

Committee on Regional Trade Agreements

FACTUAL PRESENTATION

**Economic Partnership Agreement
between
Japan and Switzerland
(Goods and Services)**

Report by the Secretariat

Revision

This report, prepared for the consideration of the Economic Partnership Agreement between Japan and Switzerland has been drawn up by the WTO Secretariat on its own responsibility and in full consultation with the Parties. The report has been drawn up in accordance with the rules and procedures contained in the Decision for a Transparency Mechanism for Regional Trade Agreements (WT/L/671).

Any technical questions arising from this report may be addressed to Jean-Daniel Rey (tel: +41 22 739 52 64).

TABLE OF CONTENT

	<i>Page</i>
I. TRADE ENVIRONMENT	1
A. OVERVIEW	1
B. MERCHANDISE TRADE	1
C. TRADE IN SERVICES AND INVESTMENT	5
II. CHARACTERISTIC ELEMENTS OF THE AGREEMENT	11
A. BACKGROUND INFORMATION	11
B. STRUCTURE OF THE AGREEMENT	12
III. TRADE IN GOODS	13
A. IMPORT DUTIES AND CHARGES, AND QUANTITATIVE RESTRICTIONS	13
1. General Provisions	13
2. Preferential treatment on tariffs	13
3. Liberalization of tariff lines and trade	17
4. Tariff Rate Quotas	27
5. Import restrictions	28
B. RULES OF ORIGIN	28
C. CUSTOMS VALUATION	30
D. EXPORT DUTIES AND CHARGES, AND QUANTITATIVE RESTRICTIONS	30
1. Export duties and restrictions	30
E. REGULATORY PROVISIONS ON TRADE IN GOODS	30
1. Standards	30
2. Trade Remedies	31
3. Subsidies and State-aid	33
F. CUSTOMS-RELATED PROCEDURES	33
IV. PROVISIONS ON TRADE IN SERVICES AND INVESTMENT	34
A. SCOPE AND DEFINITIONS	34
B. GENERAL PROVISIONS ON TRADE IN SERVICES AND INVESTMENT	35
1. Measures affecting trade in services	35
2. Investment	35
3. Movement of natural persons	36
C. DENIAL OF BENEFITS.	38
D. LIBERALIZATION COMMITMENTS IN TRADE IN SERVICES AND INVESTMENT	38
1. Lists of Reservations / Non-conforming measures for trade in services	39
2. Lists of Reservations / Non-conforming measures for investment	41
E. LIBERALIZATION COMMITMENTS IN SELECTED SECTORS AND SECTOR-SPECIFIC PROVISIONS ON TRADE IN SERVICES	42
1. Communication services	43
2. Financial services	44
3. Transport services	45
4. Other services	45

5.	"New services"	46
F.	REGULATORY PROVISIONS ON TRADE IN SERVICES	46
1.	Domestic regulation	46
2.	Recognition	47
3.	Other regulatory provisions	47
G.	SAFEGUARD ACTIONS ON SERVICES AND INVESTMENT	47
V.	GENERAL PROVISIONS OF THE AGREEMENT	48
A.	TRANSPARENCY	48
B.	EXCEPTIONS	48
C.	TAXATION	48
D.	ACCESSION	48
E.	INSTITUTIONAL FRAMEWORK	49
F.	DISPUTE SETTLEMENT	50
G.	GOVERNMENT PROCUREMENT	52
H.	INTELLECTUAL PROPERTY RIGHTS	53
I.	ELECTRONIC COMMERCE	56
J.	OTHERS	57
1.	Competition	57
2.	Environment	57
3.	Promotion of a Closer Economic Relationship	58
K.	RELATIONSHIP WITH OTHER AGREEMENTS CONCLUDED BY THE PARTIES	58
ANNEX I		60
ANNEX II		65

Key Facts	
Parties to the Agreement:	Japan and Switzerland.
Date of Signature:	19 February 2009.
Date of Entry into Force:	1 September 2009.
Date of Notification:	1 September 2009.

I. TRADE ENVIRONMENT

A. OVERVIEW¹

1. The Free Trade and Economic Partnership Agreement between Japan and Switzerland (hereinafter referred to as "the Agreement") is Japan's 10th free trade agreement (FTA)² and Switzerland's 20th FTA.³

2. In 2009, Japan's GDP, with a population of 127.6 million, was estimated at US\$5,068 billion while that of Switzerland, with a population of 7.7 million, was estimated at US\$500 billion. Although both have similar trade profiles, exporting mainly manufactured goods and importing also mainly manufactured goods and fuels (for Japan), Japan had a lower trade to GDP ratio, 32.2, averaged over 2007-2009, than that of Switzerland, 111.2.

B. MERCHANDISE TRADE

3. For merchandise trade in 2009, Japan's share of total world exports, was 4.65%, while its share in total imports was 4.35%, while Switzerland's shares were 1.38% for exports and 1.23% for imports. With total merchandise exports of US\$580,719 million and imports of US\$551,960 million (both in sharp decline from the previous year), Japan was the world's 4th largest exporter and importer compared to Switzerland's ranking at 14 for both exports and imports (also in sharp decline from the previous year, with global exports and imports of US\$172,850 million and US\$155,706 million).⁴

4. In 2008, Japan was Switzerland's 4th largest source of imports⁵, accounting for 2.1% of its total imports. Japan was Switzerland's 3rd largest destination for exports, accounting for 3.3% of its

¹ Source for this section: WTO Trade Profiles 2010 (2009 data). Export figures are calculated f.o.b. and import figures are calculated c.i.f. Ranking in world trade excluding intra-EU trade. For bilateral trade, the 2008 figures are reported.

² Agreements in goods and services counted as one and only agreements in force, notified to the WTO, counted.

³ Agreements in goods and services counted as one and only agreements in force, notified to the WTO, counted (counting the Stockholm Convention establishing the EFTA (Goods), the EFTA agreement on Services, and the accession of Iceland to EFTA as one). For Switzerland the Agreement (with Japan) is only its third concluded independently of EFTA.

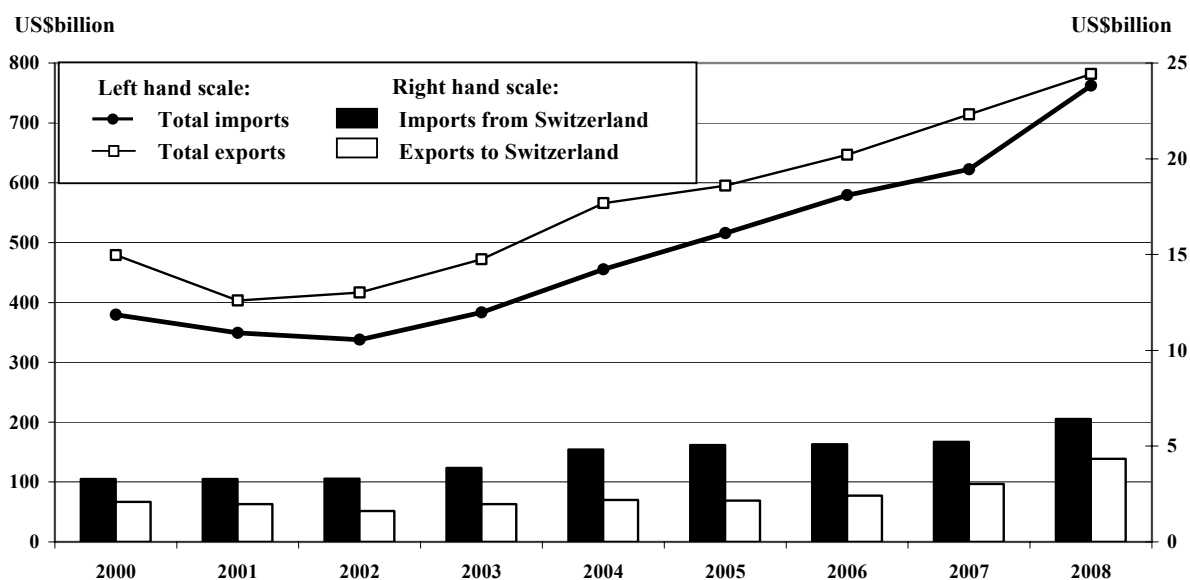
⁴ EU(27) members counted as one partner and intra-EU trade not counted.

⁵ Trade with EU Members counted as trade with one partner. In 2008, the five top sources of imports from Switzerland were: EU (78.8%), the USA (5.8%), China (2.5%), Japan (2.1%), and Libya (1.7%).

total exports.⁶ For Japan, Switzerland represented 0.8% of its total imports⁷ making Switzerland Japan's 23rd largest source of imports - while it was also Japan's 23rd largest destination for exports, accounting for 0.6% of its total exports.⁸

5. Recent developments in global and intra-Party trade are presented in Charts I.1 and I.2. Bilateral trade between Japan and Switzerland has slowly but steadily progressed during 2000-2008, though at a relatively slower pace compared with global export and import growth for Japan and Switzerland. While maintaining a global trade surplus during this period, Japan has had a constant deficit in its merchandise trade with Switzerland. Switzerland maintains a small but growing surplus in its merchandise trade. These observations have however to be placed in the context of the relative importance of bilateral trade between Japan and Switzerland as illustrated in the previous paragraph.

Chart I.1 - Japan: Merchandise imports from and exports to the world and to Switzerland, 2000-2008



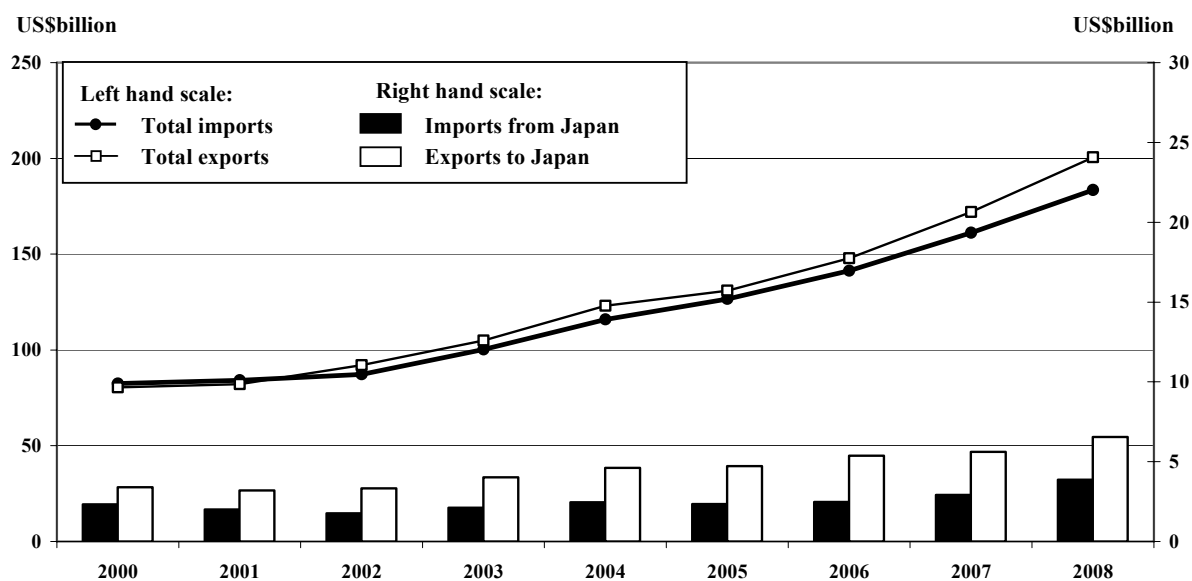
Source : UNSD, Comtrade database.

⁶ In 2008, the five top export destinations from Switzerland were: EU (61%); the USA (9.6%); Japan (3.3%); Hong Kong, China (2.9%); and China (2.8%).

⁷ In 2008, the five top sources of imports from Japan were: China (18.8%), the USA (10.4%), EU(27) (9.2%), Saudi Arabia (6.7%), and Australia (6.2%).

⁸ In 2008, the five top destination of exports from Japan were: the USA (17.8%), China (16%), EU(27) (14.1%), the Rep. of Korea (7.6%), and Hong Kong, China (5.2%).

Chart I.2 - Switzerland: Merchandise imports from and exports to world and Japan, 2000-2008



Source : UNSD, Comtrade database.

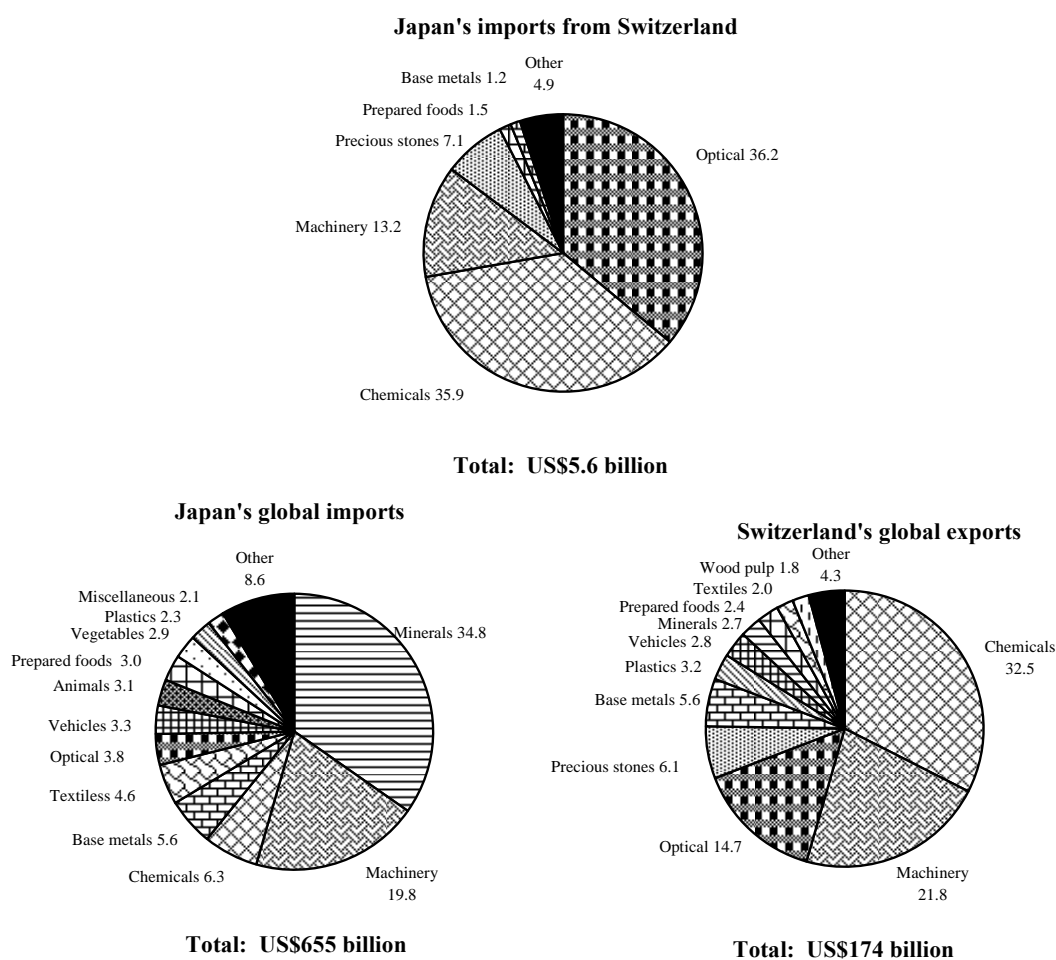
6. The commodity structure of trade among the Parties, as well as with the world in the period 2006-2008, is shown in Charts I.3a and I.3b on the basis of Harmonized System (HS) sections.

7. Chart I.3a allows focusing particularly on Japan's imports from Switzerland. Optical and chemical products accounted for almost two third of Japan's imports from Switzerland (respectively 36.2% for optical products and 35.9% for chemicals). These sectors represented almost half of Switzerland's exports to the world (respectively 14.7% and 32.5%) and only 10.1% of Japan's merchandise imports from the world (respectively 3.8% for optical and 6.3% for chemical products). The third largest import (13.2%) by Japan from Switzerland (machinery), was Switzerland's second largest global export (21.8% of its global exports). Minerals, Japan's most important global import originated from other sources.

Chart I.3a

Japan: import from Switzerland (product composition of merchandise trade, annual average 2006-2008)

Per cent



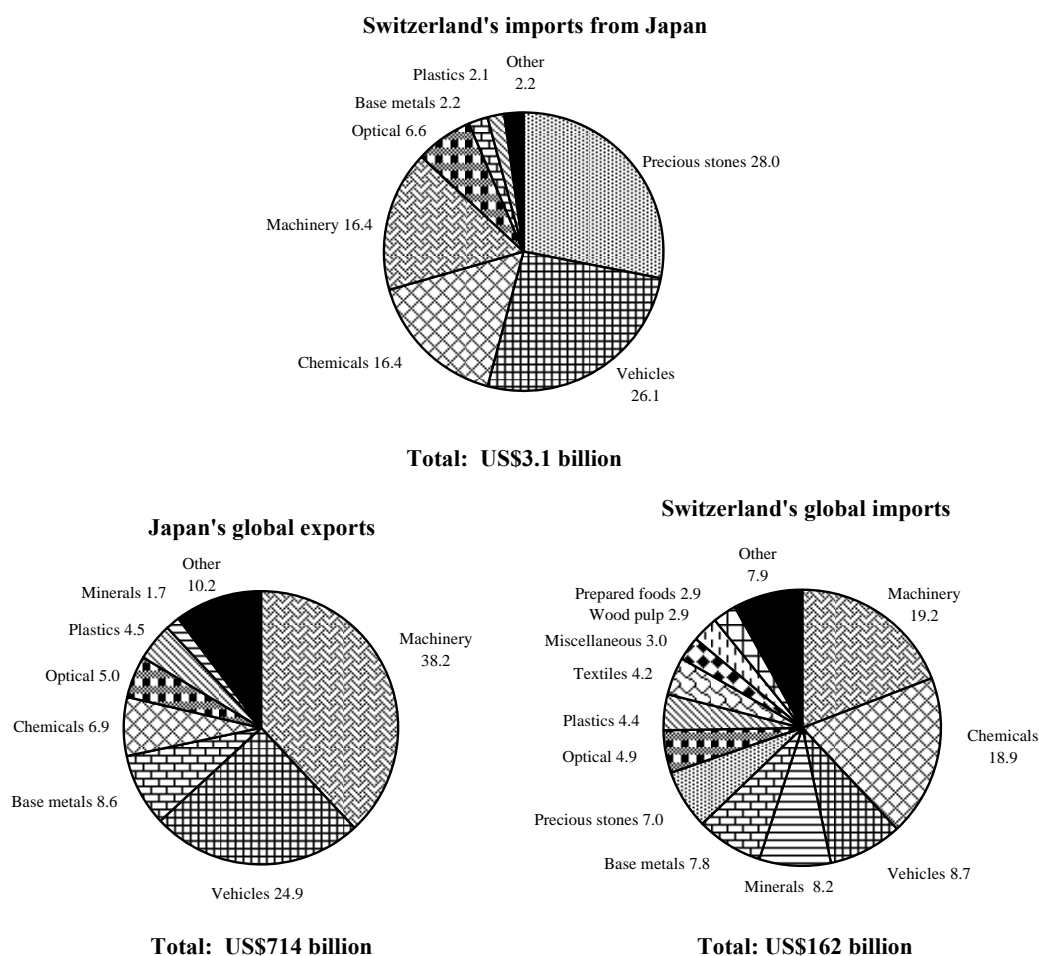
Source: UNSD, Comtrade database.

8. Chart I.3b allows focusing particularly on Switzerland's imports from Japan. Precious stones and vehicles accounted for nearly half of Switzerland's imports from Japan (respectively 28% for precious stones and 26.1% for vehicles). Vehicles were Japan's second largest global export (24.9%). Machinery, Japan's most important global export, represented 16.4% of Switzerland's merchandise imports from Japan, and was also Switzerland's largest global import (19.2%).

Chart I.3b

Switzerland: imports from Japan (product composition of merchandise trade, annual average 2006-2008)

Per cent



Source: UNSD, Comtrade database.

C. TRADE IN SERVICES AND INVESTMENT

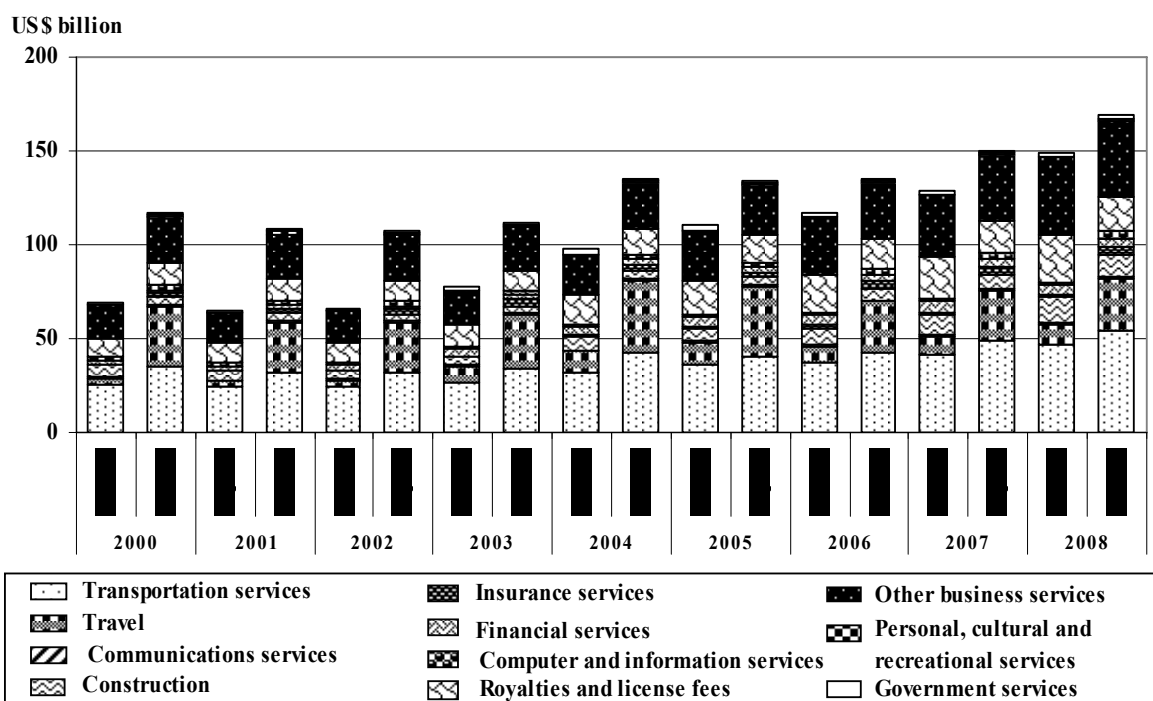
9. In commercial services trade in 2008, Japan's share of total exports was 3.85%, while its share of total imports was 4.62%, while Switzerland's shares represented 2.01% and 1.03% of world exports and imports.⁹ With total commercial services exports of US\$146,514 million, and imports of US\$163,270 million, Japan was the world's 3rd largest exporter and importer compared to

⁹ EU(27) members counted as one partner and intra-EU trade not counted.

Switzerland's ranking as 8th largest and 17th largest exporter and importer (with commercial services exports of US\$76,349 million and imports of US\$36,277 million).

10. Chart I.4 shows the breakdown of commercial services trade for Japan during the period 2000-2008 during which Japan was a net importer of such service. Transportation services and other business services accounted for the largest shares of both imports and exports followed by royalties and license fees and government services.

Chart I.4
Japan, total commercial services trade, 2000-2008

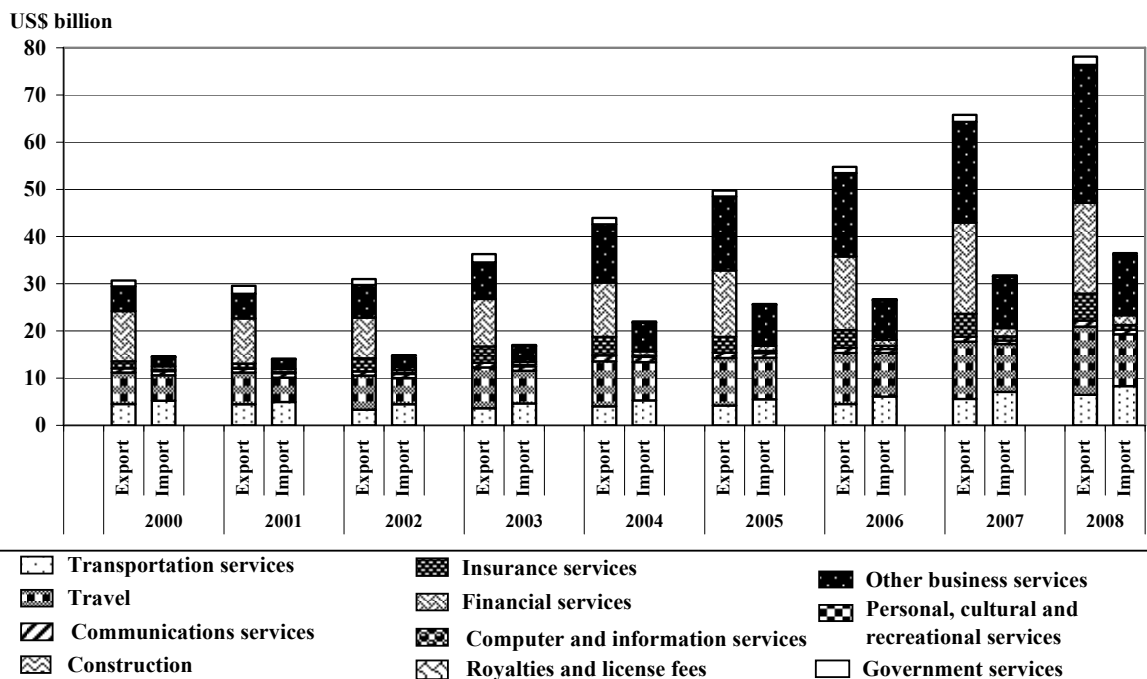


Note: Exports of insurance services were negative in the following years: 2001 (US\$ -100million) and 2002 (US\$-380 million).

