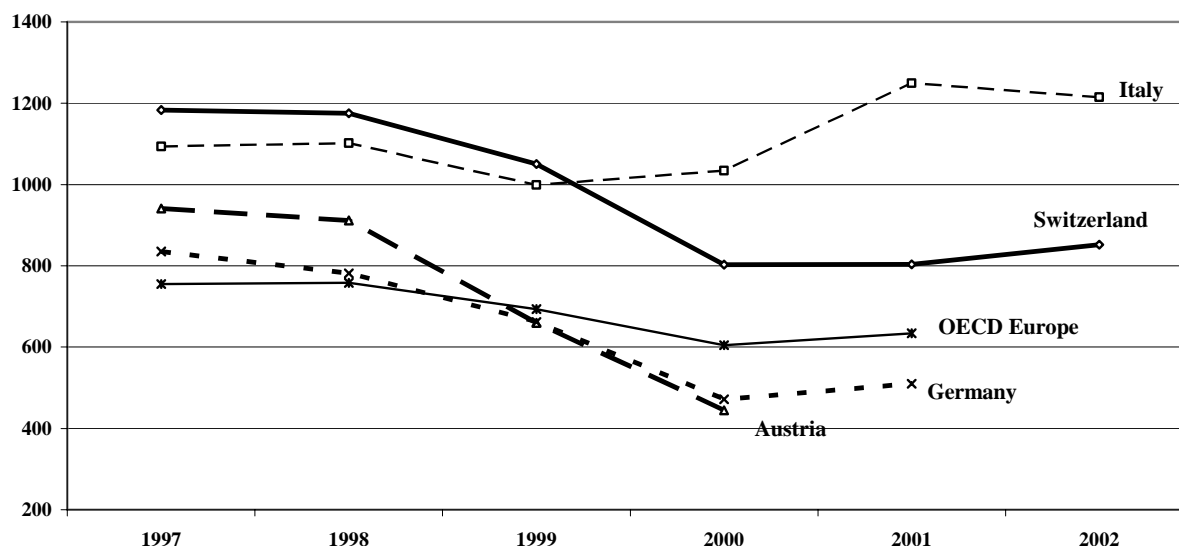
⁵⁶ *Le Temps*, "Un gros distributeur vaudois attaque les prix abusifs du Service lausannois de l'électricité", 11 March 2004. The distribution company is the Service Intercommunal de l'électricité de l'ouest lausannois.

⁵⁷ International Energy Agency (2003).

⁵⁸ Federal Office of Energy (2003), *Rapport concernant la panne de courant survenue en Italie le 28 septembre 2003*, November. Available at: <http://www.energieschweiz.ch/imperia/md/content/energiemarkteergertechniken/elektrizitt/strompanne03/4.pdf>.

Chart IV.2
Electricity prices in selected OECD countries, 1997-02

End-use prices, industry
US\$/tonne of oil equivalent (net calorific value)



Source: International Energy Agency.

76. Following the popular vote in 2002, the Supreme Court ruled that existing competition legislation enables any electricity customer or producer to ask for access to transmission networks. In order to prevent deregulation through case-by-case court rulings or agreements between utilities, efforts are being pursued to make the legal framework for the electricity market more transparent. Two laws are planned: a new electricity supply law, and an urgent temporary amendment to the Electricity Law so as to embed Swiss electricity trade within the EU cross-border trade framework. Key elements of the new legislation are the legal unbundling and operational merger of transmission operators into a single transmission system operator (Swissgrid); establishment of an electricity regulator; and eligibility of all producers and consumers with annual consumption exceeding 100 MWh (53% of the total Swiss market) to choose their supplier. The electricity supply law is scheduled to enter into force in 2007, subject to referendum.

77. The state-owned company, Liechtensteinische Kraftwerke (LKW), produces, imports, and distributes electricity in Liechtenstein. It also sets electricity prices. LKW imports electricity exclusively from the north-eastern Swiss supplier. The authorities indicated, in the context of this review, that a two-phase liberalization of the electricity market started in 2002, and that LKW no longer operates under exclusive rights. In the first phase, the market was opened for industries and large customers; in the second phase (2005), the market is to be liberalized for all consumers. The authorities also indicated that price reductions have already been realized due to the opening of the electricity market.

(d) Measures to protect the environment

78. Switzerland ratified the Kyoto Protocol in July 2003. The Swiss Kyoto target is an 8% reduction in greenhouse gas (GHG) emissions below 1990 levels by 2008-12. The CO₂ Law⁵⁹ provides for a 10% reduction of the 1990 levels of energy related CO₂-emissions (15% CO₂ emission reduction from heating and process fuel consumption, and 8% from transport fuel consumption), by 2010. The reductions are to be achieved primarily through voluntary action by the business community and consumers. If voluntary measures prove insufficient to reach the targets, a CO₂ tax (maximum of Sw F 210/tonne of CO₂) can be imposed as of 2004 onwards, subject to parliamentary approval. The oil industry association has proposed a voluntary "climate cent" of Sw F 0.01-0.019 per litre of transport fuels as an alternative to the CO₂ tax. Revenues from the "climate cent" would not be spent on the business sector and households, but for domestic CO₂ reductions, for buying GHG emissions permits or to invest in projects as foreseen under the Kyoto Protocol.

79. Based on the Energy Law⁶⁰, the Federal Council in 2001 launched "SwissEnergy", a ten-year programme to promote energy efficiency and renewable energy. Concerning fossil energies, it restates the 10% reduction target of the CO₂ Law. During its first three years (2001-03), SwissEnergy has not fully reached its targets. Electricity demand continued to grow at a robust pace so that the 10-year growth cap of 5% will probably be exceeded by a large margin. Heat generation from new renewables was on track to meet its 2010 target, whereas electricity generation from new renewables was about one third below its target path. Switzerland's CO₂ emissions have stabilized at the 1990 level (-1.7% as per 2002). Under SwissEnergy, some Sw F 75 million of subsidies were spent annually in 2001 and 2002 (federal spending and cantonal co-financing).

80. In Liechtenstein, the Clean Air Act regulates, *inter alia*, emission targets for stationary installations, maximum air pollution levels, measures to be taken if emission targets are exceeded, as well as fuel requirements. The revision of this Act, which entered into force in February 2004, represents a further commitment to reducing the emission of greenhouse gases. In 1996 Energy Conservation Act and its accompanying Ordinance were introduced to provide a legal framework for the promotion of environmentally sound use of energy and the use of renewable energy. The promotion of energy saving is a central pillar of Liechtenstein's energy policy. The authorities expect parliamentary approval of the Kyoto Protocol and its ratification before end 2004. Financial support is provided to facilitate energy saving in buildings, particularly as regards the refurbishment of old buildings, and solar installations.

(4) CONSTRUCTION

81. Under the GATS, Switzerland has bound market access and national treatment in all construction activities with the exception of certain construction work for civil engineering (ex CPC 513), special trade construction work (CPC 515), and rental services for construction equipment (CPC 518). Certain exemptions have been scheduled, as well as qualification requirements reflecting access restrictions to the Swiss labour market. The exemptions are: assembly and erection of prefabricated buildings and installation work for energy, heating, water, communications, and lifts. A variety of activities in these areas require permits or authorizations by cantonal or local bodies.

82. The WTO Government Procurement Agreement (GPA), the Inter-cantonal Concordat, and the bilateral agreement with the EU on government procurement have somewhat dismantled certain restrictions on construction activities in Switzerland (Chapters II(4)(ii) and III(2)(viii)). Nevertheless,

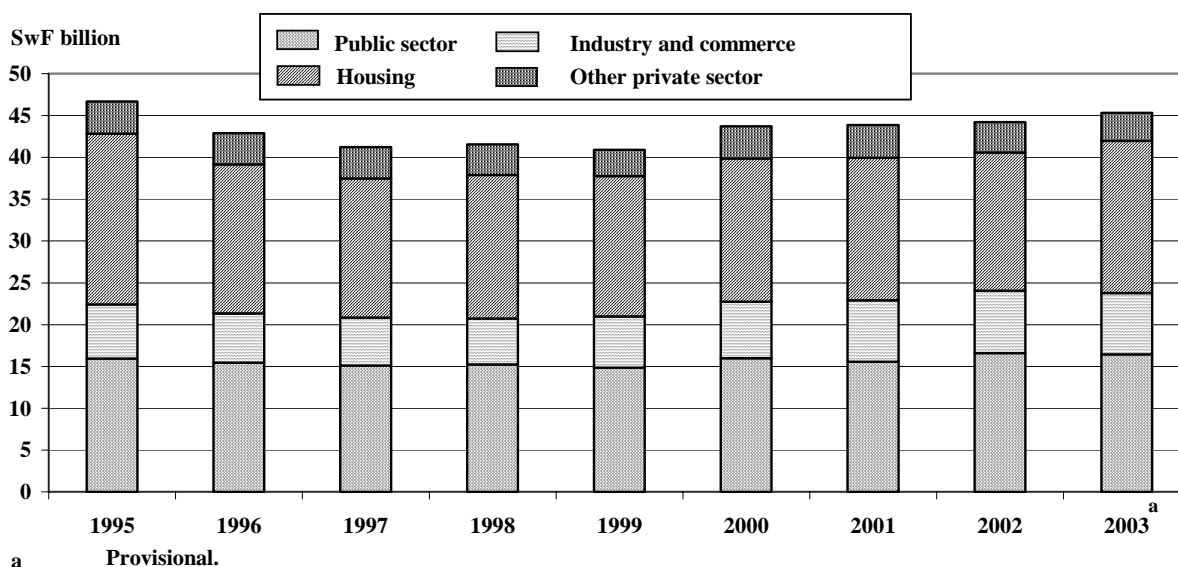
⁵⁹ *Loi fédérale du 8 octobre 1999 sur la réduction des émissions de CO₂*, RS 641.71.

⁶⁰ *Loi sur l'énergie*, RS 730.0.

construction services are still among Switzerland's highly protected activities.⁶¹ Restrictions to trade in this subsector are fourfold: standards and technical regulations have traditionally been both particularly stringent and specific to Switzerland; several professions in the subsector continue to be regulated at cantonal level, with restrictions on work by out-of-canton suppliers; in the past, there have been a relatively large number of restrictive arrangements and other anti-competitive practices among suppliers that limited entry of new, including foreign, suppliers; and the limits on work permits for foreign employees limit the competitiveness of this labour-intensive subsector. Together, these factors have contributed to maintaining construction costs high by international comparison. The authorities indicated that corrective measures were being implemented.

83. Accounting for 6% of GDP and 7.5% of employment (Table I.1), the construction industry is an important contributor to, and beneficiary of, overall economic activity in Switzerland. The industry nevertheless recorded negative growth rates from 1999 to 2002 (Table I.2). Construction spending over the past ten years has not been dynamic and, at SwF 45 billion, was lower in nominal terms in 2003 than in 1995 (Chart IV.3). Imports of construction services appear to be particularly small, representing less than 0.5% of total activity in the subsector.

Chart IV.3
Construction spending by project, Switzerland, 1995-03



Source: Swiss National Bank online:
http://www.snb.ch/f/publikationen/publi.html?file=/f/publikationen/monatsheft/aktuelle_publication/html/f/inhaltsverzeichnis.html

84. The construction industry has in the past suffered from various restrictive arrangements and other anti-competitive practices among suppliers. Inquiries by the Competition Commission (Comco) have covered kitchen and bathroom equipment, cables, bricks and construction stone, wallpaper, cement, concrete and road surfacing. Since 2000, the Comco has found four construction companies

⁶¹ WTO (2000).

guilty of collusion on prices when tendering for renovation of the National Library.⁶² In addition, an agreed regulation was reached with the Swiss Association of Builders (*Schweizerische Baumeisterverband*), which guarantees that the design of its competition rules is in conformity with the competition legislation. Another intervention concerned the new system of honoraries of the Swiss Society of Engineers and Architects (SIA).

85. The SIA, a member of the Swiss Association for Standardization (Chapter III(2)(vii)), initiates most standards for the construction industry. The SIA also issues reference wages, although these are ultimately negotiated between employers and employees. Stringent building zoning prescriptions cover areas such as land use ratios, minimum size of rooms, ratio of windows to ground surface, insulation, floor heights, and availability of bomb shelter. Construction products have yet to be included under the bilateral MRA with the EU. The authorities expect the new law on construction products⁶³, and the recent intercantonal agreement in this area, to help address these problems.

86. The 1995 Federal Law on the Internal Market (Chapter III(4)(c)) was expected to establish a unified construction market in Switzerland, by eliminating barriers such as local residence and establishment requirements, and membership obligations in local trade associations. The LMI states that goods, services, and labour legally offered in one canton may be offered in any canton. As noted by the Federal Council in 2004, this law did not succeed in creating the free movement of labour and services across cantons, and high entry barriers continue to limit competition in regulated professions of the construction industry.

87. About two thirds of all employees in the Swiss construction subsector are foreigners; and about one third have temporary work permits. The federal authorities determine an annual global quota of permits, distributed to cantons and down to individual firms. Under certain cantonal regulations (e.g. in Geneva), allocation to firms is made on a historical basis. A company wishing to perform a construction contract in Switzerland must obtain a temporary permit for each foreign worker. In general, these permits are valid only for the site for which they have been delivered.

88. In Liechtenstein, the non-financial services regime applies to construction services (Chapter II(6)(ii)). The GPA and the EEA regimes apply in the public sector. Liechtenstein has included MFN exemptions under Article II of the GATS to ensure "adequate" market access to local suppliers of construction and related engineering services. Market access for these services is thus contingent upon reciprocity.⁶⁴

(5) TELECOMMUNICATIONS

Switzerland

(a) Overview

89. Switzerland has one of the highest telephone penetration rates in the world. In recent years, as mobile telephone penetration has increased, there has been a decline in the teledensity, from 68 main lines per 100 inhabitants at end 1997, to 56 lines per 100 inhabitants at end 2002. By the end of 2002, there were 5.7 million cellular services subscribers, i.e. a penetration rate of over 79%, up from

⁶² For further details, see "*La Comco interdit le cartel des soumissions*". Available at <http://www.weko.admin.ch/publikationen/pressemitteilungen/00116/PC-181201-Submissionskartel-F.pdf?lang=fr>.

⁶³ *Loi sur les produits de construction*, RS 933.0, and related ordinance.

⁶⁴ See WTO document GATS/EL/83 and GATS/EL/83-A, 15 April 1994 for Final Lists of Article II (MFN) Exemptions for Switzerland and Liechtenstein, respectively.