Source: IMF, BOP CD-Rom.

11. Chart I.5 shows the breakdown of commercial services trade for Switzerland during the period 2000-2008 during which it was a net exporter, with the value of exports more than twice that of imports. Business and financial services accounted for the largest shares of exports while business services and travel accounted for the largest shares of imports during the same period.

Chart I.5
Switzerland, total commercial services trade, 2000-2008

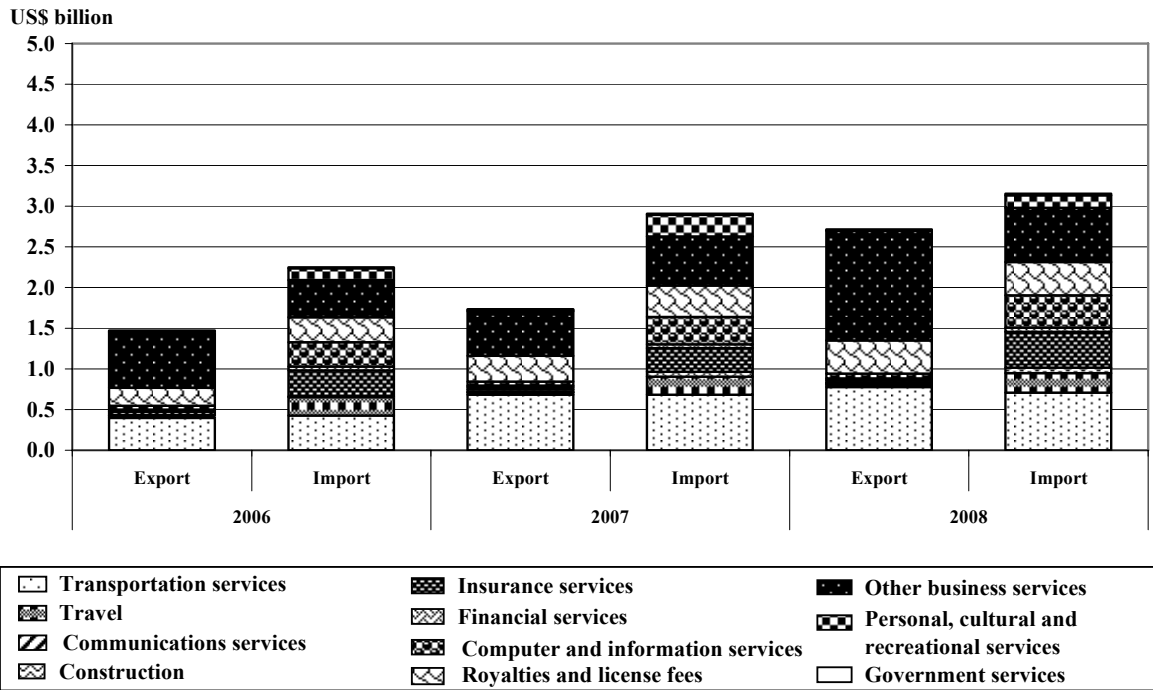


Note: no trade data of Construction; Computer and information services; and Royalties and license fees in 2000-2008.

Source: IMF, BOP CD-Rom.

12. Chart I.6 shows bilateral trade in commercial services in 2006-2008, as reported by Japan. Transportation and business services were the largest categories in terms of imports, with computer and information services and insurance services also well represented, while business services and transportation services were the largest exports. For both imports and exports, royalties and licence fees were also significant.

Chart I.6
Japan, bilateral commercial services trade with Switzerland, 2006-2008

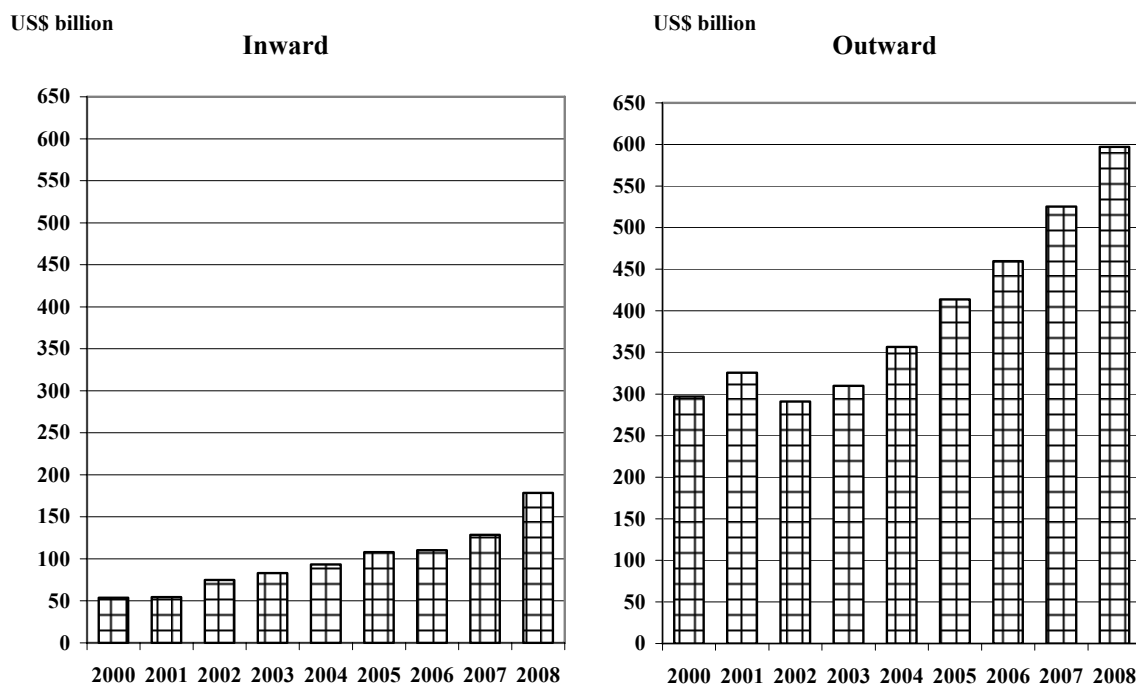


Source: Japan authorities.

13. Chart I.7 shows Japan's total stock of inward and outward FDI and Chart I.8 shows Japan's stock of FDI from and to Switzerland over the period 2000-2008. While Japan's global inward and outward investment stocks have grown consistently, its investment in Switzerland has remained relatively constant during the same period. Switzerland's investment in Japan has increased particularly during the last years of the period. In 2008, Switzerland's FDI stock in Japan was US\$1.16 billion accounting for 0.2% of total investment in Japan (US\$597.34 billion).

Chart I.7

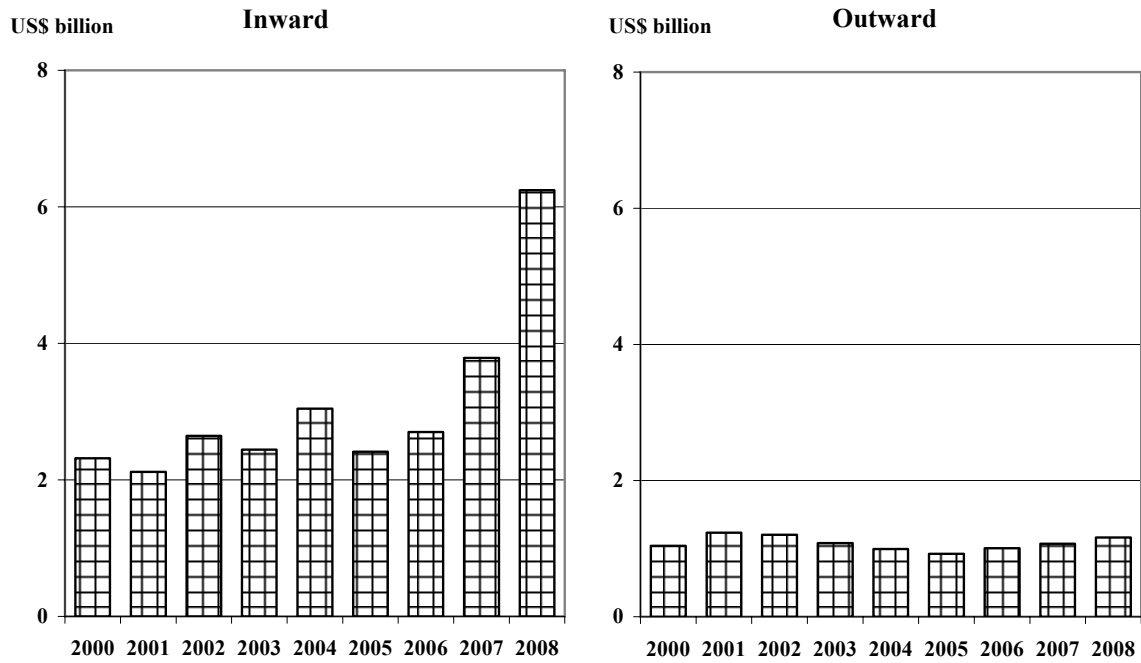
Japan inward and outward foreign direct investment stock with world, 2000-2008



Source: WTO Secretariat estimates based on data at <http://www.boj.or.jp/en>.

Chart I.8

Japan inward and outward foreign direct investment stock with Switzerland, 2000-2008

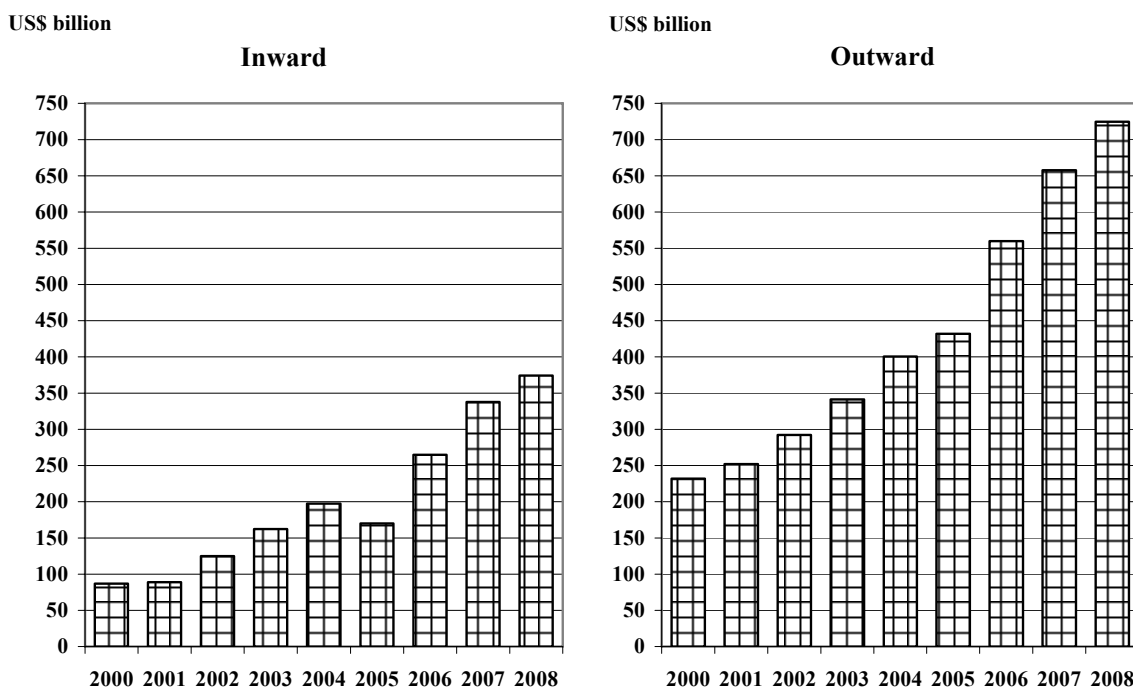


Source: WTO Secretariat estimates based on data at <http://www.boj.or.jp/en>.

14. Chart I.9 shows Switzerland's FDI with the world in 2000-2008. Switzerland is a significant net outward investor, with outward FDI accounting for over US\$700 billion in 2008 compared with the corresponding figure of US\$600 billion for Japan. Switzerland is also a net investor in Japan as Chart 1.8 shows.

Chart I.9

Switzerland, inward and outward foreign investment stock with world, 2000-2008



Source: UNCTAD, Foreign Direct Investment database.

II. CHARACTERISTIC ELEMENTS OF THE AGREEMENT

A. BACKGROUND INFORMATION

15. Negotiations between Japan and Switzerland were initiated in May 2007 and conducted through eight rounds of bilateral negotiations. The Agreement was signed on 19 February 2009 and entered into force on 1 September 2009.

16. The Parties notified the goods and services aspects of the Agreement to the WTO on 1 September 2009, in document WT/REG273/N/1 – S/C/N/512. The notification was made pursuant to Article XXIV:7(a) of the GATT 1994 for goods, and to Article V:7(a) of GATS for services. The text of the Agreement, together with its Annexes, is available on the Parties' official websites:

Japan:

<http://www.mofa.go.jp/region/europe/switzerland/epa0902/index.html>

Switzerland:

<http://www.seco.admin.ch/themen/00513/02655/02731/02970/index.html?lang=en>

17. While Switzerland had concluded a number of FTAs, within the framework of EFTA¹⁰, the Agreement is a bilateral Agreement, outside of the EFTA scope. However, as Switzerland and Liechtenstein are bound by the Customs Union Treaty of 29 March 1923, the Agreement also applies to Liechtenstein for matters covered by the Customs Union Treaty. This means, that while the trade in goods part of the Agreement applies also to Liechtenstein, the services part does not.

B. STRUCTURE OF THE AGREEMENT

18. The Agreement is composed of a Preamble and sixteen Chapters. It is complemented by ten Annexes, each one related to a specific Chapter of the Agreement, including the Parties Schedules related to their liberalization commitments in goods and Lists of Reservations of Specific Commitments in the context of their liberalization commitments in services and investment.

19. The Parties also adopted, on 19 February 2009, a separate *Implementing Agreement*, pursuant to Article 10 of the Agreement, which sets forth details and procedures for the implementation of certain provisions of the Agreement. The Implementing Agreement constitutes an integral part of the Agreement. In addition, on the occasion of the signing of the Agreement, the Parties issued a *Joint Statement*.

20. The Joint Committee established under the Agreement met, for the first time on 1 September 2009, on the date of entry into force of the Agreement. It adopted three decisions: it established the Rules of Procedures of the Joint Committee (Decision No. 1), Operational Procedures for trade in Goods (Decision No. 2), and Operational Procedures for Rules of Origin (Decision No. 3).

Box II.1: Outline of the Agreement.	
<i>Chapters, Annexes and Letters</i>	<i>Title/description</i>
Preamble	
Chapter 1	General Provisions → Implementing Agreement (related to Art. 10)
Chapter 2	Trade in Goods → Annex I: Schedules (related to Art. 15) → Appendix 1 (Schedule of Japan) → Appendix 2 (Schedule of Switzerland) → Annex II: Rules of Origin (related to Art. 25) → Appendix 1 (Product Specific Rules) → Appendix 2 (Specimen of Certificate of Origin) → Appendix 3 (Text of Origin Declaration)
Chapter 3	Customs Procedures and Trade Facilitation
Chapter 4	Sanitary and Phytosanitary Measures
Chapter 5	Technical Regulations, Standards and Conformity Assessment Procedures
Chapter 6	Trade in Services → Annex III: List of Reservations (related to Art. 57) → Appendix 1 (List of Reservations of Japan) → Appendix 2 (List of Reservations of Switzerland) → Annex IV: Disciplines on Domestic Regulations on Services (related to Art. 48) → Annex V: Recognition of Qualifications of Service Suppliers (related to Art. 49) → Annex VI: Financial Services (related to Chapter 6) → Annex VII: Telecommunication Services (related to Chapter 6)

¹⁰ The European Free Trade Association, comprising of Iceland, Liechtenstein, Norway, and Switzerland.

Box II.1: Outline of the Agreement.	
<i>Chapters, Annexes and Letters</i>	<i>Title/description</i>
Chapter 7	Movement of Natural Persons → Annex VIII: Specific Commitments for the Movement of Natural Persons (related to Chap. 7) → Appendix 1 (Specific Commitments by Japan) → Appendix 2 (Specific Commitments by Switzerland)
Chapter 8	Electronic Commerce
Chapter 9	Investment → Annex IX: List of Reservations (related to Art. 90) → Appendix 1 (List of Reservations of Japan) → Appendix 2 (List of Reservations of Switzerland)
Chapter 10	Competition
Chapter 11	Intellectual Property → Annex X: Geographical Indications (related to Chapter 11 / Art. 119)
Chapter 12	Government Procurement
Chapter 13	Promotion of a Closer Economic Relationship
Chapter 14	Dispute Settlement
Chapter 15	Administration of the Agreement
Chapter 16	Final Provisions
Annexes I to X	<i>Note: Annexes are listed above in connection with the Chapters they refer to.</i>

Source: WTO Secretariat based on the Agreement.

III. TRADE IN GOODS

21. While the Preamble and Chapter 1 contain provisions applicable to trade in goods and trade in services, Chapters 2 to 5 contain provisions specific to trade in goods.

A. IMPORT DUTIES AND CHARGES, AND QUANTITATIVE RESTRICTIONS

1. General Provisions

22. Each Party gives national treatment to the goods of the other Party in accordance with Article III of the GATT 1994. Article III of the GATT 1994 is made part of the Agreement *mutatis mutandis* (Article 14).

2. Preferential treatment on tariffs

23. Article 15 provides that the Parties shall eliminate or reduce customs duties on imports on originating products of Japan and Switzerland imported by one Party from the other. The terms and conditions for the elimination or reduction of customs duties are set out in Annex I, which contains, in its Appendix 1, the Schedule of tariff concessions of Japan, and in its Appendix 2, the Schedule of tariff concessions of Switzerland. Article 15 has therefore to be read in connection with the Parties' Schedules of tariff elimination attached to, and forming an integral part of the Agreement. "Originating product" means a product which qualifies as an originating product under Annex II, which contains the rules of origin applicable to the Agreement.¹¹

24. In case an MFN rate of customs duty is lower than the rate established by Annex I, the MFN rate is applied to products originating in Japan or Switzerland.

¹¹ See Part III, section B of this factual presentation.

25. The tariff elimination programme¹², presented in the following section and supported by Charts and Tables is complemented by a tariff reduction programme.¹³ Certain products are however excluded by Japan and/or by Switzerland from the tariff elimination / reduction programme.¹⁴ The Agreement also includes commitments, by both Parties, on tariff rates quotas (TRQs), progressively introduced for certain products during a transitional period of up to 10 years.¹⁵

26. Customs duty elimination / reduction started on 1 September 2009 when the Agreement entered into force, from the base rates in the respective Schedules. It will be completed at the end of a transition period of 15 years (2024).¹⁶

27. For both Parties, the Agreement identifies different categories for the preferences granted by the Parties to each other are described.

28. A general review of the Agreement's provisions on trade in goods will take place in 2014 (Article 25). On that occasion, the Parties may, if they agree, enter into negotiations on the possible improvement of market access under Chapter 2 and on their Schedules of tariff concessions.

(a) Japan's elimination / reduction programme, by categories

29. Japan's Schedule distinguishes between 4 main product categories for which the elimination or reduction of customs duties is implemented differently. In addition, one product category identifies products which are excluded from the customs tariff elimination / reduction programme. These categories can be summarized as follows:

30. *Category "A"* covers products for which customs duties were eliminated at the date of entry into force of the Agreement (1 September 2009). *Category "B"* covers products for which customs duties will be reduced and eliminated progressively in equal annual instalments from the base rate.¹⁷ Seven different sub-categories, with transition periods ranging from four to sixteen annual instalments have been established and can be summarized as follows:

Table III.1
Summary of Category "B" (Japan)
Implementation Periods applicable to the Progressive elimination of customs duties on imports by Japan

Sub-categories	Number of entries (*)	Number of equal annual instalments	Duty free on
B3	2	4	1 April 2012
B5	39	6	1 April 2014
B7	44	8	1 April 2016
B9	1	10	1 April 2018
B10	379	11	1 April 2019
B12	2	13	1 April 2021
B15	107	16	1 April 2024

Note (*): "Number of entries" means number of entire tariff lines, at the 6-digits level, or part of tariff lines subject to the commitments.

Source: WTO Secretariat based on the Agreement, Annex I, Appendix 1 (Schedule of Japan).

¹² See Categories "A", and "B" in Japan's Schedule of tariff concessions, and Category "A" in Switzerland Schedule of tariff concessions.

¹³ See Category "P" in Japan's and in Switzerland's Schedules of tariff concessions,

¹⁴ See Category "X" in Japan's Schedule of tariff concessions and Categories "X" and "Y" in Switzerland's Schedule of tariff concessions.

¹⁵ See Category "Q" in Japan's Schedule of tariff concessions and products identified as eligible for TRQs in column 1 or 6 of Switzerland's Schedule of tariff concessions.

¹⁶ In the case of Switzerland, all the elimination / reduction commitments took place at the entry into force of the Agreement.

¹⁷ For Japan, the following reductions are due to take place on 1 April of each following year until the elimination programme is completed.

31. *Category "P"* covers products for which customs duties have to be reduced, in most cases immediately. Category P contains 13 sub-categories, which will have different final rates once the Agreement is implemented. One additional sub-category covers products for which customs duties are to be reduced in eleven equal annual instalments from the base rate to 5%. The 14 sub-categories can be summarized as follows:

Table III.2
Summary of Category "P" (Japan)
Final Rates and Implementation Periods applicable to the Progressive reduction of customs duties on imports by Japan

Sub-categories	Number of entries ^a	Number of equal annual instalments	Final Rate reached on	Final Rate
Pa	1	immediate reduction	1 September 2009	6.3%
Pb	1	immediate reduction	1 September 2009	8.1%
Pc	1	immediate reduction ^b	1 September 2009	8.5%
Pd	1	immediate reduction	1 September 2009	9.6%
Pe	1	immediate reduction	1 September 2009	12%
Pf	1	immediate reduction	1 September 2009	12.6%
Pg	1	immediate reduction	1 September 2009	13.4%
Ph	5	immediate reduction	1 September 2009	17%
Pi	2	immediate reduction	1 September 2009	19%
Pj	1	immediate reduction	1 September 2009	20%
Pk	1	immediate reduction	1 September 2009	23.8%
Pl	2	immediate reduction	1 September 2009	27.2%
Pm	1	immediate reduction	1 September 2009	32%
Pn	24	11	1 April 2019	5%

- a "Number of entries" means number of entire tariff lines, at the 6-digits level, or part of tariff lines subject to the commitments.
b For this Sub-category, special rules have been agreed in the context of the implementation of the Bilateral Safeguard (Article 20, paragraphs 2 and 9).

Source: WTO Secretariat based on the Agreement, Annex I, Appendix 1 (Schedule of Japan).

32. *Category "Q"* covers products for which Japan grants preferential access to originating products in Switzerland through a TRQ.¹⁸ For products imported out of the quota, the MFN rate at the time of importation applies. The TRQ-related preferential access granted by Japan is summarized in the Summary Table contained in Annex II, Part A of this factual presentation.

33. *Category "X"* covers products, which are excluded from the Agreement's coverage.

(b) Switzerland's elimination / reduction programme, by categories

34. Switzerland's Schedule contains tariff lines which are sometimes split to distinguish similar products either by their end-uses, by their production processes, or to introduce a seasonal criterion. The Schedule distinguishes between 4 main product categories for which the elimination or reduction of customs duties is implemented differently. In addition, one category contains products that are excluded from the customs tariff elimination / reduction programme. These categories can be summarized as follows:

35. *Category "A"* covers products for which customs duties were eliminated at the date of entry into force of the Agreement (1 September 2009). Duty elimination for some of these products, however, is "within the limits of a tariff quota". The modalities for TRQs are to be deduced from the types of TRQ as recorded in the WTO List LIX.

36. *Category "P"* covers products for which customs duties were reduced on the date of entry into force of the Agreement. The Category contains three sub-categories, with different final rates and/or methods of computing them. The first (P1) contains tariff lines (or parts of tariff lines) for which a preferential rate is granted, at the entry into force of the Agreement, to imports originating in Japan.

¹⁸ See also Part III, section 4 of this factual presentation.

Out of 135 entries, 56 are subject to duty reductions "within the limits of a tariff quota". In addition, special terms and conditions, set out in column 6 of the Schedule, are applicable to certain reduction commitments. For instance, the reductions for certain types of cigarettes (HS 2402.2010 and 2402.2020) are subject to renegotiation within a 24-month period from the date of entry into force of the Agreement.

37. The second (P2) contains tariff lines (or parts of tariff lines) for which a preferential rate is granted to imports originating in Japan, at the entry into force of the Agreement. The final rate is based on deducting the preferential "rebate" rate contained in Switzerland's Schedule of tariff concessions from the MFN rate applicable at the time of import. Out of 70 entries, 22 are subject to reductions "within the limits of a tariff quota". In addition, special terms and conditions, set out in column 6 of the Schedule, are applicable to certain reduction commitments.

38. The third (P3) contains tariff lines (or parts of tariff lines) for which Switzerland commits to limit the customs duties imposed on imports originating in Japan to the "Agricultural Element" (AE) of the duties. The AE of the customs duty, levied upon import, shall be based on, but not exceed, the difference between the Swiss domestic price and the world market price of the agricultural raw materials incorporated into the products concerned.¹⁹ Out of 66 entries, 2 are reduced "within the limits of a tariff quota".

39. *Category "X"* covers products, which are excluded from the customs duties elimination / reduction programme. *Category "Y"* covers products in HS Chapter 19²⁰, which are excluded from the customs duties elimination / reduction programme, but for which export subsidies²¹ may be maintained by Switzerland.

40. Although there is no specific category covering products for which Switzerland grants a preferential access to originating products in Switzerland through a TR²², Switzerland's commitments (in categories A and P) are, in a number of cases, "within the limits of a tariff quota". For products imported above the TRQ, no preferential access is granted and the MFN rate applies. References to TRQs are made for 193 tariff lines (or parts of tariff lines) in HS Chapters 1, 2, 5-8, 10, 20, 22, and 35. However, a number of lines referring to TRQs correspond to products, for which Switzerland is not granting any preference to Japanese products (Category "X", excluded from the elimination / reduction programme). Twenty-one different types of TRQs are referred to in Switzerland's Schedule of concessions which concern the same products as in Switzerland's WTO commitments, contained in WTO Schedule LIX (Switzerland and Liechtenstein).²³ The preferential treatment granted by Switzerland under the Agreement takes the form of preferential in-quota duties granted for products originating in Japan, within the overall quota quantities²⁴ (final quota quantities contained in Schedule LIX, Part I, Section IB, column 4) of the respective WTO TRQs. For Category "A" concessions the in-quota rate is zero immediately while for categories P1, P2 and P3 the in-quota-rate is the same as in

¹⁹ Annex I, Appendix 2, Section 1 (Notes for the Schedule of Switzerland), paragraph 2.b

²⁰ Preparations of cereals, flour, starch or milk; pastrycooks' products.

²¹ As defined in Article 9 of the WTO Agreement on Agriculture.

²² See also Part III, section 4 of this factual presentation.

²³ While the WTO Schedule LIX has been prepared, in 1993/94, on the basis of the HS 1992 classification, Switzerland's Schedule of Tariff Concessions attached to the Agreement has been prepared on the basis of the HS 2007 classification. As a consequence, a number of tariff lines listed in the context of the Agreement differ from the one registered in the WTO Schedule LIX. The TRQ-related lines are however consistent with the TRQ commitments contained in the WTO Schedule LIX (Switzerland/Liechtenstein). This information has been confirmed by Switzerland.

²⁴ Final quota limits are often set for several tariff lines (and not only for the lines for which Japan is granted a preferential access). We have therefore not inserted the applicable quota limit for each line in the Summary Table contained in Annex II, Part B of this factual presentation, as it could mislead the reader.

Switzerland's Schedule of Tariff concessions (Annex II, Appendix 2). The TRQ's maintained by Switzerland for Japan is discussed below and also in Annex II below.²⁵

41. In addition, for three products (table grapes, peaches, and nectarines), Switzerland opened specific bilateral TRQs, through which customs duties are eliminated "within the limits of a tariff quota of 50 tonnes/year" only for "gift fruits".²⁶

42. The Operational procedures for trade in goods referred to in Article 23 mandate the Joint Committee to take a decision to provide detailed regulations pursuant to which the relevant authorities of the Parties shall implement their functions under Chapter 2 of the Agreement (part on trade in goods). The Joint Committee at its first meeting adopted Operational Procedures for Rules of Origin, in particular in the context of the allocation of TRQs.²⁷

43. The following section addresses the commitments made by a Party in terms of elimination of tariffs for imports from the other Party. For Japan and Switzerland this is covered by Category A and, for Japan only and to a certain extent, by Category Q.

3. Liberalization of tariff lines and trade

(a) Japan's liberalization schedule

44. Japan's applied tariff in 2009 consisted of 8,836 lines at the HS nine-digit level (HS 2007).²⁸ Of these tariff lines, 603 lines carry non *ad valorem* rates.²⁹ Table III.1.A shows the scheduled duty elimination in terms of tariff lines and trade, as applied by Japan to imports from Switzerland.³⁰ Before the entry into force of the Agreement, 3,657 tariff lines (41.4% of Japan's tariff) were already duty-free on an MFN basis, representing 77.5% of Japan's imports by value (during 2006-08) from Switzerland. Upon entry into force of the Agreement, an additional 3,547 lines (40.1% of the tariff) became duty-free for imports from Switzerland. As a result, 81.5% of Japan's tariff became duty free for imports from Switzerland, corresponding to 97.1% of imports by value from Switzerland. After 10 years of implementation, in 2018, 7,738 lines (87.6% of the tariff) are to become duty-free, amounting to 99.3% of the value of imports from Switzerland. By the end of the implementation period (2024), 7,849 tariff lines, corresponding to 88.8% of Japan's tariff will be duty free for imports from Switzerland, representing 99.4% of the value of its imports from Switzerland. 987 tariff lines (11.2% of Japan's tariff) are excluded from any tariff elimination, representing 0.6% of imports by value from Switzerland. The 987 tariff lines which remain dutiable consist of lines that are excluded from the elimination commitments of the Agreement, or because the commitment undertaken corresponds to an immediate or a progressive reduction of the customs duty rate to reach the final preferential rate at the end of the transitional period. Certain tariff lines (or parts of tariff lines)³¹, are

²⁵ The quota allocation method used by Switzerland to administer its commitments varies according to the types of product. Details on the methods used and reports on the allocation are available at: <http://www.blw.admin.ch/themen/00007/00059/index.html?lang=fr>

²⁶ The tariff lines (or parts of tariff lines) subject to TRQ commitments are: HS ex0806.1011 (Table grapes considered as "gift fruits" imported from 15 July to 15 September); ex0806.1012 (Table grapes considered as "gift fruits" imported from 16 September to 14 July); ex0809.3010 (Peaches considered as "gift fruits"); and ex 0809.3020 (Nectarines considered as "gift fruits").

²⁷ See the section of this factual presentation on Rules of origin for more details.

²⁸ As is standard practice, the WTO Secretariat does not include tariff lines which are subject to in-quota rates in its calculations.

²⁹ Of these 603 lines 203 have specific duties, 322 have mixed duties while 56 lines have compound rates of duty. In addition, 22 lines have other duties.

³⁰ The Schedule can be found in Annex I, Appendix 1 of the Agreement.

³¹ See Annex II, Part A below.

subject to preferential tariff rate quotas (TRQs) for imports from Switzerland and are discussed in Section 4 below.

Table III.3

Tariff elimination commitments under the Agreement and corresponding average trade
Japan

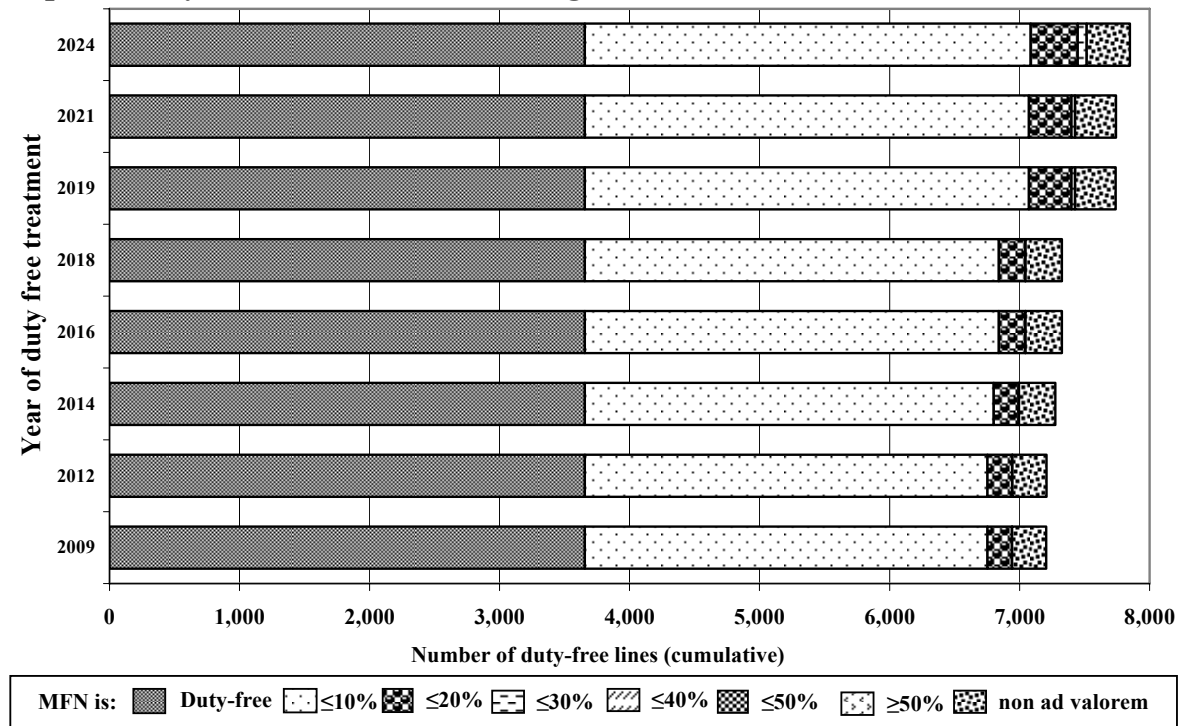
Duty phase-out period	Number of lines	% of total lines in Japan's tariff schedule	Value of Japan's imports from Switzerland (2006-2008) in million US\$	% of Japan's total imports from Switzerland 2006-2008
MFN duty free (2009)	3,657	41.4	4,302.5	77.5
2009	3,547	40.1	1,087.5	19.6
2012	2	0.0	10.6	0.2
2014	69	0.8	90.9	1.6
2016	51	0.6	7.8	0.1
2018	1	0.0	0.7	0.0
2019	411	4.7	16.2	0.3
2021	2	0.0	0.1	0.0
2024	109	1.2	0.1	0.0
Remain dutiable	987	11.2	32	0.6
Total	8,836	100.0	5,548.4	100.0

Note: Tariff lines subject to in-quota rates are excluded in the computation.
Based on the HS 2007 nomenclature.

Source: WTO estimates based on data provided by Japan.

45. Chart III.1 presents Japan's duty elimination under the Agreement by ranges of applied rates. Most of the lines to be progressively freed of duties during the transition period are subject to rates of 10% or less. For lines with higher rates of MFN duties, especially those with rates above 20% and many non *ad valorem* duties are to be eliminated after 10 years of the Agreement having been in force (2019).

Chart III.1
Japan's duty elimination under the Agreement



Source: WTO Secretariat estimates, based on data provided by Japan.

46. Table III.4 shows Japan's tariff elimination commitments *vis-à-vis* Switzerland by HS section product categories. Of the 7,849 tariff lines which will become duty free for imports from Switzerland at the end of implementation of the Agreement³², almost one third fall under HS section XI (textiles, 20%) and HS section VI (chemicals, 12%) while the others are distributed across the other HS sections with a majority falling under HS sections XVI (machinery), XV (base metals) and IV (prepared food).

Table III.4
Japan: Tariff elimination under the Agreement, by HS section

HS section and description	MFN average %	Total No. of lines	MFN 2009	Number of duty-free lines								Remain dutiable	Avg. Final Tariff (Dutiable)	
				2009	2012	2014	2016	2018	2019	2021	2024			
I Live animals and animal products	8.3	517	112	34						59		4	308	12.7 ^a
II Vegetable products	6.1	529	166	129	2	5	12			92		19	104	20.2 ^a
III Animal or vegetable fats and oils	3.8	86	20	22						7			37	14.5 ^a
IV Prepared foods etc.	16.4	764	79	47		12	20	1		119	2	83	401	21.3 ^a
V Minerals	0.5	216	163	34		18							1	-
VI Chemicals and chemical products	2.3	1,050	398	636			1			2			13	11.7 ^a
VII Plastics and rubber	2.5	296	103	179						14				
VIII Hides and skins	10.5	193	65	3			12			72			41	13.4
IX Wood and articles	3.4	263	94	92		32				4		3	38	6.9
X Pulp, paper etc.	0.0	169	169											
XI Textiles and textiles articles	6.5	1,989	78	1,905									6	-
XII Footwear, headgear	16.4	104	6	23			1			36			38	20.3
XIII Articles of stone	1.2	164	99	63			1			1				
XIV Precious stones, etc.	1.3	80	58	17		2				3				
XV Base metals and base metals products	0.9	852	614	238										
XVI Machinery	0.1	919	905	14										
XVII Transport equipment	0.1	146	145	1										
XVIII Precision equipment	0.2	279	270	6			3							
XIX Arms and ammunition	6.9	24		24										
XX Misc. manufactured articles	1.8	189	106	80			1			2				
XXI Works of art, etc.	0.0	7	7											
Total	4.8	8,836	3,657	3,547	2	69	51	1	411	2	109	987	16.9	

- specific duty

a contains *ad valorem* and alternate duties

Note: Tariff lines subject to in-quota rates are excluded in the computation; for the calculation of averages, specific rates are excluded and the *ad valorem* part of alternate rates are included.

Based on the HS 2007 nomenclature.

Source: WTO estimates based on data provided by Japan.

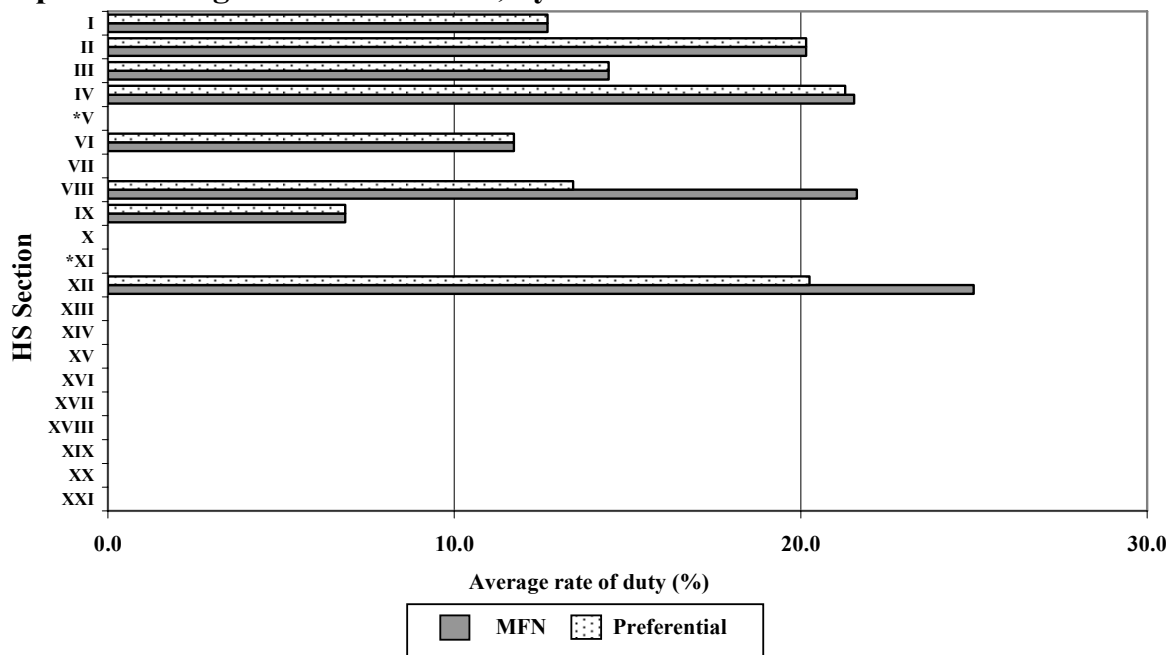
47. While 3,547 lines were liberalized immediately, the remainder are mostly to be liberalized in 2019 (411 lines) and 2024 (109 lines). Of the 987 lines retaining a duty at the end of the implementation period, the vast majority (86%) fall under HS sections I to IV (agricultural products). At the end of the implementation period (2024 in the case of Japan), the overall average tariff of the lines remaining dutiable will be 16.9% with the highest rates for prepared foods (21.3%), footwear (20.3%) and vegetable products (20.2%).

³² Including the 3,657 tariff lines which were already duty free on an MFN basis in 2009.

48. Chart III.2 shows a comparison of average dutiable rates in those HS sections where preferential duties remain at the end of the implementation period.³³ The comparison is made between the average preferential and MFN rates for lines subject to preferential duties only. For those HS sections where tariff peaks remain after implementation of the Agreement is completed, the preferential duties are identical to the MFN duties for HS sections I, II, III, VI, and IX, while the average preferential duties are lower than MFN duties for HS sections IV, VIII, and XII. The average preferential rates range from between 6.9% in HS Section IX to 20.3% in HS XII.

Chart III.2

Japan: Average of dutiable rates, by HS Section



Note: For tariff lines with non *ad valorem* components, only the *ad valorem* part of alternate rates are included in the calculation.

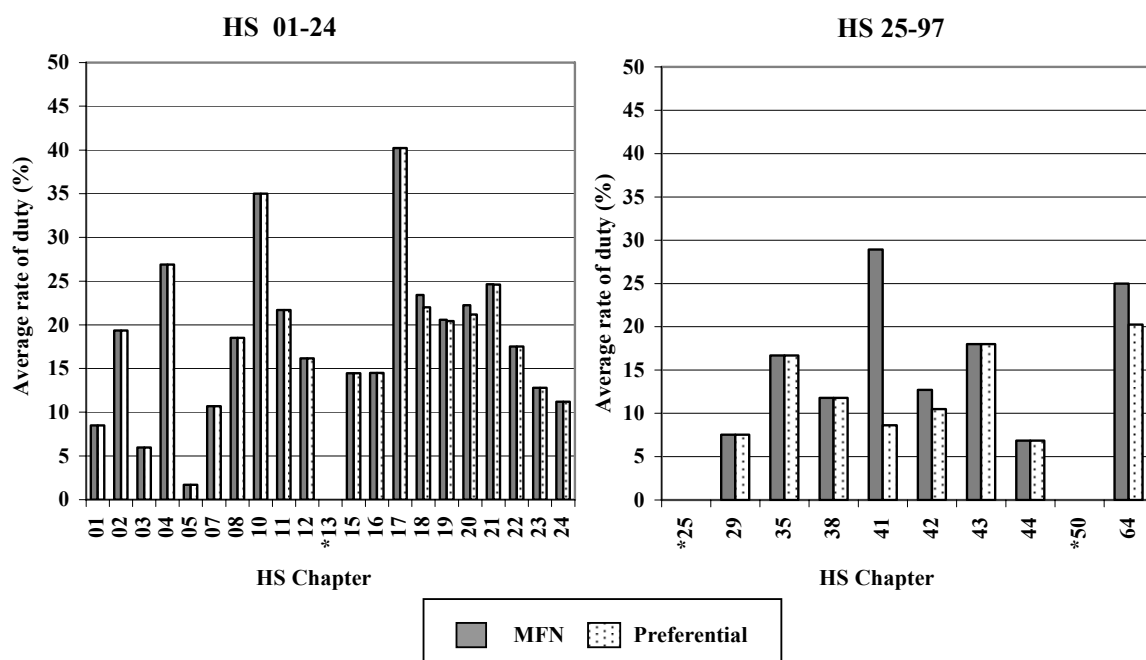
*HS sections V and XI only contain specific duties.

Source: WTO Secretariat estimates, based on data provided by Japan.

³³ HS Sections V and XI contain specific duties and in absence of AVEs, it is not possible to include these lines in the comparison.

49. Chart III.3 shows a comparison of average dutiable rates in those HS Chapters where preferential duties remain at the end of the implementation period. The comparison is made between the average preferential and MFN rates for lines subject to preferential duties only. For those HS Chapters where tariff peaks remain after implementation of the Agreement is completed, the preferential duties are identical to the MFN duties for all Chapters except for 18, 19, 20, 41, 42, and 64, where the preferential duties are lower, in most cases slightly lower, than the MFN duties.³⁴

Chart III.3
Japan: Average of dutiable rates, by HS Chapter



Note: For tariff lines with non *ad valorem* components, only the *ad valorem* part of alternate rates are included in the calculation;

* HS Chapters 13, 25 and 50 only contain specific duties.

Source: WTO Secretariat estimates based on data provided by Japan.

(b) Switzerland's liberalization schedule

50. Switzerland's tariff consists of 8,082 lines, 6,657 (82.4%) of which are non *ad valorem*.³⁵ As the Swiss tariff comprises essentially specific duties, the WTO Secretariat has calculated *ad valorem* equivalents (AVEs) as the ratio of specific duties to import unit values, which in turn are estimated by the ratio of import values to import quantities/volumes in 2008 (at the HS eight-digit level).³⁶ If no import data were available for 2008, import data for 2007 were used.

51. Table III.5 shows the scheduled duty elimination in terms of tariff lines and trade, as applied by Switzerland to imports from Japan.³⁷ Before the entry into force of the Agreement, 1,425 tariff lines (17.6% of Switzerland's tariff) were already duty-free on an MFN basis, representing 19.99% of

³⁴ HS Chapters 13, 25, and 50 contain specific duties and in absence of AVEs, the comparison is not possible.

³⁵ As is standard practice, the WTO Secretariat does not include tariff lines which are subject to in-quota rates in its calculations.

³⁶ This was the methodology used for instance in the most recent Trade Policy Review of Switzerland and Liechtenstein (WT/TPR/G/208/Rev.1).

³⁷ The Schedule can be found in Annex I, Appendix 2 of the Agreement.

Switzerland's imports by value from Japan during 2006-08. Switzerland implemented all its tariff concessions immediately upon entry into force of the Agreement, with an additional 5,303 lines (65.6% of the tariff) becoming duty-free for imports from Japan. As a result, 83.2% of Switzerland's tariff became duty free for imports from Japan, corresponding to 99.75% of imports by value from Japan. 1,354 tariff lines (16.8% of Switzerland's tariff) are excluded from any tariff elimination, representing 0.25% of imports by value from Japan. The 1,354 tariff lines which remain dutiable consist of tariff lines which are excluded from the elimination commitments of the Agreement, or because the commitment involves a reduction of customs duties either immediately or as indicated in Switzerland's Schedule contained in Annex I, Appendix 2. In addition, for a number of products, Switzerland's commitments took the form of preferential TRQs linked to WTO TRQ commitments or bilateral TRQs (see below). In-quota rates are excluded in the Secretariat's calculations.

Table III.5
Tariff elimination commitments under the Agreement and corresponding average trade
Switzerland

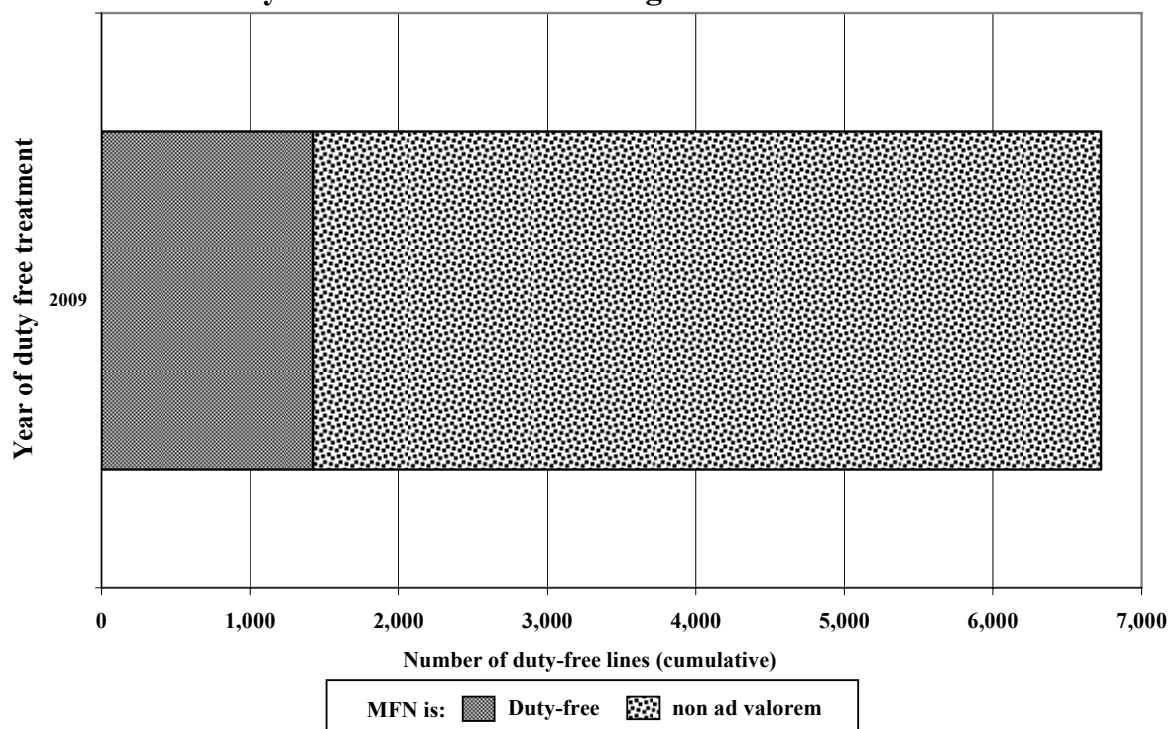
Duty phase-out period	Number of lines	% of total lines in Switzerland's tariff schedule	Value of Switzerland's imports from Japan (2006-2008) in million US\$	% of Switzerland's total imports from Japan 2006-2008
MFN duty free (2009)	1,425	17.6	697.3	19.99
2009	5,303	65.6	2,781.8	79.76
Remain dutiable	1,354	16.8	8.7	0.25
Total	8,082	100.0	3,487.8	100.0

Note: Tariff lines subject to in-quota rates are excluded in the calculation.
Based on the HS 2007 nomenclature.