42% at the end of 1999 (3 million subscribers).⁶⁵ Since 2001, the annual rate of increase in the number of mobile subscribers has declined, suggesting that the Swiss market is close to saturation level.⁶⁶ At 32%, the rate of Internet users is among the highest by OECD standards.

90. In October 1998, Telecom PTT was transformed into Swisscom, a limited-trading company. The Swiss Confederation, however, remains by law the majority shareholder of Swisscom, with 62.7% of the capital since April 2002.⁶⁷ Conflict can thus arise between the competition objectives contained in the Swiss legislation and their enforcement where they may be perceived as detrimental to the incumbent. Furthermore, the privileges associated with public ownership can have anti-competitive effects.

91. The liberalization of telecommunications services supply was followed by substantial increases in the number of firms, turnover, and the employment in the subsector throughout 1998-01.⁶⁸ New, including foreign, operators increased their shares of the Swiss national long-distance and international markets significantly. Since 1998, close to 300 providers have been registered for fixed network services and 40 for mobile services; several 3G licences were also awarded. Foreign companies continued to invest in Switzerland, reflecting the liberal market access and national treatment granted by Switzerland in most telecommunications services. Vodafone for example expanded its interests in Switzerland by purchasing shares in Swisscom mobile. France Telecom invested in Orange. The second biggest operator TDC Switzerland (Sunrise) is an affiliate of Danish TDC. The broadband service provider, Cablecom, is currently funded by an international group of venture capitalists. However, since Swisscom still operates over 99% of subscriber lines and 72% of local traffic, it still has a *de facto* monopoly on the local loop, despite the new pro-competitive legislative environment, including an obligation to unbundle the local loop. As a result, alternative providers (e.g. Sunrise, Tele2) operate mainly in the regional and national markets, carrying more than half of the regional and national traffic.

92. The failure to unbundle local loops put pressure on fixed line operators, which could only resell existing products and thus were dependent on small and even decreasing margins. Consequently, some (mainly smaller) operators, with limited resources, have left the Swiss market, due to increased competition and lower prices of telecommunications services. This has raised concerns regarding the sustainability of competition in the Swiss market.⁶⁹

93. The reforms increased competition and brought down prices of the fixed telephone services. For fixed telephony, the OECD's indicators for 2002 show that Swiss prices for both local and international calls are lower than the OECD average.⁷⁰ This may reflect, not only the competition in some markets, but that the regulator establishes price caps for access to fixed lines (at a retail level) provided by the holder of the universal service licence, Swisscom. Price caps for fixed national calls are also foreseen by the law, but in effect are unnecessary because of the existing price competition in the fixed communications market. However, the fixed costs associated with the calls tend to be higher by international comparison, reflecting the *de facto* monopoly that remains over access to lines. For Internet dial up, prices in Switzerland are slightly above the average of OECD countries, for access at both daytime and evening discount rates.⁷¹ The fixed parts of Internet dial up access costs are below

⁶⁵ OFCOM (2003).

⁶⁶ Ecole polytechnique fédérale de Lausanne (2003).

⁶⁷ Département fédéral de l'environnement, des transports, de l'énergie et de la communication, Press Release of 11 March 2002. Available at <http://www.uvek.admin.ch>.

⁶⁸ See WTO (2000) for details on the liberalization reforms.

⁶⁹ *La Vie économique*, January 2003, p.8.

⁷⁰ OECD (2003b), Tables 6.9 and 6.10.

⁷¹ OECD (2003b), Tables 6.4 and 6.5.

the OECD average but the usage costs seem to be higher than the OECD average. As a result of these relatively high prices, Internet dial up is currently under competitive pressure by broadband access via DSL and cable modems (see below).

94. According to a recent study, the rates charged in Switzerland for access to leased lines are still very varied and can be high in regions where Swisscom has the absolute *de facto* monopoly over this service. This *de facto* monopoly is not only due to a lack of competition but also to recent rulings by Swiss courts that, under the current law, prices of leased lines of the dominant supplier cannot be regulated.⁷² However, in the main metropolitan areas where alternative operators are competing to supply leased lines, the incumbent has already been forced to decrease prices. By international comparison, average prices for leased lines in Switzerland are relatively low.⁷³

(b) Participation in the WTO and commitments

95. Swiss commitments on basic telecommunications, attached to the Fourth Protocol of the GATS, largely reflect the market access situation that prevailed prior to the 1997 liberalization.⁷⁴ Following the passage of the 1998 Telecommunications Law (*Loi sur les télécommunications* – LTC, RS 784.10), Switzerland (in 1998) communicated revised commitments to the WTO. These provide for one of the most liberal and competitive environments among WTO Members.⁷⁵ In particular, Switzerland has attached the Reference Paper to its WTO Schedule of commitments in basic telecommunications. Its commitments also include the provisions of the WTO Annex on Telecommunications. The Reference Paper specifies a number of competitive measures to prevent major suppliers from engaging in anti-competitive practices. The Annex contains disciplines regarding, *inter alia*, leased lines. Under the LTC, no restrictions target foreign suppliers (in particular) in the Swiss telecommunications market.

96. A number of important shortcomings in the area of competition safeguards persist; these include the lack of enforcement power to prevent the dominant supplier, Swisscom, from engaging in any anti-competitive practice (section 1 of the Reference Paper) in "any" relevant market. These shortcomings may not fit in with the spirit of Switzerland's WTO commitments, and may affect both Swiss and foreign new entrant suppliers. The authorities have pointed out, however, that under the revised Act on Cartels (Chapter III(4)(iii)), the Competition Commission is now empowered to impose direct sanctions for first-time infringements. As under other competition regimes, an undertaking that has a dominant position and abuses its market power may now be fined directly.

(c) Regulation of telecommunications services

97. Under the Telecommunications Law (LTC) and the accompanying Ordinance (*Ordonnance sur les services de télécommunications* (OST)), as last amended in 2003, suppliers of telecommunications services have to obtain a licence from either the Federal Office of Communications (OFCOM), which belongs to the Federal Department of Environment, Transport, Energy and Communication (DETEC), or from the Federal Communications Commission (ComCom).⁷⁶ OFCOM has administrative competency for telecommunications regulation. It grants radio licences that do not involve any telecommunications services (e.g. company radio and amateur radio licences), and licences to suppliers of fixed network services (not subject to tendering

⁷² Ecole polytechnique fédérale de Lausanne (2003).

⁷³ OECD (2003b), Table 6.18.

⁷⁴ These commitments are contained in WTO document GATS/SC/83/Suppl.3, 11 April 1997. See also WTO documents S/C/N/271-296, 26-27 February 2004, on technical prescriptions.

⁷⁵ WTO document GATS/SC/83/Suppl.3/Rev.1, 28 January 1998.

⁷⁶ Licence applications are to be dealt with within six months of submission.

procedures). Suppliers of all telecommunications services in Switzerland must register with OFCOM. ComCom, which is an independent extra-parliamentary commission, is responsible for the assignment of telecommunication licences allocated by public tendering (e.g. licences for supply of universal services), and for the approval of national frequency and numbering plans. It also rules on interconnection disputes. The stated objective of the LTC is to ensure private and business users the availability of quality and affordable services, both nationally and internationally. The law aims to also guarantee universal services, and efficient competition.

98. Providers of telecommunications services are required to ensure portability of numbers and freedom of choice in the selection of suppliers of national and international connections. The Swiss interconnection regime is based on an *ex post* regulation: suppliers interested in concluding an interconnection contract must first negotiate the terms (the principle of primacy of negotiations applies). If, after a three-month period, the negotiations are unsuccessful, the parties may then appeal to ComCom, which, on the basis of OFCOM's recommendations, will settle the dispute and fix the conditions for interconnection. By law, interconnection prices must be cost-oriented only in the presence of market dominance; in the absence of market dominance, they must follow market standards. In both cases, appeal to ComCom is possible. Cross-subsidization of telecommunications services is not legally prohibited.

Universal services

99. Articles 16-18 of the LTC provide for, *inter alia*, the availability of reliable universal services at affordable prices. Universal services comprise: public telephony (connection and transmission of speech and data); access to emergency call services and localization of these calls; an adequate network of public telephone kiosks; access to directories of subscribers in Switzerland; and special services for the hard of hearing and visually impaired. The Federal Council also determines the minimum quality criteria that the universal service provider must fulfil. Following a public invitation to tender for the award of the universal service licence by Comcom, Swisscom is the only universal service provider until 2007.

100. The Federal Council fixes upper price limits for telephone connection to users, and national calls. From 1 January 2003, the universal service guarantees everyone's right to an analogue connection for a maximum of Sw F 23.45 per month (excl. VAT) or a digital connection (ISDN or a comparable technology) for Sw F 40.00 per month. The upper price limits for national telephone calls were set at Sw F 0.11 per minute for daytime calls, Sw F 0.09 per minute for night-time calls and Sw F 0.06 per minute during the week-end. In order to finance uncovered costs of universal services, ComCom may charge a licence fee on other telecommunications services but, according to the authorities, this has never been imposed.

101. Since the liberalization in 1998, the Office of the Price Inspector (Chapter III(4)(iii)(d)) has initiated three actions against Swisscom. In 1998, the Price Inspector refused the substantial price increase for access to Swisscom's telephone directory database. In a second case, the Price Inspector obliged Swisscom to detail the costs for interconnection provided to an alternative operator. In a third case, in 2001, on Swisscom's request, the Federal Council looked into the possibility of raising the price of the fixed-line subscription from Sw F 23.45 to Sw F 29. The Price Inspector was consulted on the matter and advised the Federal Council to maintain the price at the same level.

Dominant carriers and competition issues

102. The Competition Commission (ComCo) operates in close cooperation with OFCOM and ComCom (Chapter III (4)(iii)) in cases relating to telecommunications services. Market dominance is

examined by ComCo on a case-by-case basis as part of interconnection procedures. Cases relating to dominant position have proven difficult to handle, given the provision of the LCart on this issue and the absence of sufficient power granted to regulators. This situation has changed, however, with the new competition legislation that entered into force in 2004.

103. Telecommunications services providers with a dominant market position (including suppliers of part of the universal services) must provide interconnection to other suppliers without discrimination and in accordance with transparent and cost-related principles. Interconnection prices of a market-dominant provider are regulated on the basis of the "long-run incremental costs" (LRIC) method applied by most European countries. Dominant providers must publish a basic offer every year. Recently, ComCom reduced Swisscom fixnet interconnection prices by 25% to 35%. The parties appealed to the Federal Supreme Court, with the result that ComCom's decision is not legally valid. So far, ComCom has not determined mobile interconnection prices.

Leased lines

104. In the landmark case between Commcare and Swisscom in 2000-01, both ComCom and ComCo ruled that leased lines were subject to the interconnection regulations. Accordingly, ComCom substantially reduced some of Swisscom's leased line prices. Swisscom submitted a complaint against ComCom decision to the Federal Supreme Court, and successfully contested the obligation to provide leased lines under interconnection conditions. The Federal Court concluded that neither leased lines nor transmission media could be subject to the interconnection regime, since there was no adequate legal foundation for the regulation of leased line prices of the market-dominant provider.

105. On 26 February 2003, the Federal Council amended the OST to put leased lines under the interconnection regime as of 1 April 2003. However, as shown by the Commcare vs Swisscom case, without a law on the matter, the judicial powers have the final ruling against the regulator's pro-competitive action. In order to achieve a solid political consensus around further market liberalization, the Federal Council has decided to incorporate leased lines into a revision of the Law on Telecommunications.

106. Subject to applicable legal provisions, Swisscom determines the prices, availability, quality and capacity of its leased lines, mainly used by business customers. Since duplication of leased lines is costly and uneconomic especially in the last mile, Swisscom holds a *de facto* monopoly in some parts of the leased line market, although there is no legal monopoly. This has obvious negative consequences on Swisscom's competitors who are, in practice, forced to rely on these lines especially in the last mile.

107. Swisscom also determines the prices, availability, quality, and capacity of leased lines for Internet access using copper wires. This amounts to a monopoly, because the use of cable TV and main power networks for the transmission of telecommunications services is not yet an alternative to copper wires everywhere in Switzerland. Internet via cable TV is a valid alternative for private Internet customers, but cable TV is still not available everywhere. However, business customers can depend on leased lines for their data exchange, while cable TV and other infrastructures are not well suited to provide an alternative. The authorities have indicated that leased lines between major destinations (e.g. Geneva to Zurich) can nevertheless be purchased in a competitive situation, as many operators offer capacity.

Unbundling the local loop

108. As of September 2004, Swisscom had yet to provide unbundled network elements on a non-discriminatory basis, and exploited the connection network exclusively, at a flat fee of Sw F 25.25 per month, the highest rate permitted by the law. Thus, irrespective of their chosen telecommunications provider, customers in Switzerland must, in addition, pay this amount to Swisscom on a separate bill. The OST (as amended) put three unbundling variants under the interconnection regime as of 1 April 2003: bit stream access, shared line access (where one supplier would have voice frequency and another non-voice frequencies on a given line), and full access.

109. In July 2003, TDC Switzerland (Sunrise) requested ComCom to oblige Swisscom to provide access to the local loop, after having attempted, as required by the LTC, to negotiate the terms of inter-connexion with Swisscom. In February 2004, ComCom announced that it considered the LTC to constitute a sufficient legal basis to unbundle the local loop.⁷⁷ The next step in this ongoing procedure would be to determine whether Swisscom enjoys a dominant position, and if so, to fix the conditions of access to the local loop.

Proposed changes to the legislation on telecommunications

110. On 12 November 2003, the Federal Council proposed the amendment of the Law on Telecommunications (LTC).⁷⁸ This amendment would give Swisscom's competitors direct access to households, and strengthen the instruments that guarantee effective competition, improve consumer protection and protect personal data. The main objectives of the amendment are to: unbundle the local loop; eliminate the need for state authorization for access to the telecommunications market, while telecommunications services providers remain subject to OFCOM supervision; create a conciliation body to resolve simply and quickly any disputes between users and providers of telecommunications services; and ban mass mailing of unsolicited advertising messages (spamming) by amending the law against unfair competition. The authorities indicate that the proposed bill is based, to a large extent, on the new legal framework of the European Union, which entered into force (in the Member States) on 25 July 2003. In contrast with the EU legislation, Article 11 of the draft LTC foresees an ex post regulation, which gives primacy to negotiations regarding access to services and resources of the dominant operator. Furthermore, the draft law does not provide for the control of retail prices except for value added services (Article 12b).