Source: WTO estimates based on data provided by Switzerland and WTO-IDB.

52. Chart III.4 presents Switzerland's duty elimination under the Agreement by ranges of applied MFN rates. Almost Switzerland's entire tariff is non *ad valorem* and these non *ad valorem* tariffs were eliminated for imports originating in Japan at the date of entry into force of the Agreement (1 September 2009).

Chart III.4
Switzerland's duty elimination under the Agreement



Source: WTO Secretariat estimates, based on data provided by Switzerland.

53. Table III.6 shows Switzerland's tariff elimination commitments *vis-à-vis* Japan by HS section product categories. Of the 6,728 tariff lines for which imports from Japan will enter duty free under the Agreement³⁸, almost 40% fall under HS section XI (textiles 20%) and HS section XVI (machinery 19.5%) while the others are distributed across the other HS sections especially Sections II (vegetable products), IV (prepared foods) and XV (base metals and base metal products).

Table III.6
Switzerland: Tariff elimination under the Agreement, by HS section

HS section and description	MFN average %	Total No of lines	MFN 2009	Number of duty-free lines 2009	Remain dutiable	Avg. Final Tariff (Dutiable)
I Live animals and animal products	47.8	337	123	31	183	5.0
II Vegetable products	21.1	948	168	175	605	6.3
III Animal or vegetable fats and oils	30.5	189	39	8	142	4.0
IV Prepared foods etc.	16.0	595	83	95	417	9.0
V Minerals	0.5	182	119	63		
VI Chemicals and chemical products	1.4	1,015	409	599	7	CHF 465.1 par 100 kg brut ^a
VII Plastics and rubber	2.0	241	30	211		
VIII Hides and skins	1.6	74	15	59		
IX Wood and articles	2.5	130	14	116		
X Pulp, paper etc.	5.5	181	24	157		

³⁸ Including the 1,425 tariff lines which were already duty free on an MFN basis in 2009.

HS section and description	MFN average %	Total No of lines	MFN 2009	Number of duty-free lines 2009	Remain dutiable	Avg. Final Tariff (Dutiable)
XI Textiles and textiles articles	5.2	1,094	34	1,060		
XII Footwear, headgear	3.3	61		61		
XIII Articles of stone	2.9	160	2	158		
XIV Precious stones, etc.	0.4	61	7	54		
XV Base metals and base metals products	1.4	913	39	874		
XVI Machinery	0.8	1,234	204	1,030		
XVII Transport equipment	1.4	196	18	178		
XVIII Precision equipment	0.7	257	55	202		
XIX Arms and ammunition	1.1	28		28		
XX Misc. manufactured articles	1.9	176	34	142		
XXI Works of art, etc.	0.0	10	8	2		
Total	7.4	8,082	1,425	5,303	1,354	8.5

a Average of specific duties.

Note: The majority of Switzerland's tariff is subject to specific duties for which *ad valorem* equivalents were estimated by the Secretariat. Tariff lines subject to in-quota rates are excluded in the computation; for the calculation of averages, specific rates are excluded and the *ad valorem* equivalents (AVEs) are included. AVEs are calculated as the ratio of specific duties to import unit values, estimated by the ratio of import values to import quantities/volumes in 2008 (at the HS 8-digit level). If no import data were available in 2008, 2007 data were used. Based on the HS 2007 nomenclature.

Source: WTO estimates based on data provided by Switzerland and WTO-IDB.

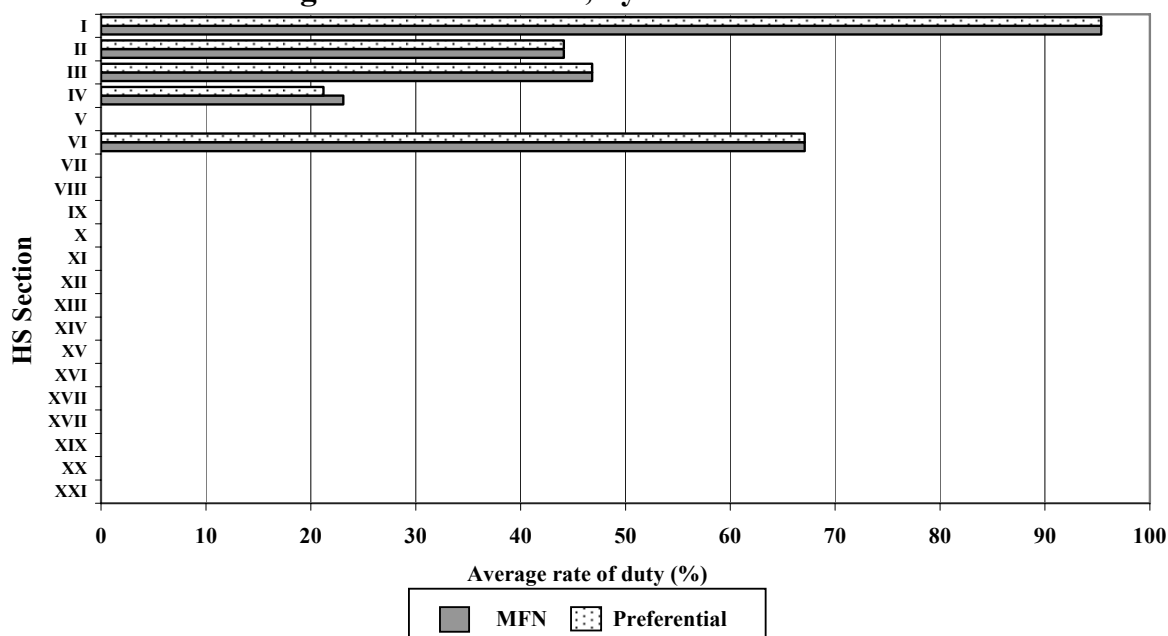
54. Of the 1,354 lines retaining a duty once the Agreement is implemented (2009 for Switzerland), the vast majority (99.5%) fall under HS sections I to IV (agricultural products). The overall average tariff of the lines remaining dutiable was 8.5% with the highest rates for prepared foods (9%) and the lowest for live animals and animal products (5%).³⁹

³⁹ Data were not available to calculate the AVEs for HS Section VI (Chemicals and chemical products).

55. Chart III.5 shows a comparison of average dutiable rates in those HS sections where preferential duties remain at the end of the implementation period.⁴⁰ The comparison is made between the average preferential and MFN rates for lines subject to preferential duties only. For most HS sections where tariff peaks remain after implementation of the Agreement is completed (HS Sections I, II, III, and VI), the preferential duties equal the MFN duties. For HS Section IV (food products, beverages, and tobacco), on average, the preferential duties are slightly lower than the MFN duties.

56. It can be noted that only the residual duties, for which an AVE can be calculated, have been used to do the averaging of the preferential duties in order to compare them with the average MFN duties. This needs to be taken into consideration when attempting to interpret the two following Charts.

Chart III.5
Switzerland: Average of dutiable rates, by HS Section



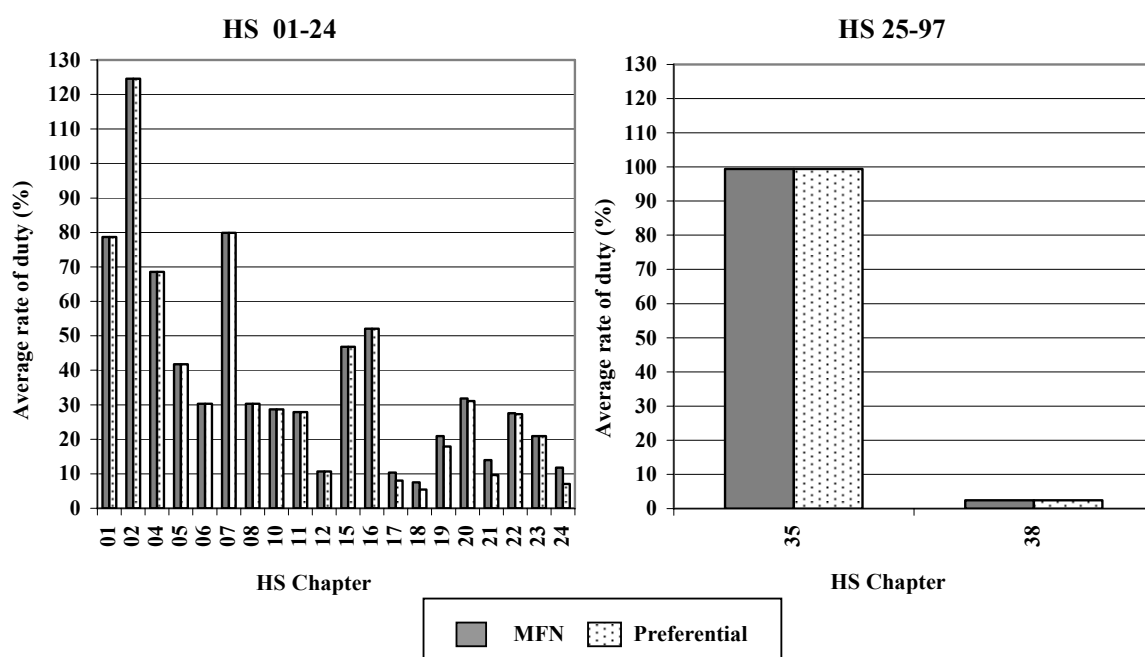
Note: For tariff lines with specific duties, only the *ad valorem* equivalents (AVEs) are included in the calculation;
Excludes tariff lines where AVEs in the preferential level are not calculated due to the absence of bilateral import data in 2008 or in 2007.

Source: WTO Secretariat estimates based on data provided by Switzerland and WTO-IDB.

⁴⁰ HS Sections V and XI contain specific duties and in the absence of AVEs, the comparison is not possible.

57. Chart III.6 shows a comparison of average dutiable rates in those HS Chapters where preferential duties remain at the end of the implementation period. The comparison is made between the average preferential and MFN rates for lines subject to preferential duties only. For those HS Chapters where tariff peaks remain after implementation of the Agreement is completed, the preferential duties are identical to the MFN duties for all the HS Chapters except for HS Chapters 17, 18, 19, 20, 21, and 24, where the preferential duties are lower, in most cases slightly lower, than the MFN duties.

Chart III.6
Switzerland: Average of dutiable rates, by HS Chapter



Note: For tariff lines with specific duties, only the *ad valorem* equivalents (AVEs) are included in the calculation;
Excludes tariff lines where AVEs in the preferential level are not calculated due to the absence of bilateral import data in 2008 or in 2007.

Source: WTO Secretariat estimates based on data provided by Switzerland and WTO-IDB.

4. Tariff Rate Quotas

58. In addition to tariff elimination and reduction commitments, both Japan and Switzerland grant preferential access for some products originating in the other Party in the form of TRQs. Japan grants preferential TRQ access to some Swiss products either immediately upon entry into force of the Agreement (for bovine meat, some sugar confectionery and chocolate, and some food preparations), or progressively over yearly instalments (for natural cheese). Annex II, Part A below summarizes Japan's TRQ concessions granted to Switzerland.

59. Switzerland grants preferential TRQ access to some Japanese products mostly through preferential in-quota rates, within the existing MFN TRQs in Switzerland's WTO Schedule of Tariff concessions (List LIX). Although there is no specific TRQ category in Switzerland's Schedule of tariff concessions in the Agreement, TRQs commitments are provided under the "description of products" in the Schedule. TRQ commitments are implemented, as for the rest of Switzerland's concessions to Japan, immediately upon entry into force of the Agreement. In addition, for three products (table grapes, peaches, and nectarines) imported as "gift fruits", Switzerland opened specific

bilateral TRQs granting preferential access within the limits set for these TRQs. Annex II below summarizes Switzerland's TRQ concessions granted to Japan.

60. Decision No. 2, adopted on 1 September 2009 by the Joint Committee, defines, as part of the Annex to the Operational Procedures for Trade in Goods, procedures for the allocation, verification, and exchange of information and consultations on TRQs.⁴¹

5. Import restrictions

61. The Parties commit not to maintain or introduce any import prohibition or restriction inconsistent with GATT Article XI obligations and with any other relevant provision under the WTO Agreement (Article 18).

B. RULES OF ORIGIN

62. The disciplines applicable to rules of origin, referred to in Chapter 2 (Article 23), are set out in Annex II of the Agreement. Section 2 of Annex II, as well as the specific rules contained in its Appendix 1, which lists product specific rules, deal with the rules of origin themselves. The general requirement for a good to be considered an originating good of a Party (Article II of Annex II of the Agreement) is that it is a product:

- (a) wholly obtained in the customs territory of the Party⁴²;
- (b) obtained in the customs territory of the Party using non-originating materials, provided that such materials have undergone sufficient working or processing in the customs territory of the Party⁴³ (the essential conditions being that the value of the non-originating materials used does not exceed 60% of the ex-works price of the product; or that non-originating materials used have undergone in the customs territory of the Party, a change in tariff classification at the HS four digit level); or
- (c) obtained in the customs territory of the Party exclusively from materials that qualify as originating products of the Party pursuant to paragraphs a) or b) above

63. The product-specific rules of origin are based on tariff chapter (two digit), heading (four-digit), or subheading (six-digit) changes. In a number of cases, changes from certain headings or subheading to other headings or subheadings do not confer origin. Complementary origin-conferring manufacturing operations and process-related rules are also applicable to selected products in HS Chapters 61 to 63 (apparel and textiles) and 71 (metals). An additional minimum regional value content (between 40% and 60%) is also mandatory for a some products. The tariff change rule does not apply to HS Headings/ Subheading 3006.92 (pharmaceutical waste), 63.09 and 63.10 (used clothing and other used textile articles) for which the product is originating only if wholly obtained in a Party.

64. The principles and norms of the WTO Agreement on Customs Valuation are used to determine the value of non-originating materials. Additional calculation rules are contained in Article IV of Annex II of the Agreement.

⁴¹ These procedures complement Notes 2(Qa), 2(Qb), and 2(Qf) in Section 1 of Appendix 1 (Japan's Schedule of tariff concessions) of Annex I of the Agreement, as well as Note 5 in Section 1 of Appendix 2 (Switzerland's Schedule of tariff concessions) of Annex I of the Agreement.

⁴² Article III of Annex II of the Agreement lists the products which shall be considered as wholly obtained.

⁴³ Article IV of Annex II of the Agreement defines what allows a product obtained using non-originating materials to be considered as an originating product of a Party.

65. In determining originating products of a Party, cumulation is permitted when products originating from one Party are used as inputs for the production of a product in the customs territory of the other Party (Article V of Annex II).

66. According to Article VI of Annex II of the Agreement, a product using non-originating materials that have not undergone the required change in tariff classification shall be considered as an originating product of a Party if the value of all non-originating materials used does not exceed 7% of the ex-works price of the product for products classified under HS Chapters 1 to 24. The "tolerance *de minimis*" value is set at 10% of the ex-works price of a product for HS Chapters 25 to 49, or 64 to 97 and 7% of the total weight of the product for products in Chapters 50-63. This "tolerance" rule applies except as otherwise provided for in Appendix 1 to Annex II.

67. Article VII of Annex II of the Agreement contains a list of minimal operation or processes, considered as "non-qualifying operations", that do not confer origin on a product.

68. Additional disciplines on "unit of qualification", "unassembled or disassembled product", "accessories, spare parts and tools", "neutral elements", and "accounting segregation" are in Section 2 of Annex II, and on "territorial requirements"⁴⁴ in Section 3 of Annex II of the Agreement.

69. Section 4 of Annex II contains administrative rules applicable to the certification of the origin of products. Specific disciplines are defined in relation to the proof of origin (Article XV), the certificate of origin (Article XVI), the certificate of origin issued retrospectively (Article XVII), the issuance of a duplicate certificate of origin (Article XVIII), the declaration of origin (Article XIX), the validity of proof of origin (Article XX), the claim of preferential tariff treatment (Article XXI), the supporting documents (Article XXII), and the preservation of documents and records (Article XXIII). A single Certificate of Origin form⁴⁵, and a standard declaration of origin⁴⁶ have been developed.

70. Section 5 of Annex II of the Agreement contains arrangements for administrative cooperation between the Parties in rules of origin-related matters. It covers, *inter alia*, notification (Article XXIV), verification of proof of origin (Article XXV), confidentiality (Article XXVI), penalties and measures against fraudulent acts (Article XXVII).

71. Decision No. 3, adopted on 1 September 2009 by the Joint Committee established under the Agreement, contains "Operational Procedures for Rules of Origin", which is intended to facilitate the implementation of the rules of origins contained in Annex II of the Agreement. Chapter 1 of Section 1 of the Operational Procedures contains disciplines on the proof of origin and Chapter 2 of Section 1 contains the administration and enforcement of Annex II. Section 2 contains explanatory notes regarding, *inter alia*, calculating the value of non-originating materials, accumulation, tolerance and the splitting-up of consignments.

72. A Sub-Committee on Rules of Origin, Customs Procedures and Trade Facilitation, placed under the supervision of the Joint Committee is established to review and monitor the implementation of preferential rules of origin (Article XXX).

⁴⁴ Section 3 covers "principle of territoriality" and "consignment criteria".

⁴⁵ A specimen is contained in Appendix 2 of Annex II of the Agreement.

⁴⁶ Contained in Appendix 3 of Annex II of the Agreement.

C. CUSTOMS VALUATION

73. Part I of the WTO agreement on the implementation of Art. VII of the GATT 1994 (Customs Valuation Agreement) is applicable for the purpose of determining the customs value of goods traded between the Parties and is made part of the Agreement *mutatis mutandis* (Article 17).

D. EXPORT DUTIES AND CHARGES, AND QUANTITATIVE RESTRICTIONS

1. Export duties and restrictions

74. The Parties committed not to introduce or maintain any customs duties on exports to each other (Article 16). The Parties also committed not to maintain or introduce any export prohibition or restriction inconsistent with GATT Article XI obligations and with any other relevant provision under the WTO Agreement (Article 18).

E. REGULATORY PROVISIONS ON TRADE IN GOODS

1. Standards

(a) Sanitary and phytosanitary measures

75. Chapter 4 of the Agreement covers Sanitary and Phytosanitary Measures (SPS). It establishes that, with regard to the rights and obligations of the Parties in respect of SPS measures, the WTO SPS Agreement shall apply (Article 34). Specific issues that may arise from the application of SPS measures shall be addressed through science-based bilateral consultations to find mutually acceptable solutions (Article 35). The Parties also renounced the use of the Agreement's dispute settlement mechanism for SPS-related matters (Article 36), thereby relying on applicable instrument deriving from the SPS Agreement.

(b) Technical barriers to trade

76. Chapter 5 of the Agreement covers technical regulations, standards and conformity assessment procedures⁴⁷ (hereinafter TBT).

77. The WTO TBT Agreement applies with regards to the rights and obligations of the Parties in respect of TBT, unless otherwise provided for in Chapter 5. The Agreement contains a best endeavour clause on the strengthening of cooperation in TBT-related fields. Cooperation may take different forms such as exchange of information, joint contributions in international and regional fora; and reinforcement of the role of international standards as a basis for technical regulations and conformity assessment procedures (Article 38).

78. Japan has designated the Central and South Eastern Europe Division – European Bureau, Ministry of Foreign Affairs -, and Switzerland has designated the Free Trade Agreements Division of the State Secretariat for Economic Affairs (SECO), as enquiry points to answer all reasonable enquiries from the other party regarding TBT matters (Article 39).

79. With regard to conformity assessment procedures, each Party shall ensure that, in cases where a positive assurance of conformity with technical regulations is required for a particular product, suppliers of the product imported from the other Party shall be granted non-discriminatory access. Each Party shall also ensure, whenever possible, that results of the conformity assessment procedures

⁴⁷ Technical regulations, standards and conformity assessment procedures have, in the Agreement, the same definition as in the WTO TBT Agreement.

in the other Party are accepted, even when the procedures differ from its own, provided assurance can be given that conformity with its national technical regulations or standards can be considered as equivalent. In this regard, accreditation according to international standards and guides shall establish a rebuttable presumption of technical competence. The Parties must upon request from the other Party explain why they do not accept the results of the conformity assessment procedure (Article 40).

80. The Agreement establishes a Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures (TBT Sub-Committee), to serve as consultation, coordination, and facilitation body and to review the implementation and operation of Chapter 5.

81. Like for SPS matters, the Parties also renounced the use of the Agreement's Dispute Settlement mechanism for TBT-related matters (Article 42), thereby relying on applicable instruments deriving from the TBT Agreement.

2. Trade Remedies

82. The Agreement does not contain any specific disciplines on antidumping and countervailing measures. It however does so for safeguard measures.

(a) Safeguard mechanisms

(i) *Global safeguards*

83. The Parties retain the right to apply a safeguard measure in accordance with Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or Article 5 of the WTO Agreement on Agriculture (Article 20.12). In case global safeguards would be taken, imports of originating goods from the other Party would thus in principle be included in the application of a safeguard measure pursuant to Article XIX of the GATT 1994 and the WTO Agreement of Safeguards.

(ii) *Bilateral safeguard actions*

84. For trade between the Parties Article 20 provides for the application of bilateral safeguard measures on originating goods. Such measures may be applied at any time under the Agreement if an originating good, as a result of the elimination or reduction of a customs duty on imports in accordance with Article 15, is imported in such increased quantities, either in absolute terms or relative to domestic production, and under such conditions that the imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry of the importing Party.⁴⁸ In such cases, the importing Party may (a) suspend the further reduction of customs duty on the originating good; or (b) increase the duty rate to a level not to exceed the lesser of the applied MFN rate in effect when the safeguard action is taken and the MFN rate in effect on the day immediately preceding the date of entry into force (Article 20.2).

85. The measure may only be applied following an investigation by the Party's competent authorities in accordance with the same procedures as in Articles 3, and 4.2 of the WTO Agreement on Safeguards and to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry and to facilitate adjustment. Prior to the application of such a measure, a Party must inform the other Party in writing of the initiation of an investigation and the decision to apply or

⁴⁸ Pursuant to Article 11, "serious injury" means a significant overall impairment in the position of a domestic industry. "Threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent. "Domestic industry" means the producers as a whole of the like or directly competitive products operating in the customs territory of a Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

extend a bilateral safeguard. That Party must also provide adequate opportunity for prior consultations with the other Party with a view to reviewing the proposed measure and reaching an agreement on the level of compensation. The maximum duration of a measure is two years. This can in exceptional circumstances be extended to a total maximum period of three years. The measure must not be reapplied to goods which have already been subject to a bilateral safeguard, for a period of time equal to the duration of the previous measure or one year, whichever is longer. It also cannot be applied to imports within the limits of tariff rate quotas.

86. The Party proposing to apply a bilateral safeguard must provide to the other Party mutually agreed adequate means of trade compensation at a level substantially equivalent to the safeguard. Compensation takes the form of duty concessions on imports whose value is substantially equivalent to that of the additional customs duties on imports expected to result from the bilateral safeguard. If the Parties are unable to agree on compensation within 30 days following commencement of the consultations the Party against who the measure is taken will be free to suspend the application of the duty concessions under the Agreement to a level substantially equivalent to the bilateral safeguard. The right of suspension is limited to what is necessary to achieve the substantially equivalent effects of the safeguard.

(iii) *Provisional bilateral safeguard measures*

87. Provisional safeguard measures (Article 20.9) may be taken in critical circumstances where delay would cause damage which would be difficult to repair. The imposition of such a measure requires a written notice and a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry. The duration of a provisional measure cannot exceed 200 days⁴⁹; where during this time the investigation fails to determine that the increased imports from the other Party constitute a substantial cause of serious injury, or threat thereof, the Party applying the measure must refund any additional duties collected as a result of the measure.

88. Table III.7 presents the main features of the bilateral safeguard mechanism.

Table III.7

Synopsis of the bilateral safeguard mechanism, including provisional safeguard measures

Description of the bilateral safeguard measure	
Trigger	<ul style="list-style-type: none"> Rise in imports in absolute terms or relative to domestic production.
Criteria	<ul style="list-style-type: none"> Substantial cause of serious injury or threat thereof to a domestic industry.
Measures	<ul style="list-style-type: none"> Suspension of further duty reduction; Increase in duty rate to MFN rate or MFN rate preceding entry into force, whichever is lower - (the measure cannot be applied to the quota quantities granted under preferential TRQs).
Transitional Measure	<ul style="list-style-type: none"> Possible in critical circumstances (delay would cause damage difficult to repair); Preliminary determination based on clear evidence; Refund in case the final determination does not determine that increased imports have caused serious injury or threat thereof to a domestic industry.
Timing	<ul style="list-style-type: none"> The maximum duration of a measure is two years (three in exceptional circumstances); The maximum duration of a provisional measure is 200 days.
Conditions or limitations	<ul style="list-style-type: none"> Written notice of: a) institution of a proceeding; and b) decision to apply or extend a measure; Provision of adequate opportunity for prior consultations (except in the case of provisional measures); A measure may only be applied after an investigation has been carried out (except in the case of provisional measures) – an investigation must be completed within one year of its initiation; No re-imposition of safeguard measures on the same good for a period of time equal to the duration of the previous measure or one year, whichever is longer; Requirement of progressive liberalization for measures exceeding one year; Requirement to provide compensation with suspension of the application of concessions permitted corresponding to up to an amount substantially equivalent to the safeguard measure where the Parties fail to agree on the compensation.