Liechtenstein

111. Under the 1921 Postal Treaty between Switzerland and Liechtenstein, which was terminated in 1999, the Swiss PTT operated the telecommunications network in Liechtenstein for more than 75 years. Following Liechtenstein's membership in the EEA, Liechtenstein enacted its own Telecommunication Law (TelG) in 1996, and an Ordinance on individual licensing for the provision of telecommunications services in 1998. Liechtenstein TeleNet AG (LTN) was established in 1998 as a fully state-owned company to which the management of the national public telephone network was transferred. A National Telecommunication Policy was formulated in 1997 and was amended by the government in October 2002 for fixed network operation. This amendment defines the framework for Liechtenstein's national telecommunication policy, and introduced changes in the issuing of licences.

112. In addition to its network management (operation and maintenance) licence, the responsibility for network planning has also been transferred to LTN. LTN is required to make its infrastructure

⁷⁷ Comcom Press Release, "Comcom makes a partail decision on unbundling", 20 February 2004. Available at: <http://www.fedcomcom.ch/comcom/e/communiques/2004/240.html>.

⁷⁸ The draft law is available online at: <http://www.admin.ch/ch/f/ff/2003/7303.pdf>.

available to other licensees in a neutral, non-discriminatory, and cost-based manner. LTN also provides certain non-basic telecommunications services to licensed retail entities. The Liechtenstein Office for Communications is the national regulatory authority. It processes applications for both individual and general licences. With the exception of the basic services, and of certain types of services and equipment for which an individual licence is required, the supply of all other services is subject to a general licence.⁷⁹ Interconnection regulations are based on the relevant EU principles. The annual turnover of telecommunications services is currently around Sw F 90 million.

113. In 2000, a fully Swisscom-owned Liechtenstein legal subsidiary, Telecom FL AG, was granted two licences for the supply of local and international basic telecommunications services, as well as a continuity licence covering all other telecommunications services formerly provided by Swisscom. The scope of the continuity licence was to be reduced upon entry of new suppliers in the market and the emergence of competition in the area concerned. In October 2003, the state-owned LTN purchased Telecom FL AG, which became its subsidiary. The licences were renewed in 2003 for an additional three years. Owing to limited availability of frequency resources, the Liechtenstein Government has limited the maximum number of mobile telephone service suppliers to four; three companies are in operation.

(6) POSTAL SERVICES

114. The supply of telecommunications and postal services in Switzerland remained under state monopoly until the end of 1997. Upon the entry into force of the Telecommunications Law on 1 January 1998, the monopoly was split into Swiss Post (in charge of postal services), and Telecom PTT (for telecommunications services) – Swisscom since October 1998. Swiss Post is fully owned and controlled by the Confederation. At the time of the last TPR, in 2000, the Swiss postal market was divided into three distinct segments: monopoly of Swiss Post over domestic mail and incoming international mail up to 2kg; a non-reserved area (outgoing international mail, international parcels, domestic parcels between 2 and 20kg., newspapers); and other, fully liberalized, services (e.g. courier services, express). In addition, with a network of 2,722 post offices in 2003 (down from about 3,500 in 2000) Swiss Post manages 2.6 million deposit accounts and is thus a significant participant in the financial services market (see also Chapter IV(11)).

115. On 1 January 2004, parcel transport was fully liberalized, thus abolishing Swiss Post's monopoly on postal services for parcels up to 2kg. The "*Loi fédérale sur la Poste*", as amended in 2003 (LPO – RS 783), divides the Swiss postal services market into three (new) distinct segments: "reserved" services, offered exclusively by Swiss Post as a monopoly under its universal services obligations; non-reserved services, also offered by Swiss Post under its universal services obligations, but in competition with other suppliers; and liberalized services. The universal services obligations are defined in the LPO. Reserved services consist of domestic and incoming international mail for letters, defined as any mail of dimensions not exceeding 353 x 250 mm, a thickness of 2cm and a weight of up to 1kg.

116. The non-reserved services that can be offered by licensed private operators (in competition with Swiss Post) consist of outbound international services for letters, as well as all postal services (domestic and international) for packages up to 20kg. Licences are provided according to the revised "*Ordonnance sur la Poste*" (OPO - RS. 783.01); they are required for all non-reserved services if sales exceed Sw F 100,000, except for newspaper and magazine subscription services. All other services can be provided freely by private, including foreign, suppliers, and are not subject to monopoly rights or licensing. A lowering to 100 g of the maximum size of letters subject to the postal

⁷⁹ See WTO (2000) for details on the licensing system, and for the pricing system for telecommunications services.

monopoly is foreseen for 2006, if a study to be commissioned in 2005, concludes that Swiss Post can finance the universal services obligations.

117. Under the OPO, access and quality of universal services, as well as consumer satisfaction, are monitored by a regulatory authority (PostReg), which is independent from Swiss Post. PostReg also operates the concessions system and documents the licensing process. If Swiss Post establishes that it cannot cover the cost of its universal services obligations despite market-based management practices, licensing fees of at most 3% could be levied on sales by other suppliers; the revenue is to be allocated to finance its non-reserved universal services. Licensed suppliers no longer wishing to pay the licensing fee must submit their services to an annual quality evaluation and prove that they supply the entire territory uniformly, and that charges are independent of distance. In addition, they must communicate which quality standards that they commit to maintain.

118. Following Liechtenstein's membership in the EEA, it enacted its own law on postal services in 1999. Postal services are supplied by Liechtenstein Post AG, a fully state-owned company with exclusive rights over letters, in line with EU directive (97/67/EC) on postal services. On 10 June 2002, the EC adopted a new Directive (2002/39/EC) on postal services. Accordingly, Liechtenstein adapted its law on postal services in March 2004. The new adaptation limits the exclusive rights of Liechtenstein Post AG to letters up to 100 g until 31 December 2005, and up to 50 g subsequently. All other postal services (e.g. parcel transport, courier services, express delivery) have been fully liberalized, and Liechtenstein Post AG provides them in competition with private operators. No private operators are established in Liechtenstein, but private Swiss operators also serve the Liechtenstein market.

(7) OVERLAND TRANSPORT

Switzerland

119. The supply of international transport services (passenger and freight), as well as transit traffic in Switzerland and Liechtenstein, takes place under bilateral or multilateral agreements and is subject to reciprocity provisions. In the WTO, Switzerland and Liechtenstein have maintained certain MFN exemptions on road transport under Article II of the GATS.

120. Given Switzerland's location at the centre of Europe, a large share of North-South merchandise trade transits through the country. The Federal Office for Transport is the regulatory body for public transport; it grants licences and concessions, issues security certificates, and determines the pricing policy for access by companies to the rail network. In the case of regular passenger transport, the concession is subject to proof that the service "does not have any detrimental effect on the national economy".⁸⁰ The concession is granted in principle for a period of ten years renewable.

121. Under the Swiss Constitution, the Federal Government has the mandate to transfer the largest possible share of merchandise freight from road to rail transport. This mandate is to be achieved via three measures: the first is the modernization of Switzerland's public transport infrastructure, at an estimated cost of SwF 30 billion over the next 20 years; the second is the introduction, since January 2001, of the heavy vehicle fee, based on road use; and the third is the reform of rail transport, expected to stimulate competition in this subsector and thus facilitate the road-rail transfer.

⁸⁰ See also Switzerland's commitments in WTO document GATS/SC/83, 15 April 1994.

122. The first phase of the rail transport reform began in 1999, and included an obligation for companies to distinguish transport services from transport infrastructure for accounting and organizational purposes. It also established access to the Swiss rail network for all companies, against payment. The bilateral agreement with the EU on land transport extended this access to EU/groupings and to EU/railway undertakings (for combined transport) as of 1 June 2002. However, access can be granted to any railway company outside the EU on the basis of a bilateral agreement with the country where the railway company is established and if certain conditions are met. In 1999, the Swiss Federal Railways (SBB) was transformed into a joint-stock company and was granted more management powers. However, the SBB is still fully owned by the Confederation and therefore remains under the supervision of the Federal Council. The SBB still holds exclusive rights over long-distance passenger services. In exchange for this privilege, the SBB is assigned specified basic tasks by the Federal Council (e.g. regular supply of basic rail transport services throughout the country). The Swiss Confederation and cantons also provide financial assistance to suppliers of rail transport services for services ordered by the public authorities.

123. The authorities consider the first phase of the rail reform as successful. This reform increased competition in freight transport. Some 25 Swiss companies are now operating over other companies' networks. A second reform phase, which has not started (as of mid-2004), has the main objectives to harmonize the financing of the rail infrastructure. Rail freight was 61 million tonnes in 2000 (about 34% of total tonne-kilometre freight transport); around 89% of the total revenue from rail freight was earned by the SBB.

124. In parallel with its reforms, Switzerland has several bilateral agreements on market access in road transport. Bilateral agreements on the development of rail infrastructure have been concluded with France, Germany, Italy, and Austria. The agreement between Switzerland and the EU on land transport (RS 0.740.72) led to further liberalization of market access for international road and rail services, albeit on a bilateral basis (Chapter II(4)(ii)). However, it does not allow road transport between two points situated on the territory of a EU member state or on the Swiss territory (cabotage). This agreement replaced prior bilateral agreements between Switzerland and individual EU member countries for market access in bilateral road transport, and road transit traffic, and, from 2005, allows Swiss hauliers to carry goods between the EU members states.⁸¹

125. Since 2000, bilateral agreements on road transport of both passenger and freight have also been concluded with a number of non-EU States.⁸² These agreements establish a legal framework designed to facilitate reciprocal access to road transport services, as well as transit trade. In addition, exchanges of letters with several countries specify quotas authorizing merchandise transport in Switzerland using 40-tonne vehicles, as provided for by the bilateral agreement on land transport with the EU.⁸³

126. Public road transport services are provided by companies that are majority publicly owned (cantons and townships) and by the Swiss Post.

⁸¹ Switzerland has concluded bilateral agreements on road transport with 44 countries, including EU Member States (WTO document GATS/SC/83, 15 April 1994).

⁸² Belarus, Bosnia-Herzegovina, Kazakhstan, Lithuania, and Ukraine.

⁸³ The countries are Estonia, Hungary, Latvia, Lithuania, Poland, Russia, Slovenia, and Turkey. All except Russia and Turkey are now EU members.

Liechtenstein

127. The state-owned company, the "Liechtenstein Bus Anstalt", which was involved in the public transport business, was liquidated in 2003. Public transport services are currently supplied by the Ministry responsible for transport.

128. Liechtenstein has 250 km of highways and 18.5 km of railways. The railway track is owned and operated by Austrian Federal Railways; Liechtenstein has no rail company. International transport services for goods and passengers are supplied by private companies. Carriers for road freight and passenger transport need a permit issued by the Office for Economic Affairs. The permit is granted if certain criteria relating to, *inter alia*, reliability, financial standing, qualification or business establishment are met. In addition, for international transport in the EEA, carriers need a special licence issued by the Office of Customs Affairs. Bilateral agreements, concluded by Liechtenstein with Austria and France, provide for quotas on road transport of goods (directly from each party to the agreement) to third countries.

129. In 2001, Liechtenstein also introduced the Swiss Heavy Vehicle Fee (HVF) in parallel with Switzerland (see above).

(8) AIR TRANSPORT

130. This section focuses essentially on Swiss policy on air transport services as, under an agreement concluded in 1950 and amended in 2003, the Swiss legislation on civil aviation applies to Liechtenstein. However, in 2002, as a result of its EEA membership, Liechtenstein was required to establish basic legislation to comply with the EEA rules on civil aviation. This aviation legislation allows the continuation of Swiss regulation in Liechtenstein, in addition to the EEA rules on civil aviation, which entered into force in 2003.

(b) Recent developments

131. As noted in the 2000 TPR of Switzerland and Liechtenstein, air transport was among the industries likely to be the most affected by Switzerland's non-participation in the EEA. Without EEA carrier status, Swiss companies could not gain cabotage rights; they remain restricted in their route strategies in the larger European market. Swissair, the former Swiss national airline, had estimated the cost of these measures in the EU market alone at Sw F 200 million annually. In turn, higher travel costs and fewer connections than among EEA members had an adverse impact on user industries. The recent agreement with the EU, described below, largely addresses these issues, but its effects may be partly superseded by the external factors that have affected the industry both in Switzerland and worldwide since 2000.

132. Until September 2001, SAirGroup, a holding company, was the major supplier of air transport services and had a dominant position in the Swiss civil aviation market. At the end of 1999, SAirGroup employed nearly 20,000 persons in Switzerland. It was 18.3% owned by the Confederation, the cantons, communes, and cantonal banks; 16.8% by foreigners; and the balance by Swiss nationals (including banks and insurance companies). In September 2001, SAirGroup went bankrupt. Aside from the general sectoral crisis related to the global economic slowdown, and to the 11 September attacks in the United States, the collapse of SAirGroup was ascribed to its past expansionary strategy (the company had purchased a number of European airlines such as Sabena, LOT, and Air Liberté).

133. The company sold its 70% participation in Crossair, the second largest Swiss airline, to two banks for Sw F 260 million; Crossair took over two thirds of Swissair's airline operations; and the

decision was taken to transform Crossair into a new Swiss airline, "Swiss International Airline", in which the Swiss Confederation invested Sw F 600 million. The Federal Assembly, on 17 November 2001, also approved a further subsidy of Sw F1.45 billion under the *Programme de redimensionnement de l'aviation civile Suisse*. The authorities indicate that this consisted of a loan (in 2 steps) that would allow Swissair to continue operations until the end of the winter schedule 2001-02 when it would go out of business, thus retaining its vital air connections until the new company became operational. Furthermore, several critical services at Swiss airports were operated by subsidiaries of Swissair, and a sudden termination of the company would have totally disrupted their activities, thus impeding the operation of the main Swiss airports.

134. The results for Switzerland's national airline Swiss International Air Lines Ltd. (Group) in 2003 showed continued losses of Sw F 498 million. The company was undergoing restructuring, comprising the elimination of 3,000 jobs and a 30% reduction of the fleet, combined with a downsizing of the airline's geographical coverage. The net loss for 2003, after restructuring costs, interest and taxes, amounted to Sw F 687 million; the previous year's net loss was Sw F 980 million.⁸⁴

135. The Agreement between the European Community and the Swiss Confederation on Air Transport (the Agreement with the EU) entered into force in June 2002. Although it does not fully liberalize the air transport market, the agreement considerably improved market access for EU firms in Switzerland and for Swiss companies in the EU, and increased the attraction of Swiss airlines as potential members of international alliances.

(c) Regulation of air transport

136. Swiss legislation regarding civil aviation is based on domestic law and international agreements, the latter being of particular importance given the small size of the country. The main domestic law is the Federal Law on Air Transport (*Loi fédérale du 21 décembre 1948 sur l'aviation – LA, RS 748.0*), together with its implementing ordinances, mainly the "*Ordonnance sur la navigation aérienne*" (OSAv, RS 748.01). Policy implementation and enforcement takes place mainly at the Federal Office for Civil Aviation (OFAC), which operates under the Federal Department of Transport, Communications and Energy. OFAC's tasks include implementing and enforcing policies (including licensing and registration) on civil aviation, the drafting of legislation, and the negotiation of international agreements.

Traffic rights

137. Companies that provide commercial air transport services to, from, or within Switzerland must have an operating permit granted by the OFAC. In order to obtain an operating permit, companies must have been granted an Air Operator Certificate (AOC) by OFAC. Based on EU technical regulations, the AOC, *inter alia*, testifies that, for each type of service (e.g. short haul, long haul), the company has sufficient financial means to maintain flights for at least 24 months. Once they possess an operating permit and an AOC, companies may apply to OFAC to obtain route licences to serve particular routes. OFAC's decision to grant both operating permits and route licences is based partly on ownership and control provisions. Domestic routes are in principle reserved for "Swiss-based carriers" as defined below. However, OFAC has discretion to admit foreign carriers, based on "the common interest". For international routes, OFAC admits Swiss or foreign carriers, in accordance with the relevant bilateral agreements applicable to those routes.

138. The Federal Council has authority to decide the extent to which a commercial air transport company must be owned or effectively controlled by Swiss citizens to be considered as a Swiss-based

⁸⁴ See Press Release of 23 March 2004, available at <http://www.swiss.com>.

company (LA, Art.27). As stipulated in the OSAv, the company must be registered in Switzerland, effectively controlled and majority-owned by either: Swiss companies or nationals; foreigners residing in Switzerland; or foreign companies assimilated to Swiss citizens or companies by virtue of international accords (such as the Agreement with the EU described below).⁸⁵ Crews engaged in domestic air passenger and freight services must be EU or EFTA nationals or Swiss residents. Crews from third countries can be employed if the seco deems their employment necessary.

139. The "wet" leasing of aircraft (with crew and, typically, fuel, maintenance, and insurance) to Swiss carriers is not restricted to Swiss companies or citizens. Commercial provisions on the wet or dry leasing of aircraft are generally included in bilateral agreements concluded by Switzerland; these provisions range from a very liberal to a very restrictive regime, depending on the requirement of the partner to the agreement. Switzerland considers the dry leasing of aircraft as a business service, along with the leasing of other industrial equipment without operators, and therefore not subject to ownership and control restrictions.

140. Since the entry into force of the Agreement with the EU, and partly reflecting the downsizing of the national carrier Swiss, a large number of new, mainly low-cost, airlines have been granted traffic rights on both domestic and international routes.⁸⁶ For example, in October 2003, OFAC granted the German carrier Cirrus the right to operate domestic flights between Geneva and Lugano for six months because the service was no longer supplied by the national carrier Swiss; a Swiss company (Flybaboo) had announced its intention to operate the service once it had the operating licence and AOC. In addition, some of the carriers already present in Switzerland have extended their offers.

Airport services

141. Liechtenstein does not have an airport. Switzerland has three main international airports, at Zurich (the principal airport with almost two thirds of air traffic), Geneva, and Basel-Mulhouse, and ten regional airports. All Swiss airports with commercial services are owned by cantonal governments.⁸⁷ All relevant functions are provided either by the airport or by airport-controlled companies. According to the authorities, no state subsidies are granted to the airports. However, the cantons in some cases provide interest-bearing loans to their airports (e.g. a Sw F 300 million loan by the Canton of Zurich to Zurich airport outstanding in 2004).

142. Airport services in Switzerland generate an annual turnover ranging from € 60 million in Basel-Muhlouse to Sw F 200 million in Geneva, and Sw F 530 million in Zurich (of which Sw F 240 million in the non-aviation subsector). The revenues from airport charges, (weight-, noise- and emission-related landing charges, passenger charges, parking charges and handling charges) are earmarked for the financing of all airport-related expenses. Airport charges are not formally approved by the aviation authority. However, they are subject to the general supervision of the Federal Office for Civil Aviation and the Price Inspector. These bodies apply ICAO Policies on Charges for Airports

⁸⁵ For limited companies, over half of the voting shares must be nominal, and be owned by Swiss residents or companies, or by foreigners who are associated with them by virtue of international accords.

⁸⁶ The new carriers from EU countries (as from 1 May 2004) serving domestic and international routes since 2002 are Air Berlin, Cirrus, City-Air Germany, European Air Express, Germania, Germanwings, Hahn Air, and Hapag Lloyd Express (Germany); Air Nostrum (Spain); Blue 1 (Air Botnia) (Finland); British Midland Regional, British Airways CitiExpress, Duo Airways, and My Travel Light (UK); Cimber Air (Denmark); Hellas Jet (Greece); InterSky and Styrian Spirit (Austria); SkyEurope (Slovakia); Transavia (Netherlands); Volare Airlines (Italy); and Virgin Express (Belgium). Furthermore, Helvetic Airways is a new Swiss carrier.

⁸⁷ Basel-Mulhouse is a bi-national airport, owned by the Swiss authorities (Confederation and Cantons) and the French Government.

and Air Navigation Services. A recent debate has emerged regarding the fees charged to airlines for services at the Geneva airport. The latter, in November 2003, announced the development of differentiated airport fees based on the type of service provided, with a lower fee available in its old terminal building for low-cost carriers.

Ground handling

143. At the time of the 2000 TPR of Switzerland and Liechtenstein, airlines with passenger traffic shares exceeding 4.5% in Geneva and 1.5% in Zurich were allowed to provide their own ground-handling (including check-in); they were not allowed to supply these services to third parties.⁸⁸ In January 2002, Swiss legislation on ground handling was harmonized with that of EU Directive 96/67.⁸⁹ This directive covers every aspect, including mutual handling and third-party handling, for passenger and/or cargo operations. According to the authorities, a new system is now in place.

Slot allocation

144. Until 2002, the allocation of slots was generally based on "grandfather" rights. Since then, the authorities have indicated that Swiss regulations on slot allocation have been harmonized with EU regulation 95/93, and that Swiss slot-allocation regulations for international flights follow the International Air Transport Association (IATA) World-wide Scheduling Guidelines. Sales of slot are not permitted in Switzerland. The authorities indicated that Verein Slot Coordination Switzerland is an independent, non-profit organization. It started activities on 1 April 2004. The OFAC oversees the organization. A slot coordination committee will be created for Geneva and Zurich airports by the autumn of 2004.

Air traffic control

145. In 2001, the public company Swisscontrol and the Swiss Air Force, which formerly controlled civil and military air traffic within Swiss airspace, were merged into Skyguide, a new publicly owned company, in order to improve efficiency. Skyguide is responsible for the management and monitoring of civil and military air traffic in Swiss airspace, at Zurich, Geneva, Berne, and Lugano, and military airports (but not EuroAirport Basel-Mulhouse-Freiburg), as well as in the sectors of adjoining non-Swiss airspace it has been assigned.⁹⁰ Switzerland participates in the EU's "*Ciel Unique*" project.

Repairs, maintenance, and measures relating to insurance

146. Liechtenstein has one maintenance facility. In Switzerland, air carriers are not required to use domestic repair and maintenance facilities.⁹¹

147. In October 2001, the Federal Council provided Swiss companies with third-party war and terrorism aviation liability, until 24 December 2001, following the cancellation of this coverage by several commercial insurance underwriters. The State guaranty was not extended beyond that date.

⁸⁸ WTO (2000).

⁸⁹ EU Directive 96/67 is referred to in the *Ordonnance sur l'infrastructure aéronautique*, RS 748.131.1.

⁹⁰ Additional information is available at: http://www.skyguide.ch/e/profil/mandat_e.html.

⁹¹ The applicable regulations are: *Ordonnance sur le personnel préposé à l'entretien des aéronefs*, RS 748.127.2, *Ordonnance sur les licences du personnel d'entretien des aéronefs*, RS 748.127.22, *Ordonnance sur*

(d) International agreements

Participation in the WTO

148. Traffic rights, together with services directly related to the exercise of traffic rights, are currently outside the scope of the GATS, which covers only aircraft repair and maintenance, the sale and marketing of air transport services, and computer reservation system (CRS) services. Switzerland's GATS commitments on air transport are limited to aircraft repair and maintenance services. Switzerland's initial offer in the ongoing negotiations on services included sale and marketing of air transport services, computer reservation systems (CRS) services, ground handling services and airport management services. The sale and marketing of air transport services, and CRS services are covered by Switzerland's MFN exemptions under Article II of the GATS.⁹²

149. Under the GATS, Switzerland has bound measures affecting cross-border supply, consumption abroad, and commercial presence of aircraft rented without operators, i.e. dry leasing, excluding for companies flying on regular schedule or on charter. Switzerland has also bound measures affecting commercial presence for cargo handling services.

150. In the ongoing negotiations on trade in services, calls have also been made for the multilateral liberalization of "hard rights", in other words, the actual right to fly cargo and passengers.⁹³ In this regard, several WTO Members have argued the economic rationale for liberalizing air cargo, including the full range of traffic rights (e.g. cabotage), together with the removal of barriers to foreign ownership.⁹⁴ Switzerland is open to the inclusion of services directly related to the exercise of traffic rights into the GATS negotiation, although there is no consensus at this stage on which services are covered by this definition. However, Switzerland has expressed its reservations on the inclusion of traffic rights themselves.

Preferences for EU and EFTA carriers

151. Following the entry into force in 2002 of the Agreement between the European Community and the Swiss Confederation on Air Transport (the Agreement with the EU), the regime applicable to foreign carriers wishing to operate commercial air services to and from Switzerland depends on whether the foreign companies are based in an EFTA/EU country or not. Carriers incorporated in Switzerland, or in any Member State of the European Union (EU) or of EFTA, may supply scheduled and non-scheduled services corresponding to 3rd and 4th freedom rights between the Member State and Switzerland. The Agreement with the EU prohibits all discrimination based on nationality between Swiss and EU/EFTA air companies that are based and licensed in either Switzerland or EU/EFTA. Accordingly, in this agreement, Switzerland has extended national treatment to EU and EFTA firms.

152. An important advantage of the Agreement with the EU for Swiss carriers is that, as of June 2004, they are also allowed to collect passengers or cargo between any points in different countries within the EU (i.e. "seventh freedom").⁹⁵ The agreement, however, does not allow cabotage

les établissements chargés de la formation du personnel d'entretien d'aéronefs, RS 748.127.23, *Ordonnance sur les entreprises d'entretien d'aéronefs*, RS 748.127.3.

⁹² WTO document GATS/EL/83, 15 April 1994.

⁹³ See, for example, WTO documents S/C/M/49, 1 December 2000 and S/C/M/50, 5 March 2001.

⁹⁴ WTO document S/C/W/181, 27 November 2000.

⁹⁵ The "fifth freedom" is defined by ICAO as "the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and take on, in the territory of the first State, traffic coming from or destined to a third State". The "seventh freedom" is defined as "the right or

(eighth freedom), although it provides for negotiations on these additional rights to begin five years after its entry into force (i.e. by June 2007). In practice, the agreement appears to have generated new business, such as the operation of the Berne-Berlin route by Austrian carrier InterSky, which would have been impossible before the entry into force of the agreement. Many new carriers from EU countries have started serving Swiss domestic and international routes since 2002; one new Swiss carrier has started operations; and some of the carriers already present in Switzerland have extended their offer.

153. Articles 8 and 9 of the Agreement with the EU prohibit anti-competitive practices, including abuse of dominant positions, except those that affect only the Swiss territory and are covered by domestic law. According to the authorities, the rationale for this exception was that, for internal political reasons, Switzerland was anxious to limit the scope of foreign legislation and powers to cases where it was justified.

154. EU air carriers wishing to operate 5th or 7th freedom passenger or cargo flights between Switzerland and a country outside the European Union (or EFTA) are required to apply for traffic rights to OFAC. OFAC approval is subject to a declaration of reciprocity issued by the aeronautical authorities of the State where the applicant is incorporated and has its principal place of business. In addition, OFAC can request applicants to provide so called 'non-objection' declarations from the Swiss air transport companies.

155. In the 2002 revision of the EFTA Convention, a new annex, on air transport, contained a list of EU Acts to be applied. It is the same as the annex to the Agreement with the EU, with the exception of competition rules, which are not included. On a reciprocal basis, Switzerland treats all EEA members alike; some EEA members have made some reservations (in particular, Iceland has made a reservation concerning the ownership of air carriers).

Other air service agreements

156. International traffic rights for passengers and freight of countries other than members of EU or EEA are generally governed by bilateral agreements and contingent upon reciprocity provisions. Some 45 agreements have been signed or modified since 2000. In order to carry out operations in Switzerland, a foreign carrier must have been designated by its home country. Agreements may be of a "single designation" type, allowing only for one carrier per signatory, or of a "multiple designation" type. Most agreements are based on capacity sharing, and specify frequency and rates; some recent exceptions are the "open sky" agreements with the United States and Pakistan.⁹⁶ The authorities indicate that Switzerland's current policy is to seek liberal agreements, including regarding ownership and control.

157. In November 2003, Swiss International AirLines announced the signing of an alliance with British Airways, and the joining of the One World alliance. The alliance with BA included extensive code-sharing, and the integration of the frequent flyer programmes. The alliance was subsequently cancelled. Code-share arrangements between EU carriers and carriers from third countries that have implications for the Swiss market require an authorization from OFAC. It is delivered according to the provisions of the bilateral agreements with the States concerned, or on the basis of an analysis of

privilege, in respect of scheduled international air services, of transporting traffic between the territory of the granting State and any third State with no requirements to include, on such operation, any point in the territory of the recipient State, i.e. the services need not connect to or be an extension of any service to/from the home State of the carrier".

⁹⁶ RS 0.748.127.193.36.

the advantages and disadvantages for Swiss interests. Reciprocal rights for Swiss companies in the State concerned are an absolute requisite.