Source: WTO Secretariat based on the Agreement.

⁴⁹ The duration of the provisional bilateral safeguard measure is counted as a part of the total duration of the safeguard measure.

(iv) *Restrictions to safeguard the balance of payments*

89. Article 21 authorizes the Parties to take measures to safeguard the balance of payments in accordance with the conditions established under Article XII of the GATT 1994, and the Understanding on the Balance-of -Payments Provisions of GATT 1994. Moreover, nothing in the Agreement precludes the use by a Party of exchange controls or exchange restrictions in accordance with the articles of IMF Agreements.

(b) Anti-dumping and countervailing measures

90. The Agreement does not contain any specific disciplines on antidumping and/or countervailing measures.⁵⁰

3. Subsidies and State-aid

(a) Domestic Support

91. The Agreement does not contain any specific disciplines on domestic support.

(b) Export Subsidies

92. Subject to the reservations contained in Annex I of the Agreement, export subsidies on any agricultural products⁵¹ are prohibited by the Agreement (Article 19). The reservation contained in Annex I of the Agreement corresponds to some products of HS Chapter 19⁵² which are excluded from any commitment of reduction or elimination of customs duties on imports and for which export subsidies⁵³ may be maintained. This reservation is only applicable to export subsidies which may be granted by Switzerland for the concerned products.

F. CUSTOMS-RELATED PROCEDURES

93. Although customs-related procedures are contained in other parts of the Agreement⁵⁴, Chapter 3 of the Agreement covers customs procedures and trade facilitation.

94. In the provisions containing specific obligations, the Parties commit to transparency and that information relating to customs matters be readily available to any interested person. In case of changes in customs laws, information should be given in advance to enable interested persons to adjust (Article 28).

95. The Parties commit to ensure predictable, consistent, transparent, and prompt customs procedures. Use of information and communication technology, simplification, and to the extent possible, harmonisation of procedures shall be used to facilitate customs clearance (Article 29). Cooperation and exchange of information are foreseen (Article 31). The Sub-Committee on Rules of origin, customs procedures and trade facilitation (established by Article XXX of Annex II of the Agreement) is established to address, *inter alia*, customs-related matters covered by the Agreement.

⁵⁰ The Joint Statement issued on the occasion of the signing of the Agreement stresses states that antidumping measures should not be used for protectionist purposes.

⁵¹ "Agricultural products" refer to the products listed in Annex 1 to the WTO Agreement on agriculture.

⁵² HS Chapter 19 covers Preparations of cereals, flour, starch or milk, and pastrycooks' products.

⁵³ As defined in Article 9 of the WTO Agreement on agriculture.

⁵⁴ For instance in Annex II on Rules of origin.

96. Temporary admission⁵⁵ and products in transit are disciplined by Article 30, which refers specifically to the "A.T.A. Convention"⁵⁶ as a tool to facilitate clearance. The Parties also confirm the principles contained in Article V:3 of the GATT 1994 (Article 30).

97. The Implementing Agreement (IA), signed by the Parties on 19 February 2009, provides for the details and procedures for the implementation of cooperation and exchange of information (Articles 3 and 8 of the IA), including confidential information. It provides for mutual assistance between the customs authorities of the Parties to ensure the proper application of customs laws, and to prevent, investigate and repress any violation or attempted violation of customs law (Article 3 of the IA). Article 5 of the IA binds the Parties to continue to use risk management, while Articles 6 and 7 of the IA foresee cooperation in enforcement against illicit trafficking, including the import and export of products suspected of infringing intellectual property rights.

IV. PROVISIONS ON TRADE IN SERVICES AND INVESTMENT

A. SCOPE AND DEFINITIONS

98. Chapter 6 of the Agreement contains the main provisions governing trade in services between the Parties. In addition, for certain issues, references are also made to other Chapters and/or Annexes of the Agreement. In particular, the disciplines on most-favoured-nation (MFN) treatment (Article 45), market access (Article 46), and national treatment (Article 47), are applicable subject to the Parties lists of reservations in Annex III of the Agreement (Appendix 1 for Japan and Appendix 2 for Switzerland). The disciplines on domestic regulations in Article 48, are supplemented by provisions in Annex IV of the Agreement. The disciplines on recognition in Article 49, are supplemented by provisions in Annex V of the Agreement. The disciplines on movement of natural persons, in Article 50, are supplemented by the Parties' specific commitments, and the provisions of Chapter 7 of the Agreement. Annexes III, IV, V, VI and VII of the Agreement form an integral part of Chapter 6 of the Agreement.

99. In addition, Annex VII of the Agreement contains complementary disciplines on measures affecting trade in telecommunications services, while Annex VI of the Agreement contains complementary disciplines on measures affecting trade in financial services.

100. The scope of Chapter 6 (Article 43) covers measures by a Party affecting trade in services⁵⁷ taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. It applies to all services sectors.⁵⁸ In respect of air transport services, Chapter 6 does not apply to measures affecting traffic rights. Moreover, MFN, market access, and national treatment provisions in Chapter 6 do not apply to government procurement.

101. Chapter 9 of the Agreement covers Investment. In the event of inconsistency between investment-specific provisions in Chapter 9 and disciplines in Chapter 6, Chapter 6 prevails to the extent of the inconsistency. The disciplines of Chapter 9 related to national treatment (Article 87), MFN treatment (Article 88) and the prohibition of performance requirements (Article 96) are not applicable to the non-conforming measures listed by the Parties in Annex IX of the Agreement

⁵⁵ "Temporary admission" means customs procedures under which certain products may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties.

⁵⁶ Customs Convention on the A.T.A. Carnet for the Temporary Admission of goods.

⁵⁷ "Trade in services" means the supply of a service according to the four modes of supply as defined in the GATS.

⁵⁸ "Services" includes any service in any sector except services supplied in the exercise of governmental authority.

(Appendix 1 for Japan's non-conforming measures, and Appendix 2 for Switzerland's non-conforming measures). Annex IX forms an integral part of Chapter 9.

B. GENERAL PROVISIONS ON TRADE IN SERVICES AND INVESTMENT

1. Measures affecting trade in services⁵⁹

(a) National and MFN treatment

102. Japan and Switzerland grant each other national and MFN treatment for trade in services. This does not apply to the measures listed as non-conforming in Annex III of the Agreement.⁶⁰ With respect to MFN treatment, the Parties shall endeavour to accord each other treatment no less favourable than that provided under other preferential agreement they conclude or amend with a non-Party, which they would notify under GATS Article V or GATS Article *Vbis*.

(b) Market access

103. The Parties grant each other access to their respective markets for their services and service suppliers, unless otherwise specified in their Lists of Reservations in Annex III of the Agreement. They also commit to allow cross-border movement of capital when it is an essential part of a service supplied through modes 1 and 3 – unless otherwise specified in the Lists of Reservations.

2. Investment

104. Chapter 9 of the Agreement covers investment and applies to measures adopted or maintained by a Party relating to investors of the other Party and to their investments in the Area of the former Party. Under the Agreement investment activities are the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment, liquidation, sale or other disposition of investment. Chapter 9 provisions also apply to measures adopted or maintained by a party relating to investments made by investors of the other Party prior to the entry into force of the Agreement. In the event of any inconsistency between Chapter 9 and Chapter 6 (on trade in services), the rules in Chapter 6 prevail to the extent of the inconsistency (Article 84, paragraph 3).

105. Each Party shall accord to investments of investors of the other Party fair and equitable treatment and full protection and security. Neither Party shall impair by unreasonable or arbitrary measures the management, conduct, operation, maintenance, use, enjoyment, liquidation, sale or other disposition of such investments (Article 86). The other key obligations of Chapter 9 cover national treatment (Article 87), MFN treatment (Article 88), and the prohibition of performance requirements (Article 96).

(a) National and MFN treatment

106. National and MFN treatment is granted by a Party to investors of the other Party with respect to investment activities. The Parties did not commit to apply MFN treatment to investors of the other Party and their investment if a Party accords more favourable treatment to investors of a non-Party and their investment by concluding or amending a free trade agreement, customs union or similar

⁵⁹ "Measures by a Party affecting trade in services" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form, including measures in respect of: (i) the purchase, payment or use of a service, (ii) the access to and use of, in connection with the supply of a service, services which are required by that Party to be offered to the public generally, and (iii) the presence, including commercial presence, of persons of the other party for the supply of a service in the Area of the Party.

⁶⁰ See below the section on Non-conforming measures listed by Japan and by Switzerland.

agreement that provides for substantial liberalisation of investment. They will however endeavour to accord to investors of the other Party and their investments treatment no less favourable than that accorded under the concluded agreement(s), subject to a request by one Party to start negotiations with a view to incorporating into the Agreement such treatment (Article 88, paragraph 3). In addition, the MFN treatment (to the other Party) is not applicable in the context of treatment accorded to investors of a non-Party and their investments through provisions concerning the settlement of investment disputes between a Party and the non-Party that are provided for in other international agreements (Article 88, paragraph 2).

(b) Performance requirements

107. For the purpose of Chapter 9, the Annex to the WTO Agreement on Trade-Related Investment Measures (TRIMs Agreement) is incorporated into and made part of the Agreement, *mutatis mutandis* (Article 96).

(c) Reservations (Non-conforming measures)

108. The obligations on national treatment, MFN treatment and prohibition of performance requirements are however not applicable in the case of non-conforming measures, as defined in Article 90, and as recorded by the Parties in their Lists of Reservations in Annex IX of the Agreement.⁶¹

(d) Other disciplines on investment

109. Chapter 9 contains additional rules and disciplines on general treatment and protection (Article 86), transfers (Article 89), expropriation and compensation (Article 91), treatment in case of strife (Article 92), subrogation (Article 93), special formalities (Article 99), taxation measures (Article 100), and review (Article 102).

110. The Parties recognise that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures or lowering labour standards. To this effect they should not waive or otherwise derogate from such measures and standards as an encouragement for establishment, acquisition or expansion of investments (Article 101).

111. Consultations, with a view to amicably settle disputes, and eventual recourse to international conciliation or arbitration to settle investment disputes are foreseen in Article 94 which provides for disciplines on the settlement of investment disputes between an investor and a Party.

3. Movement of natural persons

112. Chapter 7 reflects the preferential trading relationship between Japan and Switzerland, the desire of the Parties to facilitate the movement of natural persons on a mutually beneficial basis and to establish transparent criteria and procedures for the movement of natural persons, and the need to ensure border security and to protect the domestic labour force and permanent employment in either Party (Article 63). Each Party committed to apply its measures relating to movement of natural persons⁶² expeditiously so as to avoid unduly impairing or delaying trade in goods or services or the

⁶¹ The content of the List of Reservations related to investment is discussed below, together with the List of Reservations related to trade in Services, which are addressed in Part IV Section D of the factual presentation.

⁶² "Natural persons of a Party" means, in respect of Japan, a national of Japan, or, in respect of Switzerland, a national of Switzerland or a permanent resident who is a service supplier in the Area of Switzerland.

conduct of investment activities under the Agreement. The Parties also committed to limit any fees for processing applications for entry and temporary stay to the approximate cost of services rendered.

113. While the Parties will grant entry and temporary stay to natural persons of the other Party in accordance with the disciplines of Chapter 7 and their relevant laws and regulations, the entry and temporary stay is subject to the specific commitments by each Party in Annex VIII of the Agreement. Natural persons covered by Annex VIII⁶³ may therefore supply the service in accordance with the terms of Chapter 6.⁶⁴ To a large extent, these commitments are built on horizontal limitations in relation with mode 4, in the Parties' GATS Schedules of specific commitments.

114. Appendix 1 of Annex VIII of the Agreement, contains the specific commitments undertaken by Japan on the movement of natural persons and is summarized in Table IV.1 below.

Table IV.1
Summary of Japan's Specific Commitments on the Movement of Natural Persons

Category	Period of stay ^a
Short-Term Business Visitors	90 days
Intra-Corporate Transferees	one or three years
Investors	one or three years
Natural Persons of Switzerland who engage in Professional Services	one or three years
Natural Persons of Switzerland who engage in Business Activities, which require technology or knowledge at an advanced level on the basis of a Personal Contract with a Public or Private Organisation in Japan	one or three years

a Period of stay may be extended.

Note: Japan may require a natural person of Switzerland seeking entry and temporary stay under the terms and conditions set out in Appendix 1 to obtain an appropriate visa or its equivalent prior to entry.

Source: Annex VIII, Appendix 1 of the Agreement.

115. Appendix 2 of Annex VIII of the Agreement, containing the specific commitments undertaken by Switzerland on the movement of natural persons, distinguishes between commitments for services sectors and for non-services sectors and contains specific rules and disciplines. Natural persons staying in or entering Switzerland with an open-ended or extendable residence permit based on an employment contract which does not limit the period of employment in Switzerland are not considered as natural persons residing in or entering Switzerland for the purpose of temporary stay or temporary employment.

116. In relation with services sectors, the commitments shall be in accordance with and subject to the provisions of Chapter 6 (on trade in services), notwithstanding any provision of Chapter 7 (on movement of natural persons). In particular, any limitations and conditions in Appendix 2 of Annex III (List of Reservations by Switzerland on Chapter 6) shall apply. Moreover, commitments in services on the movement of natural persons shall apply only to those sectors in which Switzerland has specific GATS commitments. Switzerland reserved the right to maintain, modify or adopt any measures relating to the entry and temporary stay of natural persons for business purposes not covered by its specific commitments under the Agreement. For natural persons covered by its specific commitments, authorisation is required and a number of limitations and conditions are applicable to the entry and temporary stay of these persons. The Agreement contains an exemption to the MFN provision (Article 45) for Switzerland in relation with measures based on bilateral agreements

⁶³ Chapter 6 does not apply to measures affecting natural persons seeking access to the employment market of a Party, nor does it apply to measures regarding nationality or citizenship, residence or employment on a permanent basis.

⁶⁴ A detailed definition of each Category, including conditions and specifications, is contained in Annex VIII of the Agreement.

between the Principality of Liechtenstein, or the EU and/or its Member States, and Switzerland which provides for the movement of all categories of natural persons supplying services.

117. In relation to the non-services sectors, and notwithstanding any provision of Chapter 7 (on the movement of natural persons), commitments shall be in accordance with and subject to the relevant legislation of Switzerland, in particular the Federal Law on Foreigners and any of its subordinate acts. Moreover, the numerical ceiling provided for under Swiss Law shall not be applied to natural persons of Japan in the categories defined under Switzerland's specific commitments for the movement of natural persons in relation with the non-services sectors. Table IV.2 summarizes Switzerland's specific commitments on the movement of natural persons.

Table IV.2
Summary of Switzerland's Specific Commitments on the Movement of Natural Persons

Category	Period of stay
Services Sectors^a	
Intra-corporate transferees - Executive and senior managers - Specialists	Limited to 3 years, extendable to a maximum of 5 years
Other essential personnel - Short-term business visitors - Short-term services salespersons - Contractual service suppliers engaged in certain sectors ^c - Installers and maintainers	Limited to 90 days within 1 year. If authorisation granted for a renewal for the following year, the applicant must stay abroad at least 2 months between the two consecutive periods of stay in Switzerland
Non-Services Sectors^b	
Intra-corporate transferees - Executive and senior managers - Specialists	Limited to 3 years, extendable to a maximum of 5 years
Other essential personnel - Short-term business visitors responsible for establishing a commercial presence - Salespersons	Limited to 90 days within 1 year. If authorisation granted for a renewal for the following year, the applicant must stay abroad at least 2 months between the two consecutive periods of stay in Switzerland

a For Services Sectors Commitments are subject to the provisions contained in Article III and IV of Appendix 2 of Annex VIII.

b For Non-Services Sectors Commitments are subject to the provisions contained in Article VI and VII of Appendix 2 of Annex VIII.

Source: Annex VIII, Appendix 2 of the Agreement.

118. Chapter 7 on the movement of natural persons also contains disciplines on the provision of information by the Parties (Article 66), as well as to ensure expeditious application procedures.

C. DENIAL OF BENEFITS.

119. Chapter 6, 7, and 9 do not contain any specific provisions on denial of benefits.

D. LIBERALIZATION COMMITMENTS IN TRADE IN SERVICES AND INVESTMENT

120. For trade in services, as for investment, the Parties have adopted a negative-list approach to the scheduling of their liberalization commitments, through Lists of Reservations. This implies that all sectors or sub-sectors are assumed to be open to competition from services providers or investors of the other Party unless otherwise specified in the relevant Annexes of the Agreement.

121. In the Agreement, trade in services and investment are governed by separated provisions contained in Chapter 6, for trade in services, and in Chapter 9, for investment. Though there are some overlaps in terms of coverage, the scope of the two Chapters is distinct. It should be recalled that the disciplines on investment may cover, for example, investment related to trade in goods.

122. In the event of any inconsistency between Chapter 6 and Chapter 9 with regard to measures by a Party affecting trade in services, the rules on trade in services prevail to the extent of the inconsistency (Article 84, paragraph 3).

1. Lists of Reservations / Non-conforming measures for trade in services

123. In relation with trade in services (Chapter 6), the adoption by the Parties of a negative list approach means that the obligations of national and MFN treatment, and market access in Articles 45, 46 and 47, apply fully to measures covering all sectors and sub-sectors, unless reservations are listed (in Annex III of the Agreement).

(a) Japan's Lists of Reservations

124. Section 1 of Appendix 1 of Annex III of the Agreement contains Japan's reservations setting out existing measures that do not conform to some or all of the obligations taken under the Agreement relating to national and MFN treatment, and market access. It represents a standstill commitment, as Japan will be able to maintain, review, or amend the existing measures listed that do not comply with these obligations, but will not be able to make these measures more restrictive. Section 2 of Appendix 1 of Annex III of the Agreement contains Japan's reservations setting out specific sectors, sub-sectors or activities for which it may maintain existing, or adopt new or more restrictive measures that do not conform with some or all of the obligations taken under the Agreement relating to national and MFN treatment, and market access. It represents a broader carve-out than reservations contained in Section 1.

125. Japan has 54 reservations in Section 1. One of these applies to all sectors in relation with non-conforming measures by local governments other than prefectures, which breaches Chapter 6 provisions on national treatment as well as on market access. The other 53 reservations cover measures, to which Chapter 6 provisions on national treatment and/or on market access do not apply. They cover parts of most services⁶⁵, except environmental services, and tourism and travel-related services. The measures include: prior notification requirement, similar to that for investment; establishment requirement (in some construction services for example); residency requirement (in some wholesale and retail trade activities for example); possible limitation on the number of licences conferred to service suppliers (in some distribution services for example); qualification requirement (in collection agency services for example); designation by the competent Japanese authorities (in some measuring services for example); or nationality requirement (including for Swiss services providers) (in some telecommunication services or transport activities for example). In three cases concerning the transport sector the measures are carved out from Chapter 6 provisions on MFN treatment (granted to Switzerland). In two cases reservations are made for water transport (reciprocity requirement), while in one case reservations are made for freight forwarding business (excluding that using air transportation).

126. Japan has 20 reservations in Section 2. Four of these apply to all sectors in relation with measures to which Chapter 6 provisions on MFN⁶⁶, national treatment, and or market access do not apply. The 16 other reservations cover such measures which are or may be taken in the future with respect to parts of the: aerospace industry; arms and explosives industry; broadcasting industry; primary and secondary educations services, energy, financial services (banking and insurance); fisheries; land transaction⁶⁷; manufacturing; public law enforcement and correctional services and social services; and security guard services. In four sectors (Energy, Fisheries, Land Transportation Public Law Enforcement and Correctional Services and Social Services) cases the measures are also

⁶⁵ As defined in the Services Sectoral Classification List (MTN.GNS/W/120).

⁶⁶ In the context of the adoption of measures relating to "new services".

⁶⁷ Reciprocity condition.

reserved from Chapter 6 provisions on MFN treatment (granted to Switzerland). In one case there is a reciprocity requirement⁶⁸, while in three other cases transportation services for natural gas on a fee or contract basis, fisheries within territorial waters, internal waters, exclusive economic zone and continental shelf, and public law enforcement and correctional services and social services are reserved.

(b) Switzerland's List of Reservations

127. Appendix 2 of Annex III of the Agreement contains Switzerland's reservations setting out existing measures that do not conform to some or all of the obligations taken under the Agreement relating to national and MFN treatment, and market access. These reservations represent a standstill commitment, as Switzerland will be able to maintain, review, or even amend the existing measures listed that do not comply with these obligations, but will not be able to make these measures more restrictive. Unlike Japan, Switzerland has reserved in the same list both existing non-conforming measures and measures which may be adopted in the future in certain sectors and sub-sectors. Consequently, Appendix 2 of Annex III of the Agreement also contains Switzerland's reservations setting out specific sectors, sub-sectors or activities for which it may maintain existing, or adopt new or more restrictive measures that do not conform with some or all of the obligations under the Agreement relating to national and MFN treatment, and market access. Appendix 2 represents a broader carve-out than the reservations in Appendix 1.

128. Switzerland has 103 reservations. Four of the "existing measures" apply to all sectors and require specific legal forms for companies providing services in Switzerland, domicile requirements for the establishment of a branch, or authorization requirement for the acquisition of certain types of real estate, to which Chapter 6 provisions on national treatment do not apply. Fifty-eight reservations cover measures to which Chapter 6 provisions on MFN and/or national treatment do not apply, and/or market access. The measures listed cover parts of most services sectors, except tourism and travel-related services. The measures include: registration requirement and/or authorization procedures (in some business services, or trade services for example); residency requirement (in pipeline transport services for example); exclusivity mandates, state monopolies, and/or concession requirement (in some postal and courier services, specialty air services, or construction work and mining services for example); licensing requirements (in some financial services for example); establishment requirement (in some insurance services for example); nationality requirement (including for Japanese services providers) (in community and social services for example); or qualification requirement (in some business services for example). Various regulatory limitations and/or prohibitions on the provision of certain types of services are also listed as non-conforming measures in connection with national treatment and/or market access limitations (in some business services, agricultural services for example). A number of reservations refer to sub-federal measures (cantonal or municipal in a few cases). In five cases the measures, to which also breach Chapter 6 provisions on MFN treatment (granted to Japan) do not apply, take the form of a reciprocity requirement or is related to the participation of Switzerland in bilateral or regional agreements/programmes.⁶⁹

129. In relation with "future" measures, three apply to all sectors in connection with the application of non-conforming measures, taking the form of residency requirements for certain personnel, discrimination related to subsidies, tax incentives and tax credits, or limitations on the nationality of certain executives and/or the control of certain enterprises, which could breach Chapter 6 provisions on national treatment. The 38 other reservations cover measures breaching Chapter 6 provisions on

⁶⁸ With respect to the acquisition or lease of land in Japan.

⁶⁹ For example, in relation with transport services, in the context of bilateral road transport agreements or the Revised Act on Rhine Shipping, or, for audiovisual services, in the context of the Council of Europe Convention on transfrontier television or the MEDIA-EURIMAGES programmes.

MFN and/or national treatment, and/or market access, which are or may be taken in the future with respect to parts of: trade services; transport services (rail, road, internal waterways, supporting and auxiliary transport services); telecommunication and audiovisual services; financial services; business services (audit, leasing or rental, advertising, investigation and security, collection agency, for example); construction work and mining services; services related to energy; community and social services, including education services; trade services; audiovisual services; cultural and recreational services, as well as other services sectors or sub-sectors, including "new services."

2. Lists of Reservations / Non-conforming measures for investment

130. In relation with investment (Chapter 9) the adoption by the Parties of a negative list approach means that all measures taken by the Parties are deemed to be consistent with the national treatment, MFN and performance requirements principles in Articles 87, 88 and 96, respectively, unless listed by the Parties in Annex IX of the Agreement.

(a) Japan's Lists of Reservations

131. Section 1 of Appendix 1 of Annex IX of the Agreement contains the Reservations made by Japan setting out existing measures that do not conform with some or all of the obligations in the Agreement relating to national and most-favoured-nation treatment, and/or performance requirements.⁷⁰ It represents a standstill commitment, as Japan will be able to maintain, review, or even amend the existing measures listed that do not comply with these obligations, but will not be able to make these measures more restrictive. Section 2 of Appendix 1 of Annex IX of the Agreement contains reservations setting out specific sectors, sub-sectors or activities for which Japan may maintain existing, or adopt new or more restrictive measures that do not conform with some or all of the obligations taken under the Agreement relating to national and MFN treatment, and/or performance requirements. It represents a broader carve-out than reservations in Section 1.

132. Japan has 22 reservations under Section 1. One of these applies to all sectors in relation with non-conforming measures taken by local governments other than prefectures, with regard to provisions on MFN and national treatment as well as on performance requirements in Chapter 9. Most of the other reservations cover measures breaching Chapter 9 provisions on national treatment, which take the form of prior notification requirements for investors intending to make investments in sectors such as information and communication; manufacturing; oil industry; agriculture, forestry and fisheries; transport (essentially air and railway transport as well as water transport). Four non-conforming measures also constitute a breach of Chapter 9 provisions on MFN treatment (granted to Switzerland). In two cases the measures take the form of reciprocity-based registration or permission requirements.⁷¹ In two other cases the measures take the form of prohibitions on Swiss investors.⁷²

133. Japan has 10 reservations under Section 2. Three of these apply to all sectors in relation with non-conforming measures with regard to the provisions on MFN and/or national treatment in Chapter 9.⁷³ Most of the seven other reservations relate to Chapter 9 provisions on national treatment, which are or may be taken in the future with respect to aerospace industry; arms and explosives

⁷⁰ Article 96 of the Agreement entitled "prohibition of performance requirement" states that "the Annex to the Agreement on trade-related investment measures in Annex 1A to the WTO Agreement, the TRIMS agreement, is (hereby) incorporated into and made part of (the Agreement), mutatis mutandis".