(9) TOURISM

158. Tourism is the economic subsector that has suffered most from the high prices of agricultural products (mainly food products) and from the high energy prices resulting from state or private monopolies or exclusive rights over the supply of gas and electricity. The Swiss authorities have noted that the high costs of labour resulting from quotas on the number of work permits granted to foreign workers in hotels and restaurants has been partly overcome by the abolition of the priority given to resident workers over EU nationals (see below (10)).

Switzerland

159. The Federal Government plans to provide support of Sw F 200 million in the 2005-09 period (Sw F 40 million annually) in favour of a "results-oriented destination marketing" by Switzerland Tourism⁹⁷, with results to be measured by the actual number of tourists. The existing instruments of support to tourism have been modernized and endowed with new funding. A budget of Sw F 35 million for the 2003-07 period was adopted for Innotour, a governmental programme for the promotion of innovation and education in tourism. The Swiss Society for Hotel Credit (*Société suisse de crédit hôtelier*), a public corporation, was granted a new interest-free loan of about Sw F 60 million, which is to be allocated by the Society as credit to hotels in mountain regions. The Society provides concessional loans and credit guarantees to small and medium-sized companies investing in tourist areas, in accordance with a federal law on accommodation of 20 June 2003.⁹⁸

160. Switzerland signed a memorandum of understanding with the People's Republic of China on 15 June 2004, under which, China will add Switzerland to the list of countries to which it permits group travel. In particular, the MOU regulates the practical organization of travel for tourism on either side and institutes an efficient procedure for the allocation of visas. The authorities expect the number of overnights by Chinese visitors, about 120,000 in 2004, to increase by a factor of three in the next ten years. The Memorandum is also applicable to Liechtenstein.

161. Since 2004, the so-called "*clause du besoin*", anchored in the Federal Constitution⁹⁹, which regulates the licensing by cantons of the supply of restaurant services, has been abandoned, with a grace period of ten years. Designed to safeguard existing restaurants, the licensing criteria include population density, and the number of restaurants in the neighbourhood. At the end of the transition period, the location and operation of restaurants should eventually be market-determined. Specific requirements still apply to the supply of tourist guide services, but the existing legislation was due to be revised: for instance, in certain cantons, the required tests for mountain guides or ski instructors are not open to foreigners; in others, foreigners cannot operate independently. The reduced value-added tax rate of 3.6% on sales of accommodation services was permanently enshrined in the Constitution in 2003. Prices are still freely set by the companies in the tourism industry.

⁹⁷ Switzerland Tourism is a public corporation in charge of communication and marketing in the tourism subsector.

⁹⁸ *Loi fédérale sur l'encouragement du secteur de l'hébergement*, RS 935.12.

⁹⁹ Federal Constitution, Article 196, Chapter 7.

Liechtenstein

162. The Liechtenstein Government provides financial support of some SwF 500,000 per year (on average) for tourism marketing activities. Certain marketing activities are coordinated with Swiss tourism associations. Except for differences in rules governing acquisition of real estate, Liechtenstein's regulations on tourism are similar to those of Switzerland. Liechtenstein Tourism was created by the Tourism Act, which entered into force on 1 September 2000, to be in charge of marketing activities.¹⁰⁰ Along with the enactment of the Tourism Act, an Administrative Board of seven members was appointed. The Board formulated a reorientation policy for the tourism subsector: e.g. a business plan was drawn up and the mission statement for tourism was updated, with a view to giving more consideration to the subsector.

163. Various measures have been implemented since 2000. A Tourism Day bringing together those involved in the tourism industry has been held annually since the Autumn of 2000. New measures also include the creation of an Internet presence with reservation facilities, the award of Q1 quality seal by Switzerland Tourism, introduction of a Partner Update, Internet newsletter for the media, a cooperation agreement with the municipalities of Vaduz and Triesenberg, a collaboration agreement with Switzerland, holding of an International Tourism Market, opening of the Welcome Desk at Vaduz bus terminal, participation in various working groups and projects, and the launch of several products (e.g. "Winter-Hit Malbun"). A close working relationship was also built up with various Liechtenstein private-sector operators to serve customers, and approximately 15 conference events are jointly organized each year.

164. In its judgment of 17 November 2003, the State Court of the Principality of Liechtenstein found the application of certain provisions of the previous legislation (in particular, provisions concerning the tourism levy) unconstitutional. The tourism legislation has subsequently been revised.

165. The number of arrivals and overnight stays in Liechtenstein fell in 2001 and 2002. In 2003, the number of arrivals increased by 1% but overnight stays fell by 0.8%. In addition to the growing trend for shorter stays, tourism in Liechtenstein has also been affected by, *inter alia*, the greater sense of insecurity on travel plans, the tense international economic situation, increased price sensitivity, and events such as 11 September attacks, and SARS.

(10) PROFESSIONAL SERVICES

166. As trade in professional services, and business services in general, relies to a large extent on the movement of physical persons, professional service suppliers are particularly affected by regulations limiting the movement of natural persons (Mode 4 in GATS terminology). Since the conclusion of Switzerland's bilateral agreement with the EU on the free movement of persons (Chapter II(4)(ii)(c)), there have been significant changes in the conditions affecting the general employment of foreigners by domestic firms and the conditions for foreigners to work in Switzerland.

167. Reflecting this ongoing process of European integration, Switzerland's labour market access policy now differs increasingly between EU/EFTA nationals and other "third country" nationals. The main labour market policy instrument is a system of annual quotas on the overall number of work permits granted. The annual quota for third-country nationals in 2004 was 4,000 residency permits and 5,000 short-term permits. The country-wide quotas are allocated per canton. In principle, first-time work permits can only be issued exceptionally to foreigners if they are highly qualified, urgently needed, and special reasons justify an exception. In the case of EU/EFTA nationals, the quotas are being abolished progressively. The second main policy instrument is a labour market test whereby

¹⁰⁰ Liechtenstein Law Gazette No. 166, that entered into force on 1 September 2000.

priority is given to indigenous (resident) manpower, irrespective of their nationality, before granting work permits to non-residents. However, since June 2004, priority can no longer be given to residents over EU/EFTA nationals.

(i) Legal services

Switzerland

168. The Federal Act on the Freedom of Movement of Lawyers (LLCA)¹⁰¹, in force from 1 June 2002, unified at federal level the previously disparate cantonal rules and requirements for the practice of law. However, cantons retain the right to determine the requirements for cantonal licensing, as long as they are not in contradiction with the LLCA; there is no federal licensing. The LLCA also introduced the free movement of lawyers within the country, enabling them to appear in a court of law of a canton different from the one in which they are registered, without special authorization. In 2002, about 6,800 lawyers were registered in Switzerland.

169. As regards practice in Switzerland by lawyers of EU countries, the amended Act was based on the bilateral agreement between the EU and Switzerland on the free movement of persons.¹⁰² As regards EFTA lawyers, the Act was based on the Vaduz Convention between Switzerland and the other EFTA countries, which entered into force on 1 June 2002 (Chapter II(4)(ii)(a)).

170. Under the LLCA as amended, a lawyer wishing to represent in court in Switzerland has to acquire a cantonal lawyer's licence and be registered in the registry of the canton in which he has his professional address (for legal consultancy, see below). In order to obtain this cantonal licence, a person must have followed a course of studies in law leading to a graduate degree awarded by a Swiss university or an equivalent diploma awarded by a university of a country with which Switzerland has an agreement on mutual recognition of diplomas (i.e. EU and EFTA states), followed by practical experience of at least a year conducted in Switzerland and success in an examination of juridical knowledge in theory and practice. Registration requires the cantonal licence and specified personal qualifications.

171. Nationals from member states of the EU or EFTA, who are entitled to practice the legal profession under one of the professional titles listed in the annex to the LLCA, may represent parties before judicial authorities in Switzerland according to the freedom to provide services (for a maximum of 90 days a year, in compliance with Directive 77/249/EEC); they cannot register in the cantonal registry. Moreover, they can permanently represent parties before judicial authorities in Switzerland if they register (in the official list of nationals of member states of the EU or EFTA) with the cantonal supervisory authority for lawyers. In the case of proceedings for which legal representation is mandatory, e.g. representation in court in penal proceedings concerning severe accusations, they must act in accord with a cantonally-registered lawyer. EU or EFTA lawyers who have been listed for three years in the official list and can prove that they were effectively and regularly active in the area of Swiss law may be listed in the cantonal register. Lawyers who have obtained a diploma entitling them to practice in one of the EU or EFTA member states, after a course of at least three years, and, if needed, have also completed the requisite professional training, may also sit an exam. Lawyers who are registered or who pass the exam have the same rights and duties as Swiss lawyers.

172. Non-EU or non-EFTA lawyers who do not comply with the general requirements cannot be registered and can work only as legal consultants. As bound in its GATS Schedule, Switzerland

¹⁰¹ *Loi fédérale sur la libre circulation des avocats* (RS 935.61).

¹⁰² *Convention instituant l'Association Européenne de Libre Echange, Annexe K – App. 1*, RS 632.31.

imposes no restrictions on the provision of consulting services by foreign lawyers in either home country or international law as regards cross-border supply, consumption abroad, and commercial presence (except in the canton of St.Gall, which requires Swiss nationality for the establishment of a practice).

173. Supervision of lawyers is exercised at the cantonal level. Each canton designates an authority responsible for the supervision of the lawyers practicing in its territory. Appeals against its decisions can be filed to the cantonal court and then to the Federal Court of Justice. Members of a bar association are also subject to the supervision of this association. The relevant cantonal supervisory authorities must be informed of any violation of professional rules by licensed lawyers.¹⁰³ There are 24 independent cantonal bar associations, and a Swiss Bar Association, which acts as an umbrella organization. Fees are generally in line with the guidelines of the relevant bar association, or fixed by cantonal legislation.

Liechtenstein

174. At the end of 2003, 103 (including 31 foreign) lawyers, 27 law partnerships, 61 associate lawyers, 5 legal agents, 16 patent attorneys, and five patent attorney partnerships were operating in Liechtenstein. The main law regulating the legal profession is the Lawyers Act and the corresponding Ordinance¹⁰⁴; it is supervised by the Financial Services Authority (FSA). Liechtenstein has not made any GATS commitments regarding legal services, except for the absence of restrictions on cross-border supply and consumption abroad of legal consultancy services in home country law and international law.¹⁰⁵

175. Registration in the national List of Lawyers is required in order to hold the title of attorney and practice law; it requires Liechtenstein or EEA nationality and domicile, success in the bar examinations and a law practice in Liechtenstein. Participation in the examinations requires the completion of two years of practical experience in a court of justice or with a licensed lawyer¹⁰⁶, or a law degree obtained in a recognized university. The professional body of Liechtenstein attorneys is the Chamber of Lawyers, a public law body constituted of all lawyers on the List of Lawyers or the List of Resident European Lawyers; the chamber is supervised by the Government. Cross-border supply of services by EEA lawyers may be authorized temporarily by the Chamber of Lawyers, subject to certain conditions.

176. Non-EEA lawyers may, under special circumstances, be permitted by the FSA to act as representatives or defence lawyers of a party before a Liechtenstein court or authority.

(ii) Accounting and auditing services

Switzerland

177. Under its GATS commitments schedule, Switzerland imposes no limitations on provision of accounting, auditing and book-keeping services as regards cross-border supply, consumption abroad,

¹⁰³ Article 14 of the LLCA.

¹⁰⁴ Law of 9 December 1992 on Lawyers, LLG 1993 No. 41. Ordinance of 25 March 2003 on Delegating Affairs in accordance with the Law on Lawyers, LLG 2003 No. 94.

¹⁰⁵ WTO document GATS/SC/83A, 17 April 1994.

¹⁰⁶ At least one year with an attorney (or administrative authority) of Liechtenstein and at least six months with a Liechtenstein court of justice or the Liechtenstein public prosecutor's office. Article 2, paragraph 3 indicates that, as regards court of justice and public prosecutor's office experience, corresponding experience gained abroad is acceptable.

and commercial presence for either market access or national treatment, with the exception that auditing services to a joint-stock company (*société anonyme*) or a "*société en commandite par actions*" must be provided by at least one person with commercial presence in Switzerland.

178. In 2001, 31,233 persons were employed in accounting and auditing.¹⁰⁷ In general, accounting and auditing services are not regulated as such in Switzerland, and a professional title does not confer the right to practice a reserved activity: rather, the professional title is a sign of competence. Amongst exceptions, the canton of Ticino requires specific qualifications and cantonal authorization for the practice of the professions of auditor, tax consultant and fiduciary, while the half-canton of Basle-Country only requires authorization for auditors. The Federal Office for Professional Education and Technology (OPET) maintains a list of regulated professions.¹⁰⁸

179. The primary law governing financial statement of Swiss companies - the Swiss Code of Obligations¹⁰⁹ - stipulates that auditors must possess the "necessary qualifications" in order to accomplish their work; at least one of the auditors must be domiciled in Switzerland, and its company or a branch registered in the commercial register.¹¹⁰ It is up to the auditor to decide "autonomously" on the professional capabilities required to fulfil the mandate. This is also the case for foreign auditors. There is no authority that controls the professional capabilities. The Federal Council proposed in its June 2004 message to move away from this autonomous regulation and switch to a system of accreditation.¹¹¹

180. Special qualifications are required of auditors if a company is of significant size or has either outstanding bond issues or its shares are listed in a stock exchange.¹¹² Such a company must be audited by "particularly qualified auditors".¹¹³ Qualifications required to become a particularly qualified auditor include a foreign certificate of professional capacity, declared to be equivalent to a Swiss qualification; or authorization under the provisions of the 8th EU Company Law Directive¹¹⁴, and corresponding practical experience and knowledge of the necessary Swiss legal provisions.¹¹⁵ The OPET is responsible for recognizing foreign diplomas of particularly qualified auditors. Article 3 of the Ordinance concerning the professional qualifications of particularly qualified auditors defines the responsibility of the company board. However, as mentioned above, the Federal Council intends to shift to a system of accreditation. In addition, at least two thirds of practical experience must have been completed under a particularly qualified auditor.

181. Under the SWX Stock Exchange listing requirements, listed companies must provide audited annual financial statements and reports.¹¹⁶ For this purpose, companies must select auditing persons

¹⁰⁷ Swiss Federal Department of Finance (2003b).

¹⁰⁸ OPET, online information. Available at: <http://www.bbt.admin.ch/dossiers/aner kenn/eu/d/regl.pdf>.