⁷¹ In the case of investments related to freight forwarding business.

⁷² In the case of investments related to foreign aircrafts used for a flight between points within Japan. and in the case of investments related to ships not flying the Japanese flag entering ports in Japan which are not open to foreign commerce and from carrying cargoes or passengers between ports in Japan.

⁷³ For instance in the context of transferring Japan's equity interests in a state enterprise or a governmental entity, or in the event of a liberalization of the supply of certain services, or in the context of the adoption or maintenance of measures related to research and development subsidies.

industry; energy; fisheries within the territorial sea, internal waters, and/or exclusive economic zone and continental shelf; broadcasting industry; land transaction; and public law enforcement and correctional services and social services.

(b) Switzerland's List of Reservations

134. Switzerland's reservations in Section 1 of Appendix 2 of Annex IX of the Agreement set out existing measures that do not conform with some or all of the obligations taken under the Agreement relating to national and most-favoured-nation treatment. It represents a standstill commitment, as Switzerland will be able to maintain, review, or even amend the existing measures listed that do not comply with these obligations, but will not be able to make these measures more restrictive. Section 2 of Appendix 2 of Annex IX of the Agreement contains Switzerland's reservations setting out specific sectors, sub-sectors or activities for which it may maintain existing, or adopt new or more restrictive measures that do not conform with some or all of the obligations taken under the Agreement relating to national treatment, most-favoured-nation treatment, and/or performance requirement.⁷⁴ It represents a broader carve-out than reservations in Section 1.

135. Switzerland has seven reservations under Section 1. Three of these apply to all sectors in relation with non-conforming measures by cantonal governments in relation with the acquisition of real estate, or with the application of non-conforming measures by municipal governments, to which Chapter 9 provisions on MFN and/or national treatment would not apply. Some domicile requirements are also reserved for some forms of companies, such as a branch office. The other reservations cover measures to which Chapter 9 provisions on national treatment does not apply, and which take the form of registration, concession or commercial presence requirements for investors intending to make investments in the energy sector.⁷⁵ One reservation refers to non-conforming measures to which Chapter 9 provisions on MFN treatment (granted to Japan) do not apply, requiring reciprocal authorization to construct and operate nuclear facilities.

136. Switzerland has two reservations under Section 2, which apply to all sectors in relation with the application of non-conforming measures, which breach Chapter 9 provisions on MFN and/or national treatment, like for instance in the context of transferring Switzerland's equity interests in a state enterprise or a governmental entity.

E. LIBERALIZATION COMMITMENTS IN SELECTED SECTORS AND SECTOR-SPECIFIC PROVISIONS ON TRADE IN SERVICES

137. In the context of WTO liberalization commitments, both Japan and Switzerland made specific commitments in all services sectors.⁷⁶ Moreover, Japan made additional commitments in telecommunications services, is a signatory to the Fourth Protocol on basic telecommunications, and made additional commitments in financial services.⁷⁷ Switzerland made additional commitments in telecommunications services, is a signatory to the Fourth Protocol on basic telecommunications, and made additional commitments in financial services, as well as the movement of natural persons.⁷⁸ Furthermore, Switzerland has MFN (GATS Article II) exemptions.⁷⁹ In the context of the DDA

⁷⁴ as referred to in the previous footnote.

⁷⁵ Oil prospecting and exploitation – which is reserved for companies that are 75% Swiss-owned, nuclear energy, hydroelectric power, and pipelines.

⁷⁶ For Japan see WTO document GATS/SC/46, and for Switzerland see WTO document GATS/SC/83.

⁷⁷ Respectively, WTO documents GATS/SC/46/Suppl.2 and GATS/SC/46/Suppl.3.

⁷⁸ Respectively, WTO documents GATS/SC/83/Suppl.3/Rev.1, GATS/SC/83/Suppl.4, and GATS/SC/83/Suppl.2.

⁷⁹ See WTO documents GATS/EL/83 and GATS/EL/83/Suppl.2.

negotiations, both Japan and Switzerland have presented revised conditional offers.⁸⁰ The liberalization commitments made by the Parties in the Agreement build on their respective GATS commitments as amended. In some sectors or sub-sectors they go beyond their GATS commitments, often including a number of additional liberalization commitments in the Parties' respective revised offers under the DDA negotiations.

1. Communication services

138. Communication services, including postal, courier, telecommunication, and audiovisual services are subject to the disciplines on trade in services in Chapter 6, and when applicable in Chapter 9 (investment), *inter alia*, in relation with MFN and national treatment, and/or market access, and/or performance requirements. Reserved measures are listed in Annex III for trade in services, and Annex IX for investment.⁸¹ The Parties' commitments in the Agreement are based on their GATS commitments and subsequent improvements in their respective revised conditional offers under the DDA negotiations.

139. For *postal-courier services*, Japan maintained a broad reservation for postal services and Switzerland reserved exclusive rights for the supply of universal postal services as in their GATS commitments. However, neither Party has reservations for *courier or express delivery services*, which are not covered by their GATS specific commitments.

140. In *telecommunications services*, bilateral commitments in the Agreement mirror to a large extent the Parties' GATS commitments and improvements in their respective revised conditional DDA negotiation offers. For example, like in its GATS Schedule, Japan's Agreement-related reservations indicate a foreign equity limitation and a related restriction on the nationality of board members. Nevertheless, the foreign equity restriction of one third under the Agreement is more liberal than in the existing GATS commitments although it is the same as in Japan's DDA initial conditional offer. Switzerland, for its part, does not list any restrictions on telecommunications. This is consistent with its GATS telecommunications commitments currently in force, which have listed essentially all telecommunication services with no limitations in all modes of supply for all sub-sectors.

141. Annex VII of the Agreement contains complementary disciplines, related to Chapter 6 and applies to measures by a Party affecting trade in telecommunications services.⁸² The disciplines contained in Annex VII of the Agreement on competitive safeguards (Article II), on interconnection (Article III), on universal service (Article IV), on licensing procedure (Article V), on regulatory authority (Article VI), and on allocation and use of scarce resources (Article VII), replicate the additional commitments on basic telecommunications contained in the Reference Paper attached to Japan's and Switzerland's WTO specific commitments on basic telecommunications.⁸³ Commitments

⁸⁰ For Japan WTO document TN/S/O/JPN/Rev.1, 24 June 2005, and for Switzerland WTO document TN/S/O/CHE/Rev.1, 14 June 2005.

⁸¹ See Section C above.

⁸² "Telecommunication" means the transmission and reception of signals by any electromagnetic means, and the disciplines contained in Annex VII of the Agreement cover the four modes of supply. However, Annex VII does not apply to measures by a Party affecting broadcasting services as defined in its laws and regulations. Moreover, in respect of Japan, "broadcasting services" includes "radio and television services" and "radio and television transmission services" under the GATS Services Sectoral Classification List. In respect of Switzerland, Reservation No. 30 contained in Appendix 2 of Annex III defines "broadcasting services" as the production, processing, transmission and reception of radio and television programme services. A programme service is a sequence of programmes which are offered continuously, defined in time and transmitted using telecommunications techniques and which are intended for the public, while "telecommunication services" are defined as the transport of electromagnetic signals – sound, data, image and combinations thereof – excluding services which are defined as broadcasting services according to the Federal Law on radio and television.

⁸³ See WTO documents GATS/SC/46/Suppl.2 and GATS/SC/83/Suppl.3/Rev.1.

on number portability (Article VIII), consumer and data protection (Article IX), and exchange of information (Article X) complement Annex VII of the Agreement. Although both Parties have specified that certain paragraphs of Annex VII of the Agreement only apply to basic telecommunications⁸⁴, and while Japan has listed certain Annex VII provisions that will only apply to a major supplier which has control over essential facilities, the telecommunications sector (beyond basic telecommunications) can benefit from a number of the disciplines in Annex VII, whereas only non-preferential suppliers of basic telecommunications services can benefit from the provisions of the GATS Reference Paper. Moreover, recourse to an independent domestic body, which may be a regulatory authority, is foreseen to resolve disputes regarding appropriate terms, conditions and rates for interconnection (Article III, paragraph 7) under the Agreement.

142. In *audio-visual services*, although Annex VII of the Agreement does not apply to broadcasting services (see above), both Parties have a number of reservations in this sub-sector. Switzerland has no commitments in audiovisual services, neither in the GATS nor in its DDA revised conditional offer.

2. Financial services

143. Financial services are subject to the disciplines on trade in services in Chapter 6, *inter alia*, in relation to MFN and national treatment, and/or market access, and performance requirements. Reserved measures are listed in Annex III for trade in services, and Annex IX for investment. The Parties' commitments on financial services build on their respective GATS specific commitments and are in general similar to those in their latest DDA revised conditional offers.

144. With regard to foreign control⁸⁵, a licence to establish a bank, an office, a branch or an agency or to appoint a permanent representative may be granted by Switzerland on the basis of reciprocity (reservations 40 and 41 in Appendix 2 of Annex III of the Agreement). Switzerland has however not indicated that this existing measure is in breach of MFN provisions in Chapter 6 (granted to Japan).

145. Annex VI of the Agreement contains complementary disciplines, related to Chapter 6 and applies to measures by a Party affecting trade in financial services.⁸⁶ The key obligations of Annex VI of the Agreement are market access (Article II), and national treatment (Article III).

146. With regard to market access, Japan and Switzerland allow financial service suppliers of the other Party established in their Area to offer any new financial service in the Area.⁸⁷ Moreover, as a derogation to Article 43, paragraph 3 (non coverage of government procurement), MFN and national treatment shall be accorded by one Party to financial service suppliers of the other Party as regards the purchase or acquisition of financial services by public entities of Japan and Switzerland.

⁸⁴ Article II to VIII of Annex VII of the Agreement only apply to basic telecommunications services.

⁸⁵ "Foreign control" in this case means that a foreign person with a qualified participation directly or indirectly holds more than 50% of the voting rights in the bank or a significant influence on it is exercised in another manner.

⁸⁶ "Financial services" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance) and the disciplines contained in Annex VI of the Agreement cover the four modes of supply.

⁸⁷ "New financial services" means a service of a financial nature, including services related to existing and new products of the manner in which a product is delivered, which is not supplied by any financial service supplier in the Area of a Party but which is supplied in the Area of the other Party or in a any other Member of the WTO.

147. National treatment is granted by a Party to financial service suppliers of the other Party with respect to access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business.

148. Annex VI of the Agreement also contains disciplines on transparency, including in the context of licences (Article IV), expeditious application procedures (Article V), and transfers of information and processing of information (Article VIII).

149. Japan and Switzerland may adopt or maintain measures for prudential reasons (Article VI), including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial institution, or for ensuring the integrity and stability of the Party's financial system. Prudential measures shall not be used as a means of avoiding the Party's commitments or obligations and the Parties confirmed that they are required under OECD to implement the Code of Liberalization of Current Invisible Operations. Moreover, the Parties took a best endeavour commitment to ensure that the Basel Committee's "Core Principles for Effective Banking Supervision", the standards and principles of the International Association of Insurance Supervisors and the International Organisation of Securities Commission's "Objective and principles of Security Regulation" are implemented and applied in their Areas. Furthermore, adequate opportunity shall be afforded by a Party to the other Party to negotiate its accession to an agreement or arrangement concluded by the other Party recognising prudential measures of a non-Party or of any international regulatory body in determining how the Party's measures relating to financial services shall be applied (Article VII).

150. The Agreement establishes a Sub-Committee on Financial Services to assist in the effective implementation and operation of Chapter 6 with respect to financial services.

3. Transport services

151. Japan's and Switzerland's commitments on transport services build on their respective GATS' specific commitments and are in general overall similar to those in their latest DDA revised conditional offers. In some cases however, the Agreement goes further than the Parties' GATS commitments, for example, in the case of Switzerland, for *maritime transport* services, for some aspect of air transport services, and with respect to pipeline transport. Certain transport sectors subject to concessionary restrictions and/or state (Federal or Cantonal) monopolies remain, however, reserved as already noted in Switzerland's GATS Schedule. The Agreement goes further than Japan's individual GATS commitments, for example, for some aspects of *air or inland waterways* transport services as well as some *pipeline services*. The water transport sector remains, however, subject to limitations and requirements similar to those included in Japan's GATS Schedule, for example, to enter certain ports, and/or load and unload cargo in Japan. A number of reservations by the Parties also concern transport-related activities which are not covered under the GATS. Moreover, in respect of air transport services, the disciplines in Chapter 6 of the Agreement do not apply to measures affecting traffic rights, however granted, or measures affecting services directly related to the exercise of traffic rights other than those affecting aircraft repair and maintenance services; the selling and marketing of air transport services; or computer reservation system services.

4. Other services

152. In many other sectors (for example in business services, construction and related engineering services, education services, or distribution services), the Parties' commitments mirror to a large extent their respective GATS' specific commitments and are generally similar to those in their revised conditional DDA offers. In others the Agreement goes further than the Parties' GATS commitments. For example, in the Agreement, *health related and social services* that are not covered in Japan's GATS Schedule are liberalized subject to reservations by Japan. Similarly, Japan has no reservations

in relation to *tourism and travel related services*, for which it had listed some limitations under the GATS. In the case of Switzerland, *health related and social services*, not covered in its GATS Schedule, is liberalized subject to reservations listed in Annex III of the Agreement. Similarly Switzerland has no reservations in *environmental services, tourism and travel related services*, and only limited reservations in *recreational, cultural and sporting services*, for which some limitations had been listed in its GATS Schedule.

5. "New services"

153. In their respective Annex III lists of non-conforming measures, both Parties have a reservation for "new services" for *all sectors*, in which they may maintain existing, or adopt new or more restrictive measures that do not conform with obligations on MFN and national treatment and/or market access.⁸⁸ For Japan, "new services" are defined as any service not classified positively and explicitly in JSIC⁸⁹ or CPC on the date of entry into force of the Agreement.⁹⁰ Japan, however, did not make this reservation applicable under Article II of Annex VI (market access for financial services). For Switzerland, "new services" are defined as services that are not currently delivered on the Swiss market and/or that are not mentioned explicitly in the CPC classification. It includes services relating to existing or new products or the manner in which a product or service is supplied. Moreover, in respect of commercial presence (mode 3), such restrictive measures shall comply with the provisions on national treatment. As regards cross-border trade, the right to introduce any new discriminatory measure is reserved by Switzerland. The reservations on "new services" may also be considered in relation with Article 74 of Chapter 8 on electronic commerce, which states that each Party shall ensure that its measures governing electronic commerce do not discriminate against the supply of services transmitted electronically against the supply of like services by other means.

F. REGULATORY PROVISIONS ON TRADE IN SERVICES

1. Domestic regulation

154. Article 48 on domestic regulation, elaborates on GATS Article VI and contains transparency and administration-related disciplines applicable when authorization is required for the supply of a service, providing for the possibility to conduct a necessity test when appropriate. These disciplines are binding upon a Party only in sectors in which it has undertaken specific GATS commitments. In addition, Article 48.4 refers to the same criteria as sub-paragraphs (a), (b), and (c) outlined in Article VI.4 of the GATS. The Parties undertake the obligation to apply licensing and qualification requirements and procedures as well as technical standards in conformity with these criteria.

155. Annex IV of the Agreement, referring to Chapter 6, sets out supplementary provisions to Article 48. It applies to measures by a Party relating to licensing and qualification requirements and procedures and technical standards. It elaborates on the international standards of relevant international organizations that shall be taken into account, and establishes a process of exchange of views on work relating to service standards at an international level and on the elaboration of domestic standards. Annex IV also contains a best endeavour commitment for a Party to treat a technical regulation for a service adopted or maintained by the other Party as equivalent to its own, provided that the latter Party is satisfied that the regulation adequately fulfils its legitimate policy

⁸⁸ For Japan, see Annex III, Appendix 1, Section 2, non conforming measure No. 3. For Switzerland, see Annex III, Appendix 2, non conforming measures No. 102 and 103.

⁸⁹ JSIC: Japan Statistical Industrial Classification set out by the Japanese Statistics Bureau (as revised on 6 November 2007).

⁹⁰ This definition covers cases where new services which could not be foreseen at the time of entry into force of the Agreement emerge in the future as a consequence of technological advances. These new services would not have been recognized at the time the CPC was adopted.

objectives. Similarly, a relatively soft best endeavour clause exists on the acceptance of the results of a conformity assessment procedure for a service covered by Chapter 6 conducted by the other Party. The structure and content of these provisions are, in essence, similar to paragraphs 4 and 6 of Article 906 of the NAFTA. Finally, a best endeavour clause is contained in Annex IV of the Agreement with a view to implementing the Disciplines on Domestic Regulation in the Accountancy Sector adopted under the auspices of the WTO on 14 December 1988, which is incorporated and made part of Annex IV of the Agreement, *mutatis mutandis*.

156. The Parties will review any development related to Art. VI:4 of the GATS negotiations, and as appropriate, incorporate these results into the Agreement.

2. Recognition

157. Article 49 on domestic regulation, reiterates some of the disciplines contained in GATS Article VII. Where a Party accords recognition of the education or experience obtained, requirements met, or licences or certifications granted, in a non-Party, it shall afford the other Party adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the other Party should also be recognized. A Party shall also afford adequate opportunity to the other Party to negotiate its accession to mutual recognition agreements or arrangements. Article 49 is complemented by Annex V of the Agreement, referring to Chapter 6, and elaborates on the procedure to be followed for recognition and on the provision of information, *inter alia*, through enquiry points to be designated by the Parties. A consultation process will address questions on the applicable procedures for recognition. Moreover, each Party shall encourage the competent authorities and the professional bodies in its territory to recognise qualifications of services suppliers obtained in the other Party, based *inter alia* upon equivalence, in particular for professional services.

3. Other regulatory provisions

158. Article 51 requires the Parties to ensure that any monopoly supplier of a service, including exclusive service suppliers, acts in a manner consistent with the Parties' obligations with respect to MFN, market access, and national treatment. The abuse of monopoly positions to act in a manner inconsistent with that Party's obligations under Articles 46 and 47 is prohibited.

159. Where certain business practices of service suppliers, other than monopolies or exclusive service suppliers (covered by Article 51), restrain competition and thereby restrict trade in services, the Parties shall enter into consultations with a view to eliminating such practices (Article 52).

G. SAFEGUARD ACTIONS ON SERVICES AND INVESTMENT

160. The Agreement does not contain any specific disciplines regulating safeguard actions on services and investment with the exception of the general provision on safeguard measures in case of financial or balance of payment difficulties, which also applies to trade in services and to investment. Safeguard measures in case of financial or balance of payments difficulties can be imposed. Article 54 (for trade in services), and Article 97 (for investment) contain disciplines on the use of measures that restrict respectively trade in services, payments or transfers for transaction⁹¹ or cross-border capital transaction as well as payment and transfers relating to investment, where the Party experiences financial or balance of payments and external financial difficulties or threat thereof, or, in the case of investment, in exceptional cases where movement of capital causes or threatens to cause serious

⁹¹ Except under the circumstances envisaged under Article 54, a Party shall not apply restrictions on international transfers and payments for current transactions and capital transactions relating to trade in services (Article 53).

difficulties for macroeconomic management, in particular monetary and exchange rate policies. The provisions of the Agreement replicate, with some minor differences, Article XII of the GATS. However the Parties have committed, through a best endeavour clause, to avoid the imposition of such restrictions. Moreover, nothing in the Agreement shall be so construed as to alter the rights enjoyed and obligations of a Party as a party to the Articles or Agreements of the IMF.

V. GENERAL PROVISIONS OF THE AGREEMENT

A. TRANSPARENCY

161. Article 4 provides for prompt publication of laws, regulations, administrative procedures, judicial decisions and administrative rulings of general application as well as international agreements which pertain to or affect the operation of the Agreement. In case changes of the above instruments significantly affect the operation of the Agreement, the Parties shall endeavour to provide, except in emergency situations, a reasonable interval between the time of publication and the time of entry into force of the measure. Confidential information is protected under Article 5. In particular, the Parties are not required to provide confidential information if this would impede law enforcement, be contrary to the public interest or prejudice legitimate commercial interests.

B. EXCEPTIONS

162. General exceptions are maintained by incorporating into the Agreement *mutatis mutandis* Article XX of the GATT 1994 for trade in goods (Article 22) and GATS Article XIV for trade in services (Article 55) and the making of investments (Article 95.1). The provisions of Article 55 also apply *mutatis mutandis* to Chapter 7 covering the movement of natural persons (Article 69).

163. Security exceptions are maintained by incorporating into the Agreement *mutatis mutandis* Article XXI of the GATT 1994 for trade in goods (Article 22) and GATS Article XIV**bis**, for trade in services (Article 56) and the making of investments (Article 95.1).⁹² The provisions of Article 56 also apply *mutatis mutandis* to Chapter 7 covering movement of natural persons (Article 69). With regard to Intellectual Property, Article 73 of the TRIPS Agreement is incorporated into the Agreement *mutatis mutandis* (Article 129).

C. TAXATION

164. Although, as a principle, the Agreement does not apply to taxation, Article 6 specifies the disciplines that are relevant to taxation measures with the corresponding conditions. Without prejudice to the chapters on trade in services, investment and intellectual property, the Agreement does not affect the rights and obligations of either Party under any agreement on the avoidance of double taxation. In the event of inconsistency between the Agreement and any such treaty, that treaty prevails to the extent of the inconsistency and consultations are foreseen to settle possible adverse effects of taxation measures on the implementation of the Agreement.

D. ACCESSION

165. The Agreement has no provisions on accession by third parties but contains a termination clause (Article 154), which foresees one year's notice in advance.

⁹² Paragraph 1 of Article XIV**bis** of the GATS shall also apply, *mutatis mutandis*, to investments made (Article 95.2). General and Security Exceptions are not applicable to Articles 86.1, 91, and 92 of the Agreement (Article 95.3).

E. INSTITUTIONAL FRAMEWORK

166. Chapter 15 of the Agreement covers institutional arrangements and establishes the Joint Committee to review and monitor implementation, consider any amendments to the Agreement, seek to resolve disputes that may arise regarding its interpretation or application, supervise the work of all Sub-Committees and ad hoc working groups established under the Agreement, and consider any other matter that may affect the operation of the Agreement. The Joint Committee may establish Sub-Committees or ad hoc working groups to assist it in carrying out its functions. The Joint Committee shall meet, in principle, every two years. It first met on 1 September 2009 and adopted three Decisions.⁹³ Decision No 1 of the Joint Committee contains the Rules of Procedures of the Joint Committee.

167. Japan has designated the Central and South Eastern Europe Division – European Bureau, Ministry of Foreign Affairs, and Switzerland has designated the Free Trade Agreements Division of the State Secretariat for Economic Affairs (SECO), as contact points, to facilitate communications between them on any matter relating to the Agreement (Article 149).⁹⁴

168. In addition to the institutional arrangements in Chapter 15, a number of other chapters of the Agreement contain institutional provisions. Article XXX of Annex II of the Agreement (on rules of origin) establishes a Sub-Committee on Rules of Origin, Customs Procedures, and Trade Facilitation, rules; Article 41 establishes a Sub-Committee on Technical Regulations, Standards, and Conformity Assessment Procedures; Article 128 establishes Sub-Committee Intellectual Property; and Article 134 establishes a Sub-Committee on Promotion of a Closer Economic Relationship.

169. Moreover, in the context of the Agreement's specific Dispute Settlement mechanism, covered by Chapter 14, the Agreement foresees, if requested by a Party, the establishment of an arbitral tribunal (see below).

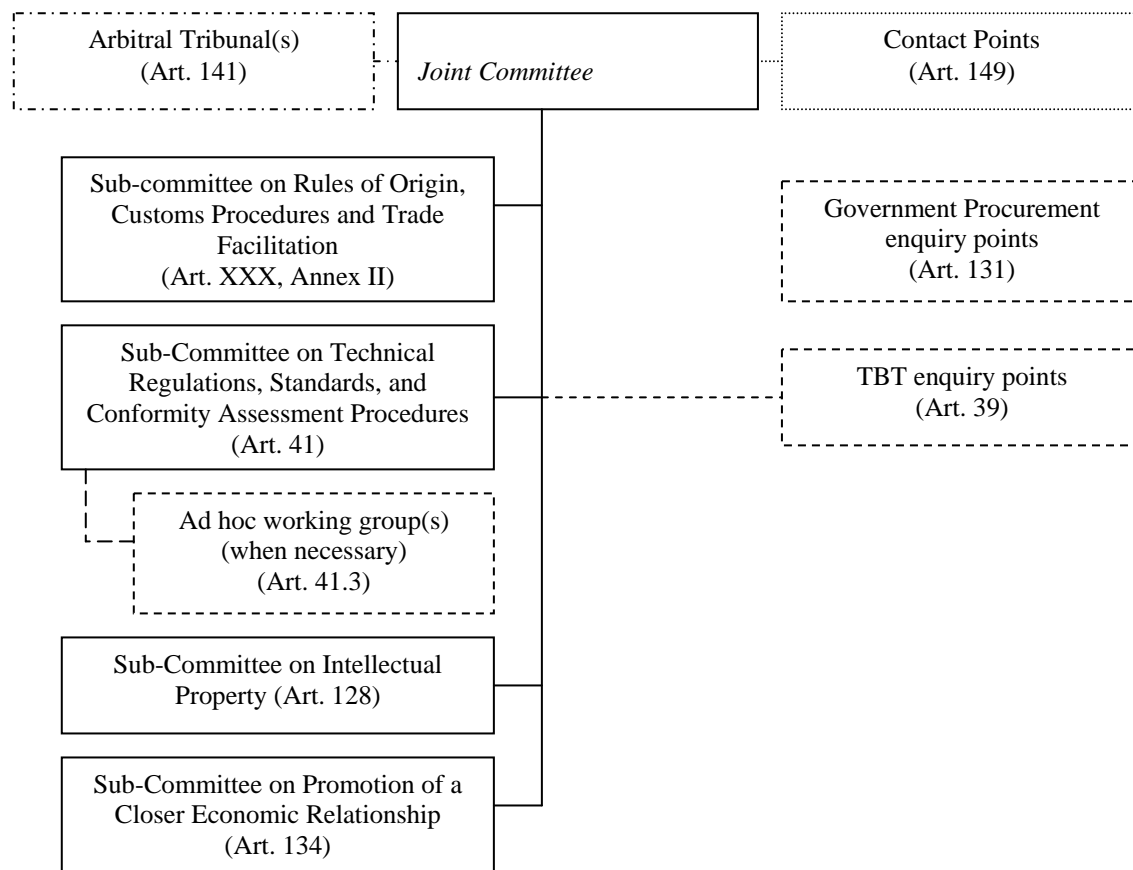
170. In addition to the contact point established by Article 149, the Agreement also establishes enquiry points on TBT-matters (Article 39), and on government procurement matters (Article 131).