¹⁰⁹ *Loi fédérale complétant le Code civil suisse (Livre cinquième: Droit des obligations)*. Available at <http://www.admin.ch/ch/f/rs/220/a727b.html>.

¹¹⁰ Article 727 of the Swiss Code of Obligations.

¹¹¹ For more information on the message, see <http://www.ofj.admin.ch/themen/rrg/intro-f.htm>

¹¹² Defined as satisfying at least two of the following requirements for two consecutive years: (1) total assets of at least Sw F 20 million, (2) turnover of at least Sw F 40 million, (3) annual average of at least 200 employees. Article 727b of the Code of Obligations.

¹¹³ Articles 727b, 727c and 727d of the Swiss Code of Obligations.

¹¹⁴ 84/253/EEC, *Official Journal of the European Communities*, L 126 of 12 May 1984.

¹¹⁵ *Ordonnance sur les qualifications professionnelles des réviseurs particulièrement qualifiés*, RS 221.302.

¹¹⁶ SWX Stock Exchange Listing Rules of 24 January 1996, as amended. Available at: http://www.swx.com/admission/02_reglement_e.pdf.

or companies registered with the Admission Board of the Exchange.¹¹⁷ This makes the Admission Board a *de facto* licensing authority for auditors of listed companies. However, as noted, changes are foreseen in the 2004 message of the Federal Council. The Listing Rules contain the conditions for registration.¹¹⁸

182. Companies that audit financial institutions supervised by the Swiss Federal Banking Commission (Chapter IV(11)) must have gained SFBC authorization.¹¹⁹ Only two categories of legal entities can be recognized as bank auditors: (1) auditing associations affiliated with at least 12 banks and with capital, guaranteed capital or reserves no less than Sw F 1 million, as well as an organizationally independent internal auditing department; and (2) fiduciary and auditing companies with paid-in capital of at least Sw F 1 million.¹²⁰ Authorized auditors must be Swiss certified accountants, or hold an equivalent foreign diploma or demonstrate bank auditing skills.¹²¹ Recognition of foreign-controlled auditing firms is decided by the SFBC; so far, no foreign auditing firm has requested recognition.

183. The Code of Obligations provides general guidelines for the preparation of financial statements.¹²² Usually, Swiss companies with international presence use either International Financial Reporting Standards (IFRS) or U.S. Generally Accepted Accounting Principles (GAAP), while companies, with predominantly Swiss presence, use the less restrictive Swiss GAAP ARR (Accounting and Reporting Recommendations). Foreign companies can also opt to use their home-country standards.¹²³ From 1 January 2005, however, only IFRS and US GAAP will be acceptable standards.¹²⁴ Swiss GAAP ARR will continue to be acceptable for SWX Local Caps (local companies), real estate companies, and investment companies. As of fiscal year 2002, 54% of SWX listed companies used IFRS, 33% Swiss GAAP ARR, and 5% U.S. GAAP.¹²⁵

184. The principal professional body representing Swiss accountants is the Swiss Institute of Certified Accountants and Tax Consultants¹²⁶; members can be either natural persons or enterprises. In 2004, discussions were being held between the private sector and the Swiss Government as to the institution of a Swiss public accounting oversight board. Moreover, the implications of the U.S. Sarbanes-Oxley Act of 2002 were still under discussion between Swiss and U.S. authorities.

¹¹⁷ Foreign companies listed in the SWX are exempt from the requirement of financial statements audited by SWX-registered auditors if their shares are traded primarily on a securities exchange in their country of domicile.

¹¹⁸ SWX online information, "Directive on the Enforcement of Financial Reporting Regulations and the Registration of Auditing Bodies", 1 December 1999. Available at: <http://www.swx.com>.

¹¹⁹ As at end 2003, nine auditing firms were recognized by the SFBC: Bankrevisions- und Treuhand AG; BDO Sofirom; Deloitte & Touche AG; Ernst & Young AG, KPMG Fides Peat; KPMG Klynveld Peat Marwick Goerdeler SA; OFOR Revision Bancaire SA; PricewaterhouseCoopers AG; Schweizer Verband der Raiffeisenbanken Inspektorat.

¹²⁰ Limited liability companies (GmbH) must also consist of at least four associates.

¹²¹ Article 35, Implementing Ordinance on Banks and Savings Banks (Banking Ordinance) of 17 May 1972.

¹²² General book-keeping rules can be found in *Ordonnance concernant la tenue et la conservation des livres de comptes*, RS 221.431.

¹²³ Only for companies domiciled in a EU/EEA country, Australia, Japan, Canada, New Zealand and South Africa.

¹²⁴ Including SWX New Market, Admission Board Communiqué No. 2/2003 of 10 February 2003.

¹²⁵ SWX online information. Available at: http://www.swx.com/admission/publicity_accounting_en.html.

¹²⁶ More information regarding the fiduciary chamber is available online at: <http://www.chambre-fiduciaire.ch/>.

Liechtenstein

185. In Liechtenstein, the auditing profession is regulated and supervised by the Financial Services Authority. At the end of 2002, 19 auditors and 30 auditing firms held a Liechtenstein licence, while seven foreign auditing firms operated under the agreements on free movement of services. Under its GATS schedule, Liechtenstein maintains no restrictions on cross-border supply, or consumption abroad regarding accounting, auditing, and bookkeeping services; certain market access limitations are specified for the supply of services through commercial presence. No commitments have been made as regards the presence of natural persons to supply these services.¹²⁷

186. Auditing services are organized under the Law on Auditors and Audit Companies.¹²⁸ A licence is required to obtain the legally protected professional title of auditor (*Wirtschaftsprüfer*) and gain authorization to conduct professional audits and to provide related advice on accounting and finance, tax, organization, and information technology. The criteria to be met are: Liechtenstein or EEA citizenship and domicile, the holding of the legally prescribed academic qualifications, practical experience of at least three years under a licensed auditor and success in the auditors examinations. The professional domicile must be in Liechtenstein. Auditing activities (as defined above) may also be undertaken by legal entities (auditing firms – *Revisionsgesellschaften*) with head office in Liechtenstein. In order to be granted a licence, the majority of the capital and of votes must be held by Liechtenstein-licensed auditors, the majority of the members of the administrative body of the company must be licensed auditors, and management must include a full-time managing director who is a Liechtenstein-licensed auditor.

187. EEA member-state citizens or citizens of countries with which Liechtenstein has concluded a reciprocity agreement, who are licensed in their home state to pursue auditing activities, enjoy freedom of establishment in Liechtenstein. Licence requirements for these categories of foreign auditors are: academic qualifications and professional experience equivalent to those requested from domestic lawyers, and success in special qualification examinations for foreigners; and liability insurance and membership of the home-country professional organization. EEA citizens holding an auditing licence from their home country may exercise auditing activities temporarily in Liechtenstein under their home-country professional title, without a Liechtenstein licence.

188. Non-EEA auditors wishing to undertake auditing in Liechtenstein temporarily under their home-country professional title must conform to the following requirements: domicile in the home country, academic qualifications equivalent to those required of domestic auditors, three-year relevant practical experience gained abroad, success in the Liechtenstein qualification test, membership in the relevant professional association in the home country, and liability insurance.

189. The auditing professional body in Liechtenstein is the Liechtenstein Association of Auditors, a public law association comprising all Liechtenstein-licensed auditors and auditing firms. The Association is supervised by the Government.

¹²⁷ WTO document GATS/SC/83A, 17 April 1994.

¹²⁸ Law of 9 December 1992 on Auditors and Audit Companies, LLG 1993, No. 44.

(iii) Engineering and architectural services*Switzerland*

190. About 33,000 architects and 45,000 engineers work in Switzerland.¹²⁹ The market is highly fragmented, with the type of business ranging from independent specialists to large architectural and engineering offices and companies. The main professional societies in Switzerland are the Swiss Society of Engineers and Architects, and the Technical Union of Switzerland (UTS/STV).

191. In most cantons, professional names such as "architect", "engineer" or "technician", are not legally protected; thus, no licence is required for the exercise of those professions. Anyone, Swiss or foreign, can practice these professions. The exceptions are the cantons of Fribourg, Geneva, Lucerne, Neuchatel, Vaud, and Ticino, which regulate the professions of architect and civil engineer.¹³⁰ Aside from these six cantons, no registration is required in the Swiss Register of Engineers, Architects and Technicians (REG). The usual requirement in those six cantons is registration in the REG, or in the cantonal register. These registers are open to foreign professionals if they have been exercising their profession in Switzerland generally for two to three years. In line with the liberal approach adopted by Switzerland as regards the architectural and engineering professions, no limitations on market access or national treatment are (in general) imposed.

192. One country-wide exception is that official land measurements can be carried out only by licensed surveyors (*ingénieur-géomètre breveté*); the licence is conferred to holders of a recognized Swiss degree from one of the two federal technical universities (in Zürich and Lausanne) or from a higher or a specialized Swiss school, after success in state-organized theory examinations.¹³¹ Foreign diplomas are accepted if they provide the necessary education at university level in the 13 subject matters specified in the ordinance (RS 211.432.261). Two of these subjects are typically Swiss (Swiss official land measurements and Swiss languages and culture). Swiss nationality is also required. However, foreign surveyors can work under the responsibility of a licensed Swiss surveyor.

193. In addition to a diploma, REG registration (in the six cantons where it is required) typically requires at least three years of professional experience (two years for technical school graduates); foreigners may also be registered under the same conditions as Swiss and Liechtenstein citizens, provided they have been working in Switzerland for at least two years.¹³² Access appears to be liberal for foreign suppliers even in the cantons that regulate. Under the bilateral agreement on the free movement of persons with the EU¹³³, the REG is entrusted with recognizing foreign architecture, engineering, and technical university degrees as equivalent to Swiss qualifications. Approval of

¹²⁹ UBS, "Swiss sectoral trends". Available at: http://www.ubs.com/e/about/research/wealth_management_research/branchenspiegel.html [2 March 2004]. Another estimate, from the European Federation of National Engineering Associations (FEANI) elevates the number of declared Swiss engineers and architects to 127,000. FEANI online information. Available at: <http://www.feani.org>.

¹³⁰ A comprehensive list of regulated professions in Switzerland, compiled by the OPET, available online at: <http://www.bbt.admin.ch/dossiers/aner kenn/eu/d/regl.pdf>. For conditions in Lucerne, see Article 63 of the cantonal ordinance on planning and construction SRL 736. The canton of Vaud has similar provisions. See CMAC online information. Available at: http://www.ge.ch/camac.vd.ch/camac_ciev/doc_lib/printdoc.asp?tmpl=ART106&id=0; for Geneva see http://www.ge.ch/legislation/L_540, Article 4).

¹³¹ *Ordonnance du 16 novembre 1994 concernant le brevet fédéral d'ingénieur géomètre*, RS 211.432.261.

¹³² REG online information. Available at: http://www.schweiz-reg.ch/reg_f6.htm.

¹³³ Agreement on free movement of persons between the European Community and its Member States, on the one part, and the Swiss Confederation, on the other.

foreign (non-university) technical and professional degrees is under the jurisdiction of the Federal Office of Professional Education and Technology.¹³⁴

194. On 1 January 2003, new structural design standards, known as Swisscodes, were introduced, replacing the Swiss Society of Engineers and Architects (SIA) codes. Swisscodes, an SIA project in collaboration with the Federal Office of Construction and Logistics, and educational and industry institutions, constitutes a compressed form of Eurocodes, the harmonized EU standards, which will be introduced within five to ten years.¹³⁵ EU compatibility is expected to enhance bilateral market access because of the common basis of calculations and contractual provisions.

Liechtenstein

195. About 175 architects and 115 engineers are registered in Liechtenstein. There are both independent specialists and architectural and engineering offices and companies. The main professional society in Liechtenstein is the *Liechtensteinische Ingenieur- und Architektenvereinigung*, representing architects, civil engineers, electrical engineers, technical engineers, rural engineers, and surveying engineers. Professional names such as "architect", "engineer" or "technician" are legally protected. Requirements to obtain a licence to work as an engineer or architect are, in addition to a diploma, at least three years of professional experience, and an office in which to carry out the profession. Citizens from non-EEA-member countries or Switzerland need 12-years prior residence in Liechtenstein. Permanent domicile in Liechtenstein is required for non-EEA or non-Swiss citizens. To conduct engineering services as a surveyor of activities in the public sector, Liechtenstein nationality is required; however, foreign surveyors can work under the responsibility of a Liechtenstein surveyor.

(11) FINANCIAL SERVICES

196. By virtue of the 1980 Currency Treaty between Switzerland and Liechtenstein, Swiss monetary policy is also applicable to Liechtenstein; the Swiss franc has been used as legal tender in Liechtenstein since 1924. The Swiss National Bank (SNB) has the same powers over, and obligations to, Swiss and Liechtenstein banks. The SNB is owned by both public and private shareholders.¹³⁶ Its main role, aside from being the sole note-issuing authority, is to exercise monetary policy and to facilitate payment transactions.¹³⁷ As a result of Liechtenstein's participation in the EEA all its banking, securities, insurance, and accounting legislation is based on EU legislation, although financial institutions (mainly banks) are also obliged to meet the accounting rules of the Swiss Federal Banking Commission due to the monetary union between the two countries.

197. In their specific commitments under the GATS, Switzerland and Liechtenstein have, with certain limitations, made commitments in all subsectors included in the Annex on Financial Services.¹³⁸ In line with the Understanding on Commitments in Financial Services, both countries have gone further in terms of liberalization of cross-border supply, by expanding the sectoral coverage of commitments made under mode 1 for banking and other financial services (excluding

¹³⁴ Federal Law on Professional Education (BBG) of 13 December 2002.

¹³⁵ Office fédéral des constructions et de la logistique online information. Available at: <http://www.kbob.ch>.

¹³⁶ SNB was founded by law on 16 January 1906. Approximately 55% of the (half paid-up) capital of Sw F 50 million is held by public bodies such as cantons and cantonal banks and the rest is held primarily by private persons; no shares are held by the Federal Government.

¹³⁷ SNB jointly operates the Swiss Interbank Clearing (SIC) system, a real-time gross settlement system in which more than 220 commercial banks currently participate.

¹³⁸ WTO document GATS/SC/83/Suppl. 4, 26 February 1998.

insurance).¹³⁹ In the case of insurance, however, commitments on cross-border supply remain limited to marine, aviation, and transport (MAT); reinsurance; and auxiliary services (as stipulated in the Understanding).

(i) Banking services

(a) Banking and securities services in Switzerland

198. Switzerland is one of the most important financial centres in the world. This is largely the result of the country's political and economic stability. The Swiss franc is the world's fifth most-traded currency. Financial services account for about 11% of the country's GDP.¹⁴⁰ In 2002, the Swiss stock market was ranked eighth in the world in terms of market capitalization. The most important line of business for Swiss banks is asset management, which accounts for over 50% of their output¹⁴¹; 35% of the world's private wealth is estimated to be domiciled in Switzerland. As Switzerland has adopted the universal bank system (i.e. no separation of commercial and investment banking activities), securities and investment fund activities are also dominated by banks.

199. At the end of 2003, the banking system of Switzerland consisted of 342 banks, with total assets of Sw F 2,237 billion (of which Sw F 921 domestic and Sw F 1,316 foreign), total earnings of Sw F 13 billion, and total personnel of 112,915 (of which 13,455 at banks' offices abroad).¹⁴² In recent years, the banking sector has been heavily consolidated, with the number of banks 45% lower in 2003 than the 1990 level of 625 banks. Specifically, the Swiss system comprised two big banks, 24 cantonal banks, 83 regional and savings banks, the Union of the Raiffeisen Banks, 15 private banks, 26 branches of foreign banks, and 201 other banks (122 foreign-controlled and 55 stock exchange banks). The two biggest banking groups of the country, UBS AG and the Credit Suisse Group (CSG), account for 63% of total assets and dominate all aspects of the Swiss banking system. UBS is the sixth largest bank in the world by shareholder equity (Sw F 42.5 billion, with assets of Sw F 851 billion), while CSG is 20th (Sw F 22.6 billion equity, Sw F 689 billion assets).¹⁴³ PostFinance is the financial services arm of Swiss Post, the fully state-owned postal system. PostFinance had assets of Sw F 39 billion in 2002, spread over 2.6 million accounts. In February 2002, the Board of Directors of PostFinance decided that the company would also arrange loans on behalf of a Swiss bank because the Postal Act does not allow PostFinance to directly grant loans (i.e., PostFinance is not a bank).

200. The Union of Raiffeisen Banks is an association of 471 small regional banks, each of which operates independently, pooling local savings and lending money to local businesses. Cantonal banks are (semi-)governmental organizations (most of them universal banks), while stock exchange banks are banks specialized in securities trade in stock exchanges. Private banks engage primarily in portfolio and wealth management for private individuals and institutional investors.

¹³⁹ A footnote to mode 1 commitments for Banking and Other Financial Services (excluding insurance) states: "Are covered not only transactions indicated in paragraph B.3 of the 'Understanding' but the whole range of banking and other financial services transactions (excluding insurance)."

¹⁴⁰ 16% of pension funds are included. See Federal Department of Finance online information, "Swiss Financial Centre", June 2003. Available at: <http://www.efd.admin.ch/e/dok/faktenblaetter/finanzplanz/finanzplanzch.pdf> [24 February 2004].

¹⁴¹ Swiss Bankers Association. Available at: http://www.swissbanking.org/en/jb_02_03_e_def.pdf [24 February 2004].

¹⁴² Swiss National Bank (2004d).

¹⁴³ The third largest Swiss bank is the Cantonal Bank of Zurich (Zürcher Kantonalbank), with Sw F 3.2 billion of equity and Sw F 67 billion of assets (*Euromoney*, Vol. 34, No. 410, June 2003).

201. Cantonal banks, defined as banks in which more than a third of the share capital and votes are controlled by the canton in which they are established, enjoy two main privileges. The canton typically assumes full or partial liability for the debt of its cantonal bank; and cantonal banks also benefit from preferential treatment regarding capital requirements and taxation. However, the special legal status of cantonal banks is being examined. Only two institutions have the right under the Mortgage Bond Act of 1930 to issue Swiss mortgage bonds: the Central Bond Issuing Body of the Swiss Cantonal Banks (*Pfandbriefzentrale der schweizerischen Kantonalbanken*) and the Mortgage Bond Bank of Swiss Mortgage Institutions (*Pfandbriefbank schweizerischer Hypothekarinstitute*). Only cantonal banks may participate in the former, while participation in the latter is limited to banks whose head office is in Switzerland and for which Swiss mortgage loans represent at least 60% of their balance sheet assets.

202. Banking activities are organized under the Banking Act.¹⁴⁴ On 1 May 2004, the new Federal Act on the Swiss National Bank entered into force. It clarifies the monetary policy mandate of the SNB. The new Act specifies that "the National Bank shall pursue a monetary policy serving the interests of the country as a whole. It shall ensure price stability. In so doing, it shall take due account of the development of the economy". In addition, the SNB has to contribute to the stability of the financial system. The new Act and the corresponding ordinance also clarify the oversight responsibilities of the SNB as regards payment and securities clearing, and settlement systems. By overseeing these systems, the SNB supports the safety and efficiency of financial market infrastructures in Switzerland.

203. Bank secrecy is an important aspect of the Swiss banking system; it covers all business relations between the bank and its customers and is not limited in time. Furthermore, breach of bank client confidentiality by bank employees is a criminal offence under Swiss law.¹⁴⁵ However, bank secrecy is lifted in criminal cases (such as guns or narcotics trade, corruption, terrorism, money laundering, and tax fraud) and can be lifted in civil cases under certain conditions (such as inheritance, divorce or bankruptcy).¹⁴⁶ In the case of tax evasion, bank secrecy is upheld, even after a request from foreign authorities, as tax evasion is not considered a crime under Swiss law.¹⁴⁷

204. Bank supervision is exercised by an independent federal authority, the Swiss Federal Banking Commission (SFBC).¹⁴⁸ The SFBC supervises all financial institutions that are active in licensable activities, i.e. the acceptance of deposits from the public on a professional basis, and the management of those deposits under a corporate name. Thus, SFBC supervises banks, securities dealers and stock exchanges, investment funds, the two mortgage bond institutions, and the disclosure of shareholdings and public takeover bids.¹⁴⁹ As PostFinance is not a bank, it is not subject to the Banking Act and is directly supervised by the Federal Council.

205. To obtain a licence from SFBC, a bank must provide evidence of clearly defined business, adequate organization, and good reputation of the managers; the latter must be domiciled in a place

¹⁴⁴ Swiss Federal Law on Banks and Savings Banks of 8 November 1934, as amended, RS 952.0.

¹⁴⁵ Banking Act, Article 47.

¹⁴⁶ Usually, the plaintiff has to prove the existence of the account.

¹⁴⁷ Swiss law distinguishes between tax evasion and tax fraud; the former is the omission to declare income or assets to the tax authorities, while the latter is any tax-related fraud, such as the submission of forged documents to the authorities.

¹⁴⁸ Administratively, the SFBC is integrated in the Federal Department of Finance; however, it is independent of the directives of the Federal Council. See SFBC online information. Available at: <http://www.ebk.admin.ch/>

¹⁴⁹ Foreign exchange dealers, independent asset managers who do not keep accounts under their name and brokers who are not employed by foreign securities dealers are not supervised by the SFBC.

allowing them to ensure "responsible management". Natural persons or legal entities holding, directly or indirectly, at least 10% of the capital or voting rights, or which otherwise significantly influence the bank (qualified participation), must guarantee that their influence will not adversely affect the bank's activity. They must notify the SFBC before acquiring or selling a qualified participation or when their participation crosses (upwards or downwards) the threshold of 20%, 33% or 50%. The minimum, fully paid-in share capital is Sw F 10 million.¹⁵⁰

206. The establishment of all branches or subsidiaries or agencies of foreign banks in Switzerland requires a licence by the SFBC. Once established, they enjoy the same status as Swiss banks. Access remains subject to reciprocity, except in cases covered by international obligations, such as the WTO Agreements. The SFBC is empowered to supervise foreign establishments in Switzerland, but it also permits foreign authorities to conduct inspections at Swiss establishments of foreign banks.

207. In 2000, the SFBC started licensing Internet-exclusive banks and securities dealers, i.e. without physical presence. Regulation is identical to that of institutions with physical presence, including regarding due diligence and money laundering provisions. A Swiss bank account cannot be opened online; documents have to be provided to the Bank in physical form.

208. The main stock exchange in Switzerland is SWX Swiss Exchange, founded in 1993 and converted to a stock company in 2002.¹⁵¹ Eurex, a derivatives exchange, is also part of the SWX group.¹⁵² The main law governing stock exchange operations is the Stock Exchange Act (SESTA) and the relevant ordinances.¹⁵³ Under the SESTA, stock exchanges must ensure sufficient self-regulation, and are subject to approval by the SFBC. In order to be granted a licence, securities dealers must provide information and ensure internal separation of their trading, portfolio management, and settlement business; the minimum fully paid-up capital is Sw F 1.5 million. Stock exchanges organized under foreign law are granted authorization to operate in Switzerland if they are subject to "appropriate supervision". Foreign securities dealers can receive SFBC authorization to establish a Swiss branch if they provide information and evidence of sufficient organization and resources. The consent of foreign supervisory authorities to cross-border operations, as well as their agreement to provide administrative assistance and information to the SFBC, is also required. Commercial presence (other than representative office) in Switzerland or Liechtenstein is required in order to lead-manage Swiss franc denominated issues.

209. Collective investment funds are subject to the Investment Fund Act (IFA) and ordinance.¹⁵⁴ The fund manager must be a limited company exclusively devoted to fund management and have a principal centre of administration in Switzerland. Foreign investment funds can only be marketed or distributed publicly through a licensed representative agent resident in Switzerland. The IFA is currently under an extensive revision process aiming to extend its scope significantly. According to the authorities, this revision will not negatively affect market access or national treatment.

¹⁵⁰ Banking Ordinance of 17 May 1972 (as amended on 4 October 1999), Article 4.

¹⁵¹ In 2003, the total foreign and domestic securities (equities, funds, bonds, derivatives) turnover was Sw F 1,056.8 billion.

¹⁵² Eurex is jointly operated by SWX Swiss Exchange and Deutsche Börse.

¹⁵³ Federal Act on Stock Exchanges and Securities Trading (SESTA) of 24 March 1995, Ordinance on Stock Exchanges and Securities Trading (SESTO) of 2 December 1996, Ordinance of the Federal Banking Commission on Stock Exchanges and Securities Trading of 25 June 1997, Ordinance of the Takeover Board on Public Takeover Offers of 21 July 1997.

¹⁵⁴ Federal Law on Investment Funds of 18 March 1994, Ordinance on Investment Funds (RS 951.311). Under the 1994 Law, an investment fund is defined as "a pool of assets raised from investors, as a result of public solicitation, for the purpose of collective investment, and managed by the fund management company for the account of the investors, generally in accordance with the principle of risk diversification".

210. The supervision of the financial sector is presently under review. In December 1998, a commission was established to analyse the Swiss Financial Market Supervision. The "Zufferey Report" issued by the commission in November 2000 advocated, *inter alia*, the establishment of a single banking, securities, and insurance supervisory authority in order to enhance coordination. In November 2001, the Zimmerli Commission was established to work on the necessary legal framework for the creation of the new integrated authority. The IMF, in its 2002 assessment, supported this creation, noting that "a single supervisory authority would have several advantages", especially regarding the supervision of conglomerates and large financial institutions.¹⁵⁵ In July 2003, the first part of the "Zimmerli Report" was published for public consultation, suggesting that SFBC and the Federal Office of Private Insurance should be brought under a new Federal Financial Market Supervisory Authority (FINMA). The results of the consultation were published in June 2004. The dualistic (indirect) supervision model of Switzerland, whereby banks rely mostly on external auditors for supervision, was also examined by the Nobel Commission, created by the SFBC in February 2000. The commission confirmed that the system yields satisfactory results, a view also held by the IMF in its 2002 assessment. Under FINMA, the dualistic system would be retained, with FINMA directly supervising in exceptional cases.

(b) Banking and fund management services in Liechtenstein

211. Financial services accounted for 30% of Liechtenstein's GDP in 2000 (or Sw F 1.3 billion). Activities are mostly related to asset management, investment funds and insurance. In recent years, the financial sector has registered burgeoning growth, primarily as a result of Liechtenstein's accession to the EEA in 1995; the number of banks has increased from 3 to 17. Political stability, close ties with Switzerland, and a favourable tax regime have also encouraged the level of the country's financial system.

212. In Liechtenstein, at the end of 2003, there were 16 banks (with total assets of Sw F 35 billion, about 1.5% of the total balance sheet of Swiss banks); 2 finance companies; 107 investment undertakings; 99 authorized trustees; 287 authorized trust companies; 103 lawyers, legal agents, patent attorneys, and patent attorney offices; 48 auditors and auditing companies; and 21 Liechtenstein-chartered insurance undertakings.¹⁵⁶ The banking sector is highly concentrated, with three banks accounting for 90% of total banking assets; two of these are quoted on the Swiss Stock Exchange and one is owned by the Foundation of the Prince of Liechtenstein. Ten of the remaining banks are subsidiaries of foreign banks, and the other four belong to local interests. Assets under management reach about to Sw F 100 billion.

213. The principal law governing the banking sector and finance companies is the Banking Act of 1992 and the corresponding Banking Ordinance, as amended.¹⁵⁷ Supervision of banks, finance companies, investment undertakings, trustees, lawyers, accountants, and auditors is carried out by the Financial Services Authority (FSA). Banks and finance companies require a government licence in order to commence operations and can only take the legal form of limited companies (Aktiengesellschaft), although exceptions may be granted by the Government.¹⁵⁸ The head offices and the principal management must be domiciled in Liechtenstein. The minimum required fully-paid-up capital is Sw F 10 million for banks and Sw F 2 million for finance companies, although the Government deems the former insufficient and, in practice, requires Sw F 20 million for banks. At

¹⁵⁵ IMF (2002).

¹⁵⁶ Data for 2003 are available at the following website: <http://www.afdl.llv.li/>.

¹⁵⁷ Law of 21 October 1992 on Banks and Finance Companies (LLG 1992 No. 108), as amended, and Ordinance of 22 February 1994 Implementing the Law on Banks and Finance Companies (LLG 1994 No. 22), as amended.