⁹³ Decision No. 1, establishing the rules of procedures of the Joint Committee; Decision No. 2, adopting the operational procedures for trade in goods; and Decision No. 3 adopting the operational procedures for rules of origin.

⁹⁴ In Decision No. 1 of the Joint Committee, adopted on 1 September 2009, the Parties have clarified some of the functions of the contact points in relation with meetings of the Joint Committee.

171. The following Chart summarizes the Working Bodies established by the Agreement.

Chart V.1
Institutional Framework



Source: WTO Secretariat based on the Agreement.

F. DISPUTE SETTLEMENT

172. Chapter 14 of the Agreement sets out procedures on the settlement of disputes between the Parties relating to the interpretation and/or application of the Agreement. Chapter 14 does not preclude that Parties may have recourse to dispute settlement procedures available under any other international agreement to which both Parties are party, including the WTO Dispute Settlement mechanism (Article 138). The Parties may therefore choose a dispute settlement mechanism for matters arising under both the Agreement and the WTO. However, once the complaining Party has chosen the forum to settle the dispute, by either requesting the establishment of an Arbitral Tribunal under Article 141 of the Agreement or the establishment of a WTO Panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, the chosen procedure shall be used to the exclusion of the other for the particular dispute.

173. The Agreement's Dispute Settlement mechanism does not apply to disciplines contained in Chapters 4 (SPS), 5 (TBT), 10 (Competition), 12 (Government Procurement), and 13 (Promotion of a closer Economic Relationship) of the Agreement. Moreover, investment disputes between an Investor and a Party are to be settled according to the special procedure established by Article 94, involving consultations between the investor and the disputing Party, or international conciliation or arbitration

by the International Centre for Settlement of Investment Disputes (ICSID), or through an ad hoc arbitral tribunal agreed upon by the disputing Parties or established under the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.

174. The Parties first seek to resolve disputes through consultations (Article 139). Moreover, good offices, conciliation or mediation may be requested at any time by either Party (Article 140). In the event that the Party complained against does not enter into consultations within 30 days after the date of receipt of the request for consultations (15 days if the dispute applies to perishable products), or if the consultations fail to resolve the matter within 60 days, the complaining Party may request the establishment of an Arbitral Tribunal (Article 141). The Arbitral Tribunal is composed of three arbitrators appointed in accordance with the provisions of the Agreement. The Arbitral Tribunal shall examine the matter and make its award in accordance with the Agreement and applicable rules of international law. If requested by the complaining Party, the Arbitral Tribunal may suggest implementation options for the Parties to consider. Proceedings of the Arbitral Tribunal are governed by the provisions contained in Article 143. The Arbitral Tribunal shall, within 90 days, submit to the Parties a draft award, which they may comment within 15 days. The Arbitral Tribunal's final report is issued within 30 days after the date of submission of the draft award. The award of the Arbitral Tribunal, which shall be made public, is final and binding on the Parties (Article 142). At any time before the issuance of the award, the Parties may agree to suspend the work of the Arbitral Tribunal. If the work of the Tribunal has been suspended for more than twelve months, the authority of the Arbitral Tribunal to examine the dispute shall lapse, unless the Parties agree otherwise (Article 144).

175. The Party complained against shall promptly comply with the award issued by the Arbitral Tribunal as described in Article 145. The Party complained against must notify of the means and the period of time for implementing the award within 20 days after the issuance of the award. If the complaining Party considers the notified means or period of time to be unacceptable, it may request the Party complained against for consultations. If such consultations fail within 20 days, the matter may be referred to an Arbitral Tribunal to determine, within 15 days, the reasonable means or implementation period.

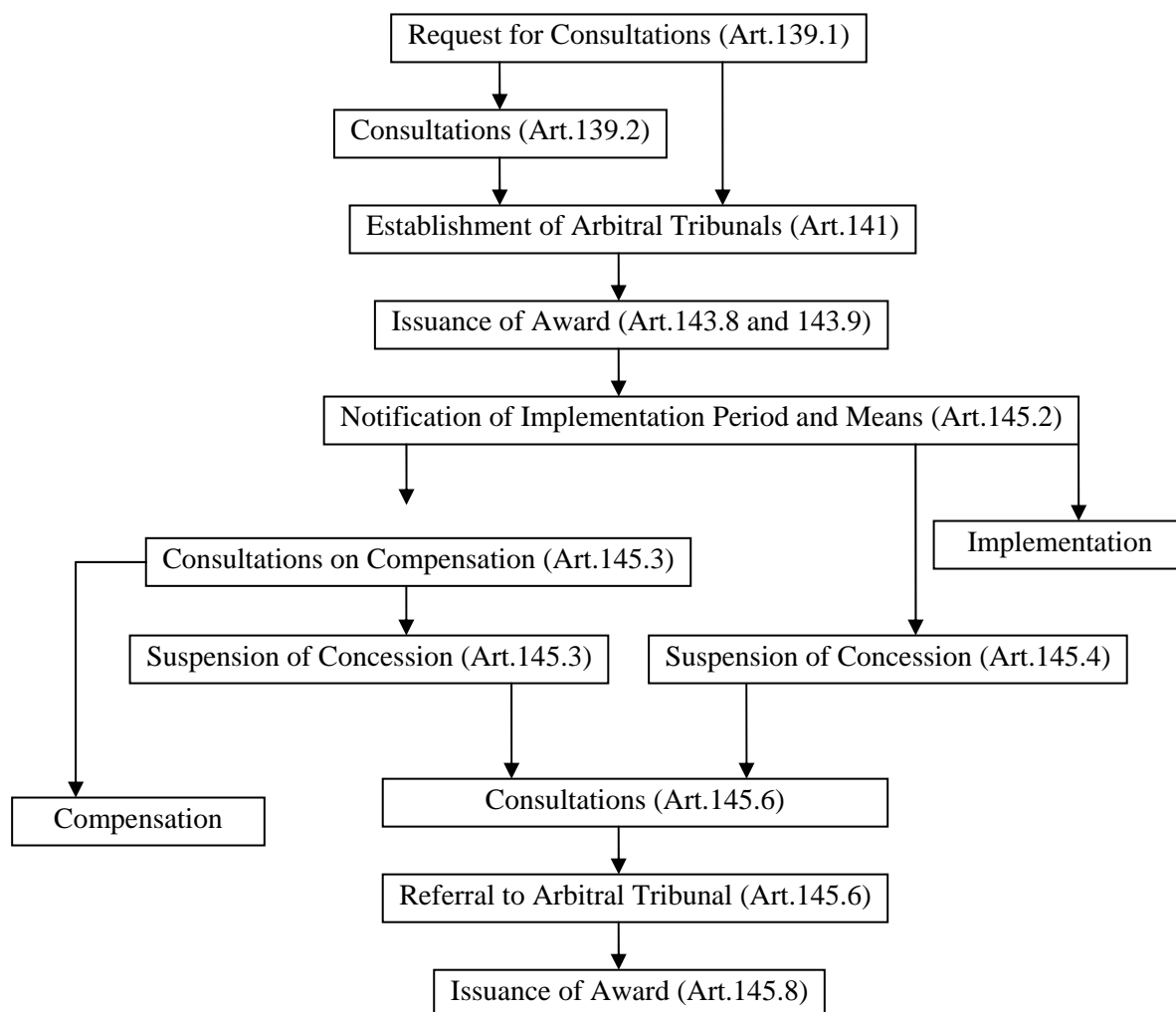
176. If the Party complained against considers it impracticable to comply with the award, it shall notify the complaining Party within 20 days after the issuance of the award and enter into consultations, with a view to agreeing mutually satisfactory compensation. If, after 20 days, the Parties still disagree about the level of compensation, the complaining Party may notify that it intends to suspend the application of concessions or other obligations under the Agreement. Such notification is also possible if the Party complained against has failed to notify the means and period of time for implementing the award or if the complaining Party considers that the Party complained against has failed to comply with the award within the specified implementation period. The notification shall indicate when the suspension of the application of concessions or other obligations shall commence and the application of what concessions or other obligations is to be suspended. The suspension can be implemented only at least 30 days after the notification, shall be restricted to benefits equivalent to the level of failure to comply with the award, and be restricted to the same sector or sectors to which the inconsistency with the provisions of, or the nullification or impairment of the benefit, relates.⁹⁵ A suspension of concession cannot take place if consultations or proceedings before an arbitral tribunal are still in progress. If the Party complained against considers, *inter alia*, that the level of suspended concessions is inappropriate, it may, within 10 days, request consultations. If such consultations fail to produce a solution within 30 days, the matter may be referred to an Arbitral Tribunal, which shall rule within 15 days. Application of concessions or other obligations under the Agreement shall not be suspended until the Arbitral Tribunal has issued its ruling. The suspension of concessions shall be discontinued when the Parties reach a mutually satisfactory resolution or where the Party complies

⁹⁵ Unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.

with the award. An Arbitral Tribunal may be requested to rule, within 15 days, on the conformity with the award of any implementing measures adopted after the suspension of the application of concessions. In the light of such ruling, the suspension should be terminated or modified as appropriate. The Arbitral Tribunal(s) involved, at various stages, on the same case, should, wherever possible, be composed of the arbitrators of the original Tribunal.

177. The following Chart provides a synopsis of the dispute settlement process.

Chart V.2
Agreement specific Dispute Settlement Mechanism



* Procedures for good offices, conciliation and mediation provided in Article140 are allowed for at any time.

G. GOVERNMENT PROCUREMENT

178. Chapter 12 of the Agreement covers government procurement. As both Parties are also parties to the plurilateral WTO Agreement on Government Procurement (GPA), the Agreement confirms that the rights and obligations of the Parties in respect of government procurement shall be governed by the GPA. The Agreement's Dispute Settlement mechanism does not apply to government procurement-related matters. (Article 130).

179. The Parties have designated governmental authorities to function as enquiry points⁹⁶ to facilitate communication between them on any matter regarding government procurement (Article 131). They will consult in the Joint Committee with a view to increasing mutual understanding of their respective government procurement systems. In the event that, after the entry into force of the Agreement, a Party accords to a non-party additional advantages of access to its government procurement market beyond those accorded to the other Party under the GPA, the former Party shall, upon request of the other Party, enter into negotiations with a view to extending those advantages to the other Party on a reciprocal basis (Article 132).

H. INTELLECTUAL PROPERTY RIGHTS

180. Chapter 11 of the Agreement deals with Intellectual Property Rights. The Agreement defines intellectual property (IP) as covering copyrights and related rights, trademarks, industrial designs, patents, new varieties of plants, geographical and related indications, unfair competition, treatment of test data in marketing approval procedures, and/or all categories of intellectual property covered by the WTO TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.

181. The Parties reaffirm their commitment to comply with the obligations set out in international agreements relating to IP to which both Parties are parties.⁹⁷ They reaffirm their obligation to grant national treatment to IPR holders (Article 108), and to accord to nationals of the other Party MFN treatment (Article 109). The Parties have taken commitments to enhance the efficiency of procedures (Article 110), to ensure that the procedures are conducive to granting or registration IPRs within a reasonable period of time to avoid unwarranted curtailment of the period of protection (Article 111), to ensure transparency of IP-related laws and regulations (Article 112), and to promote public awareness concerning protection of IP (Article 113).

182. On *copyrights and related rights*, covered in Article 114, the Agreement reaffirms the disciplines of Part II Section 1 of the WTO TRIPS Agreement. In addition, the Parties shall grant and ensure protection as provided for in Articles 5 and 6 of the WPPT to performers for their visual performances, with the same kind of limitations or exceptions as in Article 16 of the WPPT (provided that they are compatible with the Rome Convention). They grant the authors the right to claim authorship of the work and to object to any distortion, mutilation or other modification of their work, which would be prejudicial to their honour or reputation.⁹⁸ The term of protection for copyrights and related rights is no less than 50 years. However, for certain categories of works, the term of protection is the life of the author and no less than 70 years after his/her death, or not less than 70 years after the authorised publication, or no less than 70 years after the making of the work.

⁹⁶ For Japan: the Ministry of Foreign Affairs; for Switzerland: the State Secretariat for Economic Affairs.

⁹⁷ The Paris Convention for the protection of industrial property, the Patent Cooperation Treaty, the Strasbourg Agreement concerning the international patent classification, the Budapest Treaty on the international recognition of the deposit of microorganisms for the purposes of patent procedure, the 1991 UPOV Convention, the Protocol relating to the Madrid Agreement concerning the international registration of marks, the Trademark Law Treaty, the Nice Agreement concerning the international classification of goods and services for the purposes of the registration of marks, the Madrid Agreement for the repression of false or deceptive indications of source on goods, the Berne Convention for the protection of literary and artistic work, the Rome Convention for the protection of performers, producers of phonograms and broadcasting organisations, the Convention for the protection of producers of phonograms against unauthorized duplication of their phonograms, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty (WPPT).

⁹⁸ These rights are maintained at least until the expiry of the economic rights, even after the authors' death.

183. Each Party shall ensure non-discriminatory treatment for owners of copyright in the other Party with regard to the enjoyment and the exercise of copyrights, regardless of whether such copyrights are registered under the applicable laws and regulations of the former Party.

184. A Party may be exempted from its obligations under Article 114 where the exemptions as provided for in Articles 7 and *7bis* of the Berne Convention may apply.

185. The coverage of *trademarks* protection foreseen by the Agreement, in its Article 115, is similar to that in Part II Section 2 of the WTO TRIPS Agreement.⁹⁹ The protection of well-known marks is underlined as the Parties reaffirm the importance of the Joint Recommendation concerning provisions on the protection of well-known marks adopted by the Assembly of the Paris Union for the protection of Industrial Property and the General Assembly of the WIPO in 1999. The exclusive right of the owner of a registered trademark to prevent all third parties not having the owner's consent from using, in the course of trade, identical or similar signs for products or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion, is stipulated.

186. On the protection of *industrial designs*-related IPRs, covered by Article 116, the right of owners of a protected industrial design to prevent all third parties not having the owner's consent from making, selling, importing or exporting articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design when such acts are undertaken for commercial purposes, is stipulated.

187. On *patents*, covered by Article 117, the Agreement has similar disciplines to those in Part II Section 5 of the WTO TRIPS Agreement. The exclusive right of owners of a patent to prevent all third parties not having the owner's consent from making, using, offering for sale, selling, importing for these purposes or exporting that product, is stipulated. This exclusive right is granted to owners of patents for both products and processes. In the latter case, the prohibition on use, offer for sale, sale, import or export applies at least to products obtained directly by the patented process.

188. With respect to a patent granted for an invention related to pharmaceuticals or plant protection products, the Parties shall provide for a compensatory term of protection¹⁰⁰ for any period during which the patented invention cannot be worked due to the marketing approval process. The length of the compensatory terms of protection is defined in Article 117, paragraph 6(c). With respect to the treatment of test data in marketing approval procedures, applicants for marketing approval for pharmaceutical products may not rely on or refer to test or other data submitted to its competent authority by the first applicant for a term of no less than six years from the date of approval of that application; and no less than 10 years for agricultural chemical products which utilise new chemical entities (Article 121).

189. For *new varieties* of all plant genera and species, covered by Article 118, the Parties committed to provide the same level of protection as under the 1991 UPOV Convention.

⁹⁹ For the purpose of implementing the Agreement, any sign, or any combination of signs, capable of distinguishing the products or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Signs include words, including personal names, letters, numerals, figurative elements, three-dimensional shapes and combination of colours as well as any combination of sign, are eligible for registration as trademarks. However, each Party may require, as a condition of registration, that signs be visually perceptible.

¹⁰⁰ "Compensatory term of protection" means, for Japan an extension of a term of patent protection and, for Switzerland, a term specified in a supplementary protection certificate.

190. The protection of *geographical indications* (GI) and related indications¹⁰¹ is covered by Article 119 and Annex X of the Agreement. Each Party shall provide for the legal means for interested parties to prevent the use of GIs and related indications which could constitute an act of unfair competition within the meaning of Article 10bis of the Paris Convention and/or mislead the public as to the geographical origin of the products and/or services. Article 119 details the type of protection to be provided. GIs for wines and spirits are protected against any use for wines or spirits not originating from the place indicated by the GI in question, subject to paragraphs 3 to 9 of the Article 24 of the TRIPS Agreement. In accordance with the provision of the TRIPS Agreement, the Parties shall also ensure that the registration of a trademark containing or consisting of a GI, with respect to products not originating in the territory indicated, is to be refused or invalidated ex officio if the legislation of the Party so permits or at the request of an interested party and if certain conditions are met, such as: (i) the use of the indication in the trademark would mislead the public as to the geographical origin of the product; or (ii) the use would be to identify wines or spirits not originating in the place indicated by the GI in question. The protection afforded by Article 119 also applies in cases where products originating in a Party are destined for export. Armorial bearings, flags and other State emblems are also protected and cannot be used or registered as trademarks or as elements of trademarks. Annex X of the Agreement lists product designations which are protected by Japan or by Switzerland as GIs. This list shall serve, without prejudice to actions or procedures by the relevant authorities of one Party, as a source of information for potential administrative or judicial procedures by the other Party regarding the protection provided for in Article 119. The designations referred to in Annex X cover GI-related products in categories for products protected by Japan such as spirits and sake; and for products protected by Switzerland such as cheese, meat-based products, bread, pastry, cakes, confectionery, biscuits and other baker's wares, spirits, wines, watches and precision instruments, textile products, machinery, metal working industry and engineering industry, and chemical and pharmaceutical products.

191. Chapter 11 contains disciplines on *unfair competition* (Article 120), whereby each Party shall provide for effective protection against acts of unfair competition¹⁰² involving, *inter alia*, the use of name, trade name, trademarks, marks, or even containers or packages of products, used in relation to a person's business for example.

192. A substantial part of Chapter 11 is devoted to *enforcement*, including counterfeiting and piracy. Border measures (Article 123) include the possibility for Parties to suspend the release of products infringing rights at least on patents, utility models, industrial designs or trademarks, or copyrights or related rights which are destined for import into, export¹⁰³ from or ,where provided for in the national laws and regulations, transit through, the customs territory of the Party. Seizure or destruction of products infringing IPRs is allowed by the Agreement, in the absence of objections and subject to terms and conditions contained in the Parties' relevant laws. Provisions on enforcement through civil remedies, including where the right holder claims compensation for damages caused by an intentional or negligent infringement, are contained in Article 124, while provisions on enforcement through criminal remedies are contained in Article 125.

193. To encourage Internet service providers to cooperate with right holders in protecting their rights against materials infringing IPRs, each Party shall provide measures to prevent undue liabilities of Internet service providers for the removal of materials that they have put on their websites under

¹⁰¹ "Related indications" means indications in the designation or presentation of a service that contain or consist of the name of a geographical place of a Party ("indications of services"), and the country name of a party, the name of a canton of Switzerland, armorial bearings, flags and other State or regional emblems.

¹⁰² "Unfair competition" is defined as any act of competition contrary to honest practices in industrial or commercial matters.

¹⁰³ Exportation includes re-exportation.

contracts with information senders where a right holder claims that such materials infringe his/her IPRs (Article 126).

194. The Parties commit to cooperate in IP, including in relation to future international conventions on harmonization, administration and enforcement of IPRs and on activities in international organisations, including the WIPO (Article 127). The Agreement establishes a Sub-Committee on Intellectual Property Committee to review issues related to intellectual property (Article 128).

I. ELECTRONIC COMMERCE

195. Chapter 8 of the Agreement covers measures by a Party affecting electronic commerce, including for goods and services, in the context of their bilateral trade. The disciplines on electronic commerce do not apply to government procurement, subsidies¹⁰⁴, and taxation measures (Article 71).

196. Subject to trade in services- and/or investment-related reservations in the negative lists, the Parties shall ensure non-discriminatory treatment of digital products (Article 73).¹⁰⁵ In the context of the implementation of this provision and besides providing, upon request, an explanation of the criteria used in determining the origin of a digital product, the Parties shall cooperate in international organisations and foster the development of criteria determining the origin of a digital product, with a view to considering the incorporation of such criteria into the Agreement. A review of these provisions shall take place five years after the date of entry into force of the Agreement, unless otherwise agreed.

197. The Parties shall ensure that their measures governing electronic commerce do not discriminate against the supply of services transmitted electronically from the supply of like services by other means (Article 74). Subject to trade in services- and/or investment-related reservations in the negative lists, the Parties may not adopt or maintain measures that unduly prohibit or restrict electronic commerce (Article 75).

198. The Parties recognise the importance of maintaining their practice of not imposing customs duties on electronic transmissions and agree to cooperate to make this practice binding within the WTO framework, with a view to considering its incorporation into the Agreement.

199. The use of electronic signature and certification services is disciplined by Article 78 and the importance of taking certain measures and cooperating for the protection of consumers for electronic commerce is recognised by Article 80. Paperless trade administration is to be fostered *inter alia* through cooperation bilaterally and in international fora (Article 79) and inter-Party cooperation will *inter alia* identify and overcome obstacles encountered by small and medium-sized enterprises in using electronic commerce (Article 82). Private sector participation is also encouraged to ensure that regulatory frameworks governing electronic commerce support industry-led development of electronic commerce with a view to promoting bilateral trade between the Parties (Article 81). The provisions of the Agreement governing general and security exceptions are applicable also to the Chapter on electronic commerce.

¹⁰⁴ As defined in the WTO Agreement on Subsidies and Countervailing Measures.

¹⁰⁵ In the Agreement, "digital products" means such products as computer programmes, texts, plans, designs, video, images and sound recordings or any combination thereof, that are digitally encoded and transmitted electronically and that are produced for commercial sale or distribution. "Digital products" do not include those that are fixed on a carrier medium (this is subject to Chapter 2 disciplines).

J. OTHERS

1. **Competition**

200. Chapter 10 of the Agreement covers competition. Anticompetitive activities are defined by the Agreement as "any conduct or transaction that may be subject to penalties, sanctions or other relief under the competition laws and regulations of either Party (Article 103)."¹⁰⁶ The Parties shall take measures which they consider appropriate against anticompetitive activities, in accordance with their laws and regulations, and in conformity with the principles of transparency, non-discrimination and procedural fairness (Article 103) and commit to cooperate in addressing anticompetitive activities (Article 104).

201. Chapter 3 of the Implementing Agreement (IA), signed on 19 February 2009, contains details and procedures for cooperation in relation with measures against anticompetitive activities. The relevant authorities in the Parties to enforce competition are: for Japan, the Fair Trade Commission; and for Switzerland, the Competition commission and its Secretariat. The relevant laws are the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947) and its implementing regulations as well as any amendments thereto in Japan; and the Federal Act on Cartels and Other Restraints of Competition of 6 October 1995 ("Acart") and its implementing regulation, as well as any amendments thereto in Switzerland. The IA's provisions on the details and procedures of cooperation include obligations relating to notification of enforcement activities that may affect the important interests of the country of the other Party, cooperation, exchange of information, coordination of enforcement activities, avoidance of conflicts over enforcement activities, transparency, consultations, confidentiality of information and use of information for criminal proceedings. If the competition authority of a Party believes that the important interests of the Party are adversely affected by anticompetitive activities carried out in the territory of the other Party, it may request that the competition authority of the other Party initiate appropriate enforcement activities, taking into account the importance of avoiding conflicts regarding jurisdiction and the fact that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities (Article 14 of the IA).

202. Nothing in Chapter 3 of the IA prevents the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements, or is construed to prejudice the policy or legal position of either Party regarding any issues related to jurisdiction. Moreover, nothing in Chapter 3 of the IA shall be construed to affect the rights and obligations of a country under other international agreements or arrangements or under its laws (Article 21 of Chapter 3 of the IA).

203. Despite cooperation between the Parties in relation with anticompetitive activities, if a Party considers that there remain adverse trade effects caused by an anticompetitive activity, it may request the other Party to enter into consultations in the Joint Committee with a view to eliminating such adverse trade effects (Article 105). The Agreement's Dispute Settlement mechanism is not applicable to competition-related matters.