¹⁵⁸ Article 18, paragraph 1, of Banking Act.

least one member of the board of directors and one member of the management board must be domiciled in Liechtenstein. They must be duly authorized to fully represent their company.¹⁵⁹

214. The establishment of a branch or subsidiary of a non-EEA bank or finance company also requires a licence; in addition to satisfying the aforementioned requirements, the institution must be subject to home consolidated supervision comparable to Liechtenstein supervision, and the home authorities must raise no objection. A foreign institution wishing to establish a representation in Liechtenstein requires a licence by the FSA; this is granted if it is supervised in its home country (consolidated supervision in the case of a group) in a manner comparable to Liechtenstein supervision, the home supervisory authorities do not object to the presence of the bank in Liechtenstein, and the managers of the representation "guarantee irreproachable business activities". The 1992 Banking Act applies (by analogy) to Liechtenstein branches of foreign banks, finance companies, and securities undertakings. No reciprocity requirements exist. So far, no foreign banks have established branches in Liechtenstein.

215. As a result of EEA membership, finance companies and securities undertakings domiciled in an EEA member-state obtain the right of free movement of services for the activities covered by their home licences without requiring a Liechtenstein licence; their operation in Liechtenstein must, however, be supervised by their home authorities. The same applies to the establishment of branches of EEA financial institutions in Liechtenstein. Suppliers from non-EEA countries must obtain a Liechtenstein licence.

216. Investment undertakings are governed by the Law on Investment Undertakings (IUG).¹⁶⁰ Before initiating business activities, any investment undertaking requires a licence from the Government. Investment undertakings are divided into investment funds on a contractual basis (which have the legal form of a trusteeship), and investment companies (which have the legal form of limited company). The minimum required fully paid-up capital is Sw F 1 million. Investment companies must be incorporated as limited liability companies, with fixed or variable capital. Regardless of form, investment undertakings are obliged to have both a board of directors and a custodian bank, which must be registered in Liechtenstein.¹⁶¹ Furthermore, the principal administration of an investment undertaking must be domiciled in Liechtenstein. The marketing of mutual funds can be made only by banks, fund management companies or trustees with commercial presence in Liechtenstein. No secondary markets or underwritings exist in Liechtenstein. Liechtenstein banks can, participate in secondary markets, however, through their Swiss operations. Units of foreign investment undertakings may be sold in Liechtenstein under licence or, if reciprocity exists, after notification.

Money laundering

217. Liechtenstein is a party to the Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (Strasbourg Convention). It also participates in the Select Committee of Experts on the Evaluation of Anti-Money-Laundering Measures (also known

¹⁵⁹ Banks are obliged to adopt a dual management structure, with a board of non-executive directors and a management board; internal auditors, directly reporting to the board of directors, must also be appointed.

¹⁶⁰ Law of 3 May 1996 on Investment Undertakings (IUG), which entered into force on 10 July 1996, LLG 1996, No. 89.

¹⁶¹ Article 40 of the IUG.

as Moneyval).¹⁶² Liechtenstein also supports the United Nations Global Programme against Money Laundering.

218. In Autumn 1999, following allegations that Liechtenstein had fallen short in fighting money laundering, Moneyval conducted a peer review. The Financial Action Task Force (FATF) undertook a unilateral review in Spring 2000. These assessments confirmed the existence of an extensive money laundering problem, mainly owing to difficulties in the enforcement of the relevant legislation and the inefficient and overly bureaucratic character of the mutual legal assistance provisions. In June 2000, the FATF included Liechtenstein on the list of non-cooperative countries.

219. In response, numbered accounts, whereby the identity of the account holder was known only to a restricted circle, were abolished by law, and "know your customer" rules were put in place for financial and legal activities; other measures included revision of the Due Diligence Act and the release of a new Due Diligence Executive Order, a new law on Mutual Legal Assistance on Criminal Matters, an ordinance to establish a Financial Intelligence Unit to which suspicious transactions should be notified; a Decree to establish the Due Diligence Unit, which is responsible for the enforcement of the Due Diligence Act; and a revision of the Criminal Procedure and Narcotics Act of 1993. As a result, FATF removed Liechtenstein from the list of non-cooperative countries in 2001 and ceased further monitoring of the country in June 2002. In its 2003 report, the IMF noted "a high level of compliance" with FATF standards.

220. In 1998, the OECD, concerned about "harmful tax competition" by both preferential tax regimes and "tax havens", established a framework in order to identify and address the problems caused by such tax regimes.¹⁶³ In 2000 and again in 2003, Liechtenstein was maintained on the list of non-cooperative tax havens.¹⁶⁴

221. The Government of Liechtenstein is endeavouring to create an integrated financial supervisory authority, combining the current functions of the FSA, the Insurance Supervisory Authority, and the Due Diligence Unit. The new authority, to be called Financial Market Authority (FMA), is scheduled to initiate operations on 1 January 2005. It will be independent from the Government and will have sovereign powers over the supervision of all financial market activities. Supervision will continue to be dualistic in nature, combining direct (by the FMA) and indirect (by licensed auditors reporting to the FMA) supervision.

(ii) Insurance services

(a) Insurance services in Switzerland

222. Per capita insurance expenditure in Switzerland reached US\$5,660 in 2003 (of which US\$3,432 on life insurance), the world's highest per capita expenditure. The value added of the insurance sector corresponds to about 2.7% of Swiss GDP.¹⁶⁵ On 30 September 2003, there were 198 insurance companies operating in Switzerland (103 Swiss insurance companies, 40 foreign, and 55 Swiss reinsurance companies).

¹⁶² The role of Moneyval is to evaluate the implementation of both FATF recommendations and the provisions of the Strasbourg Convention for members of the Council of Europe that are not members of FATF.

¹⁶³ OECD (1998).

¹⁶⁴ OECD (2000).

¹⁶⁵ Swiss Re (2003). Of the 143 direct insurance companies, 26 were life insurance companies (of which two foreign) and 117 were non-life (of which 38 foreign).

223. Under the Insurance Supervisory Law (ISL) (RS 961.01), private insurance companies are supervised by the Federal Office of Private Insurance (FOPI). FOPI monitors life insurance, accident insurance, insurance against damage, and reinsurance, and complements the Federal Social Insurance Office (FSIO) in the supervision of supplemental insurance coverage of health insurance companies.¹⁶⁶ Among recent developments, both the life and damage insurance ordinances were revised, and entered into force in January 2004.¹⁶⁷ The ISL and the other main law governing private insurance in Switzerland, the Federal Law on Insurance Contracts of 2 April 1908, are currently undergoing a total revision, designed to strengthen solvency requirements and improve insurance supervision and consumer protection.

224. Insurers (including reinsurers) with their principal office in Switzerland require approval by FOPI before commencing business; foreign companies with reinsurance as their only business in Switzerland are exempted and are not subject to FOPI supervision. The classes of activity must be specified; as for each class, separate approval is required. Later expansion to additional classes is subject to approval. Composite life and non-life or non-insurance-related operations, are not allowed. There is a public monopoly on fire and natural damage insurance (on buildings) in 19 cantons. As part of its social security system, Switzerland maintains a monopoly on the insurance of workplace accidents in certain categories of industries (*Caisse nationale d'accidents*).¹⁶⁸

225. The minimum fully paid-up capital requirements range from Sw F 600,000 to Sw F 10 million for non-life insurers; from Sw F 5 to 10 million for life insurers, depending on the required insurance class; and is Sw F 10 million for reinsurance companies. The manager of the foreign company must be resident in Switzerland and the majority of the board of directors of the Swiss company must have EFTA citizenship and be domiciled in Switzerland. To cover costs and losses in the initial years of operation, an organizational asset fund available at short notice, equal to between 20% and 50% of minimum capital, must be formed. Furthermore, class-specific levels of reserves must be available.¹⁶⁹

226. As a general rule, cross-border supply of insurance services is not possible. Representative offices cannot engage in business or act as agents. Foreign insurers establishing in Switzerland must have been in operation for at least three years. The manager of a foreign insurance company must be domiciled in Switzerland and, apart from the organizational fund, the branch must have unrestricted access to assets equal to 50% (for non-life insurance) or 100% (for life insurers) of its minimum guarantee fund.

227. As a result of a 1989 bilateral agreement granting EU non-life insurers the right of establishment, regulations for EU non-life insurance companies are somewhat less restrictive than for non-EU companies. In particular, in contrast with other non-life foreign insurers, EU non-life insurers are not required to deposit part of their assets with the SNB. Following Liechtenstein's accession to the EEA, the existing cooperation between the supervision authorities of Switzerland and Liechtenstein was codified in a 1996 bilateral agreement on direct insurance.¹⁷⁰

228. Basic health insurance is compulsory for all residents (including foreigners) and can be provided by either recognized non-profit health organizations or private insurance companies; it

¹⁶⁶ On 30 September 2003, FSIO supervised 56 institutions. See FSIO online information. Available at: www.bpv.admin.ch.

¹⁶⁷ *Ordonnance sur l'assurance-vie* (RS 961.611) and the *Ordonnance sur l'assurance dommages* (RS 961.711).

¹⁶⁸ For information on the *Caisse nationale Suisse en cas d'accident*, see RS 832.20.

¹⁶⁹ WTO, GATS/SC/83/Suppl.4.

¹⁷⁰ RS 0.961.514.

covers sickness, maternity and accident (if not covered by accident insurance).¹⁷¹ Optional insurance may also be purchased, but this falls under private insurance law. All insurers offering the basic health insurance scheme are obliged to provide identical services, defined by law; there is no specific list of benefits, but only benefits that are "effective, appropriate and efficient" are covered. Each insured person may choose any health insurer; the latter does not have the option to refuse insurance, regardless of age or state of health, or to impose any reservations or qualifying period.¹⁷² Under the Health Insurance Act, insurance companies must offer a uniform premium within each canton, without consideration of the age of new insured entrants. The insurer can only distinguish three categories of premiums within the canton and allow reduced premiums to children and young people in education (between 18 and 25 years). Under the Act, the Confederation and the cantons subsidize insurance premiums. The financial contribution from the Confederation is allocated to the cantons according to their population, their respective financial capacities, and the amount of the premiums. All other complementary insurance services are regulated by private laws under the Insurance Contract Act. As of 1 January 2004, all matters concerning sickness and accident insurance have been transferred from FSIO to the Swiss Federal Office of Public Health.

229. Social security consists of old age and widower's pension, disability insurance, unemployment insurance and loss of earnings benefit and workplace accident insurance. There are three pillar: the AVS/AI – Assurance-vieillesse et survivants/Assurance-invalidité¹⁷³, a highly redistributive, public scheme, which is compulsory for all persons living or working in Switzerland (including children); the Prévoyance professionnelle, an occupational pension scheme that is compulsory for employed or self-employed persons earning more than Sw F 25,320 per year, designed to enable the insured to maintain current living standards after retirement; and a third pillar, which consists of individual saving measures. In order to participate in the basic health insurance scheme, health insurance suppliers are obliged to be organized as an association, mutual association, foundation or joint-stock company; pension schemes must be either a mutual association or a foundation.

230. A federal tax of 8% is levied on settlements from life insurance or 15% on private annuity insurance. A stamp duty of 5% applies to insurance premiums; a lower rate of 2.5% is levied in the case of single-premium life insurance with a repurchase option. Insurance services are not liable to VAT.

(b) Insurance services in Liechtenstein

231. At end 2003, there were 23 insurance undertakings operating in Liechtenstein (six non-life insurance, 12 life insurance and five reinsurance companies). Gross premiums amounted to over Sw F 1,475 million, 94% of which in life insurance. Total capital investments reached Sw F 3.73 billion in 2003, 75% of which in life insurance and 22% in reinsurance. Seven of those companies (four non-life and three reinsurance) operated as captives. In addition, 28 foreign insurance companies (27 Swiss, one EU) have established branches in Liechtenstein. By end 2003, over 180 EEA and Swiss insurance undertakings had registered their intention to provide cross-border insurance services, although these undertakings very rarely become active.

232. Insurance activities in Liechtenstein are governed by the Insurance Supervision Law¹⁷⁴, and the associated ordinance.¹⁷⁵ All insurance undertakings are subject to government licence for each

¹⁷¹ Foreign insurance companies are allowed to invest in real estate up to the value of technical reserves required. See online information. Available at: www.bsv.admin.ch; www.bag.admin.ch; www.edi.admin.ch.

¹⁷² Compulsory health insurance is based on the Federal Law on Health Insurance of 18 March 1994, in force from 1 January 1996; its purpose is to ensure solidarity among the insured.

¹⁷³ Old Age and Survivors' Insurance/Disability Insurance.

¹⁷⁴ LLG 1996, No. 23, Law of 6 December 1995 on the Supervision of Insurance Undertakings.

individual insurance branch. Insurance undertakings are supervised by the Insurance Supervisory Authority, which also administers the social security system. Insurance undertakings must adopt the legal form of a limited company or a cooperative. Aside from minimum capital requirements (Sw F 5 million to 10 million for both life insurers and reinsurance companies; and Sw F 0.5 million to 1 million for each class of non-life insurance), an organizational fund amounting to 20-50% of the minimum capital is required.

233. Non-insurance activities by insurance companies are forbidden. The main administration of the company (including accounting) must be situated in Liechtenstein; both a board of directors and a management board are required, with at least one member of each being a Liechtenstein resident and having sufficient authority to represent the company vis-à-vis state authorities. However, in the case of a branch office or an agency of a non-EEA undertaking, the general representative of the company is deemed to satisfy that requirement. Undertakings domiciled and licensed in an EEA country may conduct direct insurance business in Liechtenstein without requiring a Liechtenstein licence; the single-licence principle applies to the country after its accession to the EEA.

234. Cross-border provision of services by EEA companies is also possible, provided the company is capable of conducting business outside its domicile country and has the necessary solvency margin. On the basis of a bilateral agreement in force since 1997, insurance undertakings domiciled in Switzerland or Liechtenstein are granted freedom of establishment and operation in the other country. Other non-EEA-country insurance undertakings require authorization in order to operate in Liechtenstein; they must establish an agency or a branch office (including assets equal to 50% of the statutory minimum guarantee fund) in Liechtenstein. Insurance undertakings, with head office in a foreign country and engaged in solely reinsurance activities, are exempt from Liechtenstein supervision.

235. Premiums are freely set by the companies; they are not subject to approval. Liechtenstein imposes a special tax on foreign insurance companies; the rates are 1% on premium receipts from life and old-age insurance, and 2% on all other premium receipts. Insurance services are not liable to VAT.

¹⁷⁵ Ordinance of 8 April 1997 on the Insurance Supervision Act (LLG 1997, No. 85), in force from 24 January 1997.

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