2. **Environment**

204. In the Preamble of the Agreement, the Parties indicate their determination "to seek to preserve and protect the environment, to promote the optimal use of natural resources in accordance with the

¹⁰⁶ In particular, it includes: (a) private monopolisation, unreasonable restraint of trade and unfair trade practices under the competition laws and regulations of Japan; and (b) unlawful agreements between enterprises and unlawful practices of enterprises having a dominant position under the competition laws and regulations of Switzerland.

objective of sustainable development and to adequately address the challenges of climate change". Article 9 addresses, in a best endeavour manner, the promotion of trade in environmental products and environment-related services and foresees that this objective be periodically reviewed by the Joint Committee. In Article 101, the Parties confirm that encouraging investment activities by relaxing environmental measures is inappropriate.

3. Promotion of a Closer Economic Relationship

205. Chapter 13 of the Agreement contains provisions related to the promotion of a closer economic relationship between Japan and Switzerland. Under the Joint Committee, a Sub-Committee on Promotion of a Closer Economic Relationship is established to discuss ways and means to promote a closer economic relationship between the Parties. The functions of the Sub-Committee also include a discussion of the possibilities to further remove obstacles to trade and investment between the Parties and to facilitate business activities in the Parties, as well as to cooperate at government and business sector levels in bilateral trade and investment promotion activities. The Sub-Committee is also mandated to make recommendation to the Joint Committee on appropriate measures to be taken by the Parties. The Agreement's Dispute Settlement mechanism does not apply to Chapter 13.

K. RELATIONSHIP WITH OTHER AGREEMENTS CONCLUDED BY THE PARTIES

206. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which they are both party. In the event of any inconsistency between the provisions of the Agreement and the provisions of the WTO Agreement or other agreement to which both Parties are party, the Parties shall immediately consult with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law (Article 7).

207. While the Agreement does not prevent the maintenance or establishment of customs unions, free trade areas, frontier trade and other preferential arrangements¹⁰⁷, information is required if a Party establishes a customs union with a non-party. Consultations may follow (Article 8).

208. The following Table lists all other regional trade agreements (RTAs) notified and not notified to the GATT/WTO and in force to which Japan and Switzerland are party.

¹⁰⁷ To the extent they do not adversely affect the rights and obligations provided for by the Agreement.

Table V.3
Japan and Switzerland: Participation in other RTAs (notified and non-notified in force), as of July 2010

Partner/ Agreement	Date of entry into force	Type of agreement	GATT/WTO Notification	
			Year	WTO Provision
JAPAN				
Viet Nam	01.10.09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Philippines	11.12.08	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
ASEAN	01.12.08	Goods	2009	GATT Art. XXIV
Brunei Darussalam	31.07.08	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
Indonesia	01.07.08	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
Thailand	01.11.07	Goods & Services	2007	GATT Art. XXIV & GATS Art. V
Chile	03.09.07	Goods & Services	2007	GATT Art. XXIV & GATS Art. V
Malaysia	13.07.06	Goods & Services	2006	GATT Art. XXIV & GATS Art. V
Mexico	01.04.05	Goods & Services	2005	GATT Art. XXIV & GATS Art. V
Singapore	30.11.02	Goods & Services	2002	GATT Art. XXIV & GATS Art. V
SWITZERLAND				
Faroe Islands	01.03.95	Goods	1996	GATT Art. XXIV
European Communities	01.01.73	Goods	1972	GATT Art. XXIV
<u>EFTA Agreements:</u>				
EFTA (Stockholm Convention)	03.05.60	Goods	1959	GATT Art. XXIV
EFTA (Services)	01.06.02	Services	2002	GATS Art. V
EFTA – Accession of Iceland	01.03.70	Goods	1970	GATT Art. XXIV
Canada	01.07.09	Goods	2009	GATT Art. XXIV
SACU	01.05.08	Goods	2008	GATT Art. XXIV
Egypt	01.08.07	Goods	2007	GATT Art. XXIV
Lebanon	01.01.07	Goods	2006	GATT Art. XXIV
Republic of Korea	01.09.06	Goods & Services	2006	GATT Art. XXIV & GATS Art. V
Tunisia	01.06.05	Goods	2005	GATT Art. XXIV
Chile	01.12.04	Goods & Services	2004	GATT Art. XXIV & GATS Art. V
Singapore	01.01.03	Goods & Services	2003	GATT Art. XXIV & GATS Art. V
Jordan	01.01.02	Goods	2002	GATT Art. XXIV
Croatia	01.01.02	Goods	2002	GATT Art. XXIV
Mexico	01.07.01	Goods & Services	2001	GATT Art. XXIV & GATS Art. V
FYROM	01.01.01	Goods	2000	GATT Art. XXIV
Morocco	01.12.99	Goods	2000	GATT Art. XXIV
Palestinian Authority	01.07.99	Goods	1999	GATT Art. XXIV
Israel	01.01.93	Goods	1992	GATT Art. XXIV
Turkey	01.04.92	Goods	1992	GATT Art. XXIV

Source: WTO Secretariat.

ASEAN: Association of Southeast Asian Nations
EFTA: European Free Trade Association
FYROM: Former Yugoslav Republic of Macedonia

ANNEX I

Indicators of Trade Liberalization under the Agreement

Japan's Market

1. Annex Table AI.1 provides for a comparison between preferential tariff rates as part of the scheduled programme of elimination of tariffs applied to Japan's imports of merchandise from Switzerland and the MFN rates applied by Japan at the entry into force of the Agreement.

Table AI.1

Japan: Indicators of MFN tariff rates and preferential rates for imports from Switzerland

Origin of goods	Year	ALL PRODUCTS			Agricultural products ^a			Non-agricultural products		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2009	4.8	8.3	41.4	11.2	15.8	25.5	3.4	6.2	45.3
Switzerland	2009	2.4	14.3	81.5	10.0	18.2	40.0	0.7	8.6	91.7
	2010	2.3	13.8	81.5	9.7	17.7	40.0	0.7	8.2	91.7
	2011	2.2	13.4	81.5	9.5	17.2	40.0	0.6	7.9	91.7
	2012	2.1	12.9	81.6	9.2	16.7	40.1	0.6	7.5	91.7
	2013	2.1	12.5	81.6	8.9	16.2	40.1	0.6	7.1	91.7
	2014	2.0	12.5	82.3	8.6	16.0	41.1	0.6	7.1	92.2
	2015	1.9	12.0	82.3	8.4	15.6	41.1	0.5	6.8	92.2
	2016	1.8	12.1	82.9	8.1	15.7	43.0	0.5	6.6	92.5
	2017	1.8	11.7	82.9	7.9	15.3	43.0	0.5	6.3	92.5
	2018	1.7	11.3	82.9	7.7	14.8	43.1	0.5	6.0	92.5
	2019	1.7	15.7	87.6	7.4	19.6	55.7	0.4	8.9	95.2
	2020	1.6	15.5	87.6	7.3	19.4	55.7	0.4	8.9	95.2
	2021	1.6	15.4	87.6	7.2	19.2	55.9	0.4	8.9	95.2
	2022	1.6	15.2	87.6	7.1	18.9	55.9	0.4	8.9	95.2
	2023	1.6	15.1	87.6	7.0	18.7	55.9	0.4	8.9	95.2
	2024	1.6	16.9	88.8	6.9	22.6	62.0	0.4	9.0	95.2

a WTO Definition.

Note: Tariff lines subject to in-quota rates are excluded in the computation; for the calculation of averages, specific rates are excluded and the *ad valorem* part of alternate rates are included.
Based on the HS 2007 nomenclature.

Source: WTO Secretariat estimates based on data provided by Japan.

2. Japan's average applied MFN rate in 2009 was 4.8%. Tariffs on agricultural products at 11.2% were substantially higher than those for non-agricultural products at 3.4%. MFN duty-free tariff lines accounted for 41.4% of all tariff lines. As a result of the Agreement, at the date of entry into force of the Agreement (1.9.2009), Swiss exporters enjoyed an absolute margin of preference of 2.1% *vis-à-vis* the prevailing MFN tariff, 1.2% for agricultural goods and 2.7% for non-agricultural products. The share of duty free lines applicable to imports from Switzerland also rose, from 41.4% to 81.5%. Following ten years of implementation, 87.6% of all tariffs are to become duty free for imports from Switzerland, of which 95.2% for non-agricultural goods and 55.7% for agricultural products. At the end of the implementation period in 2024, Swiss exporters will face zero duties on 88.8% of their exports to Japan; however, while 95.2% of non-agricultural exports will be duty free, 62% of tariffs on non-agricultural products will be eliminated.

3. One of the objectives of the Agreement is to increase access opportunities for Swiss merchandise to the Japanese market. Annex Table AI.2 gives an indication of additional market access resulting from the entry into force of the Agreement for Switzerland's top 25 global exports.

Table A1.2 – Japan: Market access opportunities under the agreement for Switzerland's top 25 exports

Switzerland's top export products in 2006-2008		Access Conditions to Japan's import markets						
		Share in global exports	MFN (2009)			Duty-free in		
			MFN average	No. of tariff lines		2009	2014	2019
HS number and description of the product				Duty-free	Dutiable			
300490	- Medicaments (excluding goods of heading 3002, 3005, 3006, 300410-300450) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) / in forms or packing for retail sale	10.5	0.0	4				
300210	- Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes	5.8	0.0	5				
910221	-- With automatic winding	2.7	0.0	1				
711319	-- Of other precious metal, whether or not plated or clad with precious metal	2.2	5.3		3		2	1
910211	-- With mechanical display only	1.7	0.0	1				
910121	-- With automatic winding	1.5	0.0	1				
293399	-- Other	1.5	3.2		2	2		
711011	-- Unwrought or in powder form	1.2	0.0	1				
300420	- Containing other antibiotics	1.0	0.0	1				
841199	-- Parts of the other gas turbines of HS subheadings 841181 and 841182	1.0	0.0	2				
292429	-- Cyclic amides (including cyclic carbamates) and their derivatives (excluding HS subheadings 292421 to 292424); salts thereof	0.9	3.1		1	1		
294190	- Antibiotics and their derivatives (excluding HS subheadings 294110 to 294150); salts thereof	0.9	0.0	1				
710239	-- Diamonds, non-industrial other than unworked or simply sawn or cleaved or bruted	0.9	0.0	1				
300439	-- Medicaments containing hormones or other products of HS heading 2937 but not containing antibiotics, put up in measured doses or forms or packing for retail sale	0.8	0.0	1				
293719	-- Polypeptide hormones, protein hormones and glycoprotein hormones, their derivatives and structural analogues (excluding HS subheadings 293711 and 293712)	0.8	0.0	1				
902110	- Orthopaedic or fracture appliances	0.7	0.0	1				
293499	-- Nucleic acids and their salts, whether or not chemically defined, n.e.s.; other heterocyclic compounds, n.e.s.	0.7	1.6	1	1	1		
880230	- Aeroplanes and other aircraft, of an unladen weight exceeding 2,000 kg but not exceeding 15,000 kg	0.6	0.0	1				
902150	- Pacemakers for stimulating heart muscles, excluding parts and accessories	0.6	0.0	1				
970110	- Paintings, drawings and pastels	0.6	0.0	1				
847989	-- Other machines and mechanical appliances, other than machines and mechanical appliances for treating metal, including electric-wire coil-winders/ mixing/ kneading/ crushing/ grinding/ screening/ sifting/ homogenising/ emulsifying/ stirring machines	0.6	0.0	1				
910111	-- With mechanical display only	0.6	0.0	1				
330290	- Mixtures of odoriferous substance & mixtures, incl. alcoholic solutions, with a basis of one/more of these substance, of a kind used as raw materials in industry other than food/drink industries	0.6	0.0	1				
910129	-- Wrist-watches other than electrically operated, whether/not incorporating a stop-watch facility (excluding with auto. winding), with case of precious metal or metal clad with precious metal	0.5	0.0	1				
901890	- Other instruments and appliances	0.5	0.0	6				
Total of above		39.5		35	7	4	2	1

Source: WTO estimates based on data provided by Japan and UNSD Comtrade database.

4. Switzerland's top 25 exports accounted for 39.5% of its global exports in 2008; these corresponded to 42 tariff lines at the tariff line level. Before the entry into force of the Agreement, 35 of these lines which represented 38.4% of Switzerland's global exports, had duty free access to the Japanese market. At the entry into force of the Agreement, an additional 4 lines became duty free; two additional lines will become duty free in 2014 and, after 10 years of implementation (in 2019), none of these tariff lines will remain dutiable.

Switzerland's Market

5. Annex Table AI.3 provides for a comparison between preferential tariff rates as part of the scheduled programme of elimination of tariffs applied to Switzerland's imports of merchandises from Japan and the MFN rates applied by Switzerland at the entry into force of the Agreement.

Table AI.3

Switzerland: Indicators of MFN tariff rates and preferential rates for imports from Japan

Origin of goods	Year	ALL PRODUCTS			Agricultural products ^a			Non-agricultural products		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2009	7.4	9.0	17.6	26.3	32.9	17.2	2.0	2.5	17.5
Japan	2009	5.2	44.4	83.2	25.8	44.5	32.3	0.0	1.9	99.9

a WTO Definition.

Note: Tariff lines subject to in-quota rates are excluded in the computation; for the calculation of averages, specific rates are excluded and the *ad valorem* equivalents (AVEs) are included.

AVEs are calculated as the ratio of specific duties to import unit values, which in turn are estimated by the ratio of import values to import quantities/volumes in 2008 (at the HS 8-digit level). If no import data were available in 2008, 2007 data were used.

Based on the HS 2007 nomenclature.

Source: WTO Secretariat estimates based on data provided by Switzerland and WTO-IDB.

6. Switzerland's average applied MFN rate in 2009 was 7.4%. Tariffs on agricultural products at 26.3% are substantially higher than those for non-agricultural products at 2%. MFN duty-free tariff lines accounted for 17.6% of all tariff lines. At the date of entry into force of the Agreement (1.9.2009), when Switzerland completed implementation of its tariff commitments under the Agreement, Japanese exporters enjoyed an absolute margin of preference of 2.2% *vis-à-vis* the prevailing MFN tariff, 0.5% for agricultural goods and 2% for non-agricultural products. The share of duty free lines applicable to imports from Japan also rose from 17.6% to 83.2%, of which 99.9% for non-agricultural goods and 32.3% for agricultural products.

7. One of the objectives of the Agreement is to increase access opportunities for Japanese merchandise to the Swiss market. Annex Table AI.4 gives an indication of additional market access resulting from the entry into force of the Agreement for Japan's top 25 global exports.

Table A1.4 – Switzerland: Market access opportunities under the agreement for Japan's top 25 exports to the world

Japan's top export products in 2006-2008		Access Conditions to Switzerland's import markets				
		Share in global exports (%)	MFN (2009)		Duty-free in 2009	
			Average MFN applied rate (%)	No. of tariff lines		
HS number and description of the product				Duty-free	Dutiable	
870323	-- Of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc	6.5	0.7		3	3
870324	-- Of a cylinder capacity exceeding 3,000 cc	4.4	0.3		2	2
870322	-- Of a cylinder capacity exceeding 1,000 cc but not exceeding 1,500 cc	2.1	0.8		1	1
852580	- Television cameras, digital cameras and video camera recorders	1.7	0.1	1	1	1
854239	-- Other Electronic integrated circuits, other than Amplifiers or Memories or Processors and controllers	1.5	0.0	1		
870840	- Gear boxes and parts thereof	1.5	1.2		3	3
852990	- Other parts suitable for use solely/principally with the apparatus of headings 85.25 to 85.28., other than aerials and aerial reflectors of all kinds	1.4	0.2	1	1	1
890190	- Other vessels for the transport of goods and other vessels for the transport of both persons and goods	1.4	0.8		1	1
271019	-- Petroleum oils & oils obtained from bituminous minerals (other than crude) & preparations not elsewhere specified/including, containing by weight 70 %/more of petroleum oils/of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than waste oils and light oils and preparations	1.3	0.0	9		
844399	-- Other parts and accessories for printing machinery excluding HS subheading 844391	1.3	0.0	1		
854231	-- Processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits	1.1	0.0	1		
847989	-- Other machines and mechanical appliances, other than machines and mechanical appliances for treating metal, including electric wire coil-winders, mixing, kneading, crushing, grinding, screening/, sifting, homogenising, emulsifying, stirring machines	1.1	0.2		2	2
842952	-- Machinery with a 360° revolving superstructure	1.1	0.0	2		
854232	-- Memories	1.0	0.0	1		
870899	-- Other parts & accessories for the motor vehicles of HS headings 8701-8705, excluding HS subheadings 870891, 870892, 870893, 870894 and 870895.	1.0	1.4		4	4
847330	- Parts and accessories of the machines of heading 84.71	1.0	0.0	1		
870332	-- Of a cylinder capacity exceeding 1,500 cc but not exceeding 2,500 cc	0.9	0.8		3	3
848620	- Machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits	0.8	0.0	1		
890120	- Tankers	0.8	6.3 par 100 kg brut		1	1
854140	- Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes	0.8	0.0	1		
840991	-- Suitable for use solely or principally with spark-ignition internal combustion piston engines	0.7	0.9		5	5
381800	Chemical elements doped for use in electronics, in the form of discs, wafers or similar forms; chemical compounds doped for use in electronics.	0.7	0.0	1		
870422	-- Motor vehicles for the transport of goods (excluding HS subheading 870410), with C-I internal combustion piston engine (diesel/semi-diesel), g.v.w. exceeding 5 tonnes but not exceeding 20 tonnes	0.7	4.0		1	1

Japan's top export products in 2006-2008		Access Conditions to Switzerland's import markets			
		MFN (2009)			Duty-free in 2009
HS number and description of the product	Share in global exports (%)	Average MFN applied rate (%)	No. of tariff lines		
			Duty-free	Dutiable	
870333 --Vehicles principally designed for the transport of persons (excluding HS headings 8702 & 870310-870324), with C-I internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity exceeding 2500cc	0.6	0.6		2	2
853690 -- Electrical apparatus for switching/protecting electrical circuits, or for making connections to/in electrical circuits, n.e.s. in 85.36, for a voltage not exceeding 1000V	0.5	0.8	1	4	4
Total of above	35.7		22	34	34

Note: For the calculation of averages, the *ad valorem* equivalents (AVEs) are included. AVEs are calculated as the ratio of specific duties to import unit values, estimated by the ratio of import values to import quantities/volumes in 2008 (at the HS 8-digit level). If no import data were available in 2008, 2007 data were used.

Source: WTO estimates based on data provided by Switzerland, WTO-IDB and UNSD, Comtrade data.

8. Japan's top 25 exports accounted for 35.7% of its global exports in 2009; these corresponded to 56 tariff lines at the tariff line level. Before the entry into force of the Agreement, 22 of these tariff lines representing 10.6% of Japan's global exports, had duty free access to Switzerland's market. At the entry into force of the Agreement, an additional 34 of these 56 tariff lines became duty free, leaving therefore no remaining dutiable tariff lines.

ANNEX II

Part A

Summary of TRQ commitments undertaken by Japan

Table AII.1
Summary of Category "Q" (Japan)
Tariff Rate Quotas opened by Japan for products from Switzerland

Goods	(HS) Tariff Classification	Annual quota quantity	Note
Bovine meat	0210.20 (Qa)	in quota rate: 80.75 yen/kg. - aggregate quota quantities: • 2.0 metric tonnes (year 1) • 3.6 metric tonnes (year 2) • 5.2 metric tonnes (year 3) • 6.8 metric tonnes (year 4) • 8.4 metric tonnes (year 5) • 10.0 metric tonnes (year 6 and subsequent years)	Where the first year is less than twelve months, the aggregate quota quantity for the first year shall be reduced to a part of the aggregate quota quantity that is proportional to the number of complete months remaining in the first year. "Year" means, with respect to the first year, the period from the date of entry into force of the Agreement until the coming 31 March and, with respect to each subsequent year, the twelve-month period which starts on 1 April of that year. <i>Note:</i> the tariff rate quota shall be implemented through a certificate of tariff rate quota issued by the importing Party on the basis of the certificate issued by the exporting Party for each export. The TRQ shall be administered by the importing Party, and the aggregate quota quantity shall be allocated by the importing Party.
Natural Cheese	0406.90 (Qb)	- in quota rate: reduced in 6 equal annual instalments from 29.8% to 14.9%. - aggregate quota quantities: • 600 metric tonnes (year 1) • 640 metric tonnes (year 2) • 680 metric tonnes (year 3) • 720 metric tonnes (year 4) • 760 metric tonnes (year 5) • 800 metric tonnes (year 6) • 840 metric tonnes (year 7) • 880 metric tonnes (year 8) • 920 metric tonnes (year 9) • 960 metric tonnes (year 10) • 1,000 metric tonnes (year 11 and subsequent years)	Attachment 1 of Annex I, Appendix 1, contains a list and a description of 13 "Natural cheeses" eligible for access to the TRQ. The product shall be accompanied by a declaration required for the preferential tariff treatment. Necessary procedures for the declaration are provided for in Attachment 2. Where the first year is less than twelve months, the aggregate quota quantity for the first year shall be reduced to a part of the aggregate quota quantity that is proportional to the number of complete months remaining in the first year. "Year" means, with respect to the first year, the period from the date of entry into force of the Agreement until the coming 31 March and, with respect to each subsequent year, the twelve-month period which starts on 1 April of that year. <i>Note:</i> the tariff rate quota shall be implemented through a certificate of tariff rate quota issued by the importing Party. The TRQ shall be administered by the importing Party, and the aggregate quota quantity shall be allocated by the importing Party.
Part of Sugar confectionery	1704.90 (Qc)	- in quota rate: 20%. - aggregate quota quantity: 100 metric tonnes annually	the TRQ shall be implemented through a certificate of tariff rate quota issued by the importing Party. The TRQ shall be administered by the importing Party, and the aggregate quota quantity shall be allocated by the importing Party.
Part of Chocolate and other food containing added sugar or other sweetening matter	1806.20 (Qd) 1806.31 (Qe) 1806.32 (Qe) 1806.90 (Qe)	(Qd) - in quota rate: free aggregate quota quantity: 5 metric tons for each year. (Qe) - in quota rate: 8% aggregate quota quantity: 1,500 metric tons for each year	the TRQ shall be implemented through a certificate of tariff rate quota issued by the importing Party. The TRQ shall be administered by the importing Party, and the aggregate quota quantity shall be allocated by the importing Party.
Part of Food preparations not elsewhere specified or included ^a	2106.90 (Qf)	- in quota rate: 21% aggregate quota quantity: 23 metric tonnes annually.	The product shall be accompanied by a declaration required for the preferential tariff treatment. Necessary procedures for the declaration are provided for in Attachment 2. the TRQ shall be implemented through a certificate of tariff rate quota issued by the importing Party. The TRQ shall be administered by the importing Party, and the aggregate quota quantity shall be allocated by the importing Party.

a Preparation made from cheese, wine and other ingredients such as spirits, salt, starch (maximum 3% by weight), spices, not less than 50% of which is cheese by weight, not less than 20% of which is alcoholic beverages by weight and put up in containers for retail sale by weight of 0.9kg or less each including container for retail sale.

Source: Annex I, Appendix 1 of the Agreement (Schedule of Japan).

Part B
Summary of TRQ commitments undertaken by Switzerland¹

Table AII.2
Summary of WTO-related TRQs referred to in Switzerland Schedule of tariff concessions (product description column)

WTO TRQ No.	Goods	(HS) Tariff Classification	MFN in quota rate WTO Commitment (LIX Section I-B)	Preferential in quota rate RTA with Japan Agreement Annex I – Appendix 2
1	Chevaux, ânes, mulets et bardots, vivants	01011011	120 par pièce	0
		01019095 (a)	120 par pièce	0
2	Animaux vivants de l'espèce bovine	01029091	60 par pièce	0
4	Animaux vivants des espèces ovine ou caprine	01041010	5 par pièce	0
		01041020 (a)	25 par pièce	20 par pièce
		01042010	3 par pièce	
5	Animaux pour la boucherie; viande essentiellement produites sur la base de fourrages grossiers	01042020	43 par pièce	40 par pièce
		02011011	94 par 100 kg brut	85 par 100 kg brut
		02011091	69 par 100 kg brut	60 par 100 kg brut
		02012011	109 par 100 kg brut	100 par 100 kg brut
		02012091	159 par 100 kg brut	150 par 100 kg brut
		02013011	109 par 100 kg brut	100 par 100 kg brut
		02013091	159 par 100 kg brut	150 par 100 kg brut
		02021011	94 par 100 kg brut	85 par 100 kg brut
		02021091	69 par 100 kg brut	60 par 100 kg brut
		02022011	109 par 100 kg brut	100 par 100 kg brut
		02022091	159 par 100 kg brut	150 par 100 kg brut
		02023011	109 par 100 kg brut	100 par 100 kg brut
		02023091	109 par 100 kg brut	100 par 100 kg brut
		02041010	30 par 100 kg brut	20 par 100 kg brut
		02042110	30 par 100 kg brut	20 par 100 kg brut
		02042210	30 par 100 kg brut	20 par 100 kg brut
		02042310	30 par 100 kg brut	20 par 100 kg brut
		02043010	30 par 100 kg brut	20 par 100 kg brut
		02044110	30 par 100 kg brut	20 par 100 kg brut
		02044210	30 par 100 kg brut	20 par 100 kg brut
		02044310	30 par 100 kg brut	20 par 100 kg brut
		02045010	49 par 100 kg brut	40 par 100 kg brut
		02050010	20 par 100 kg brut	11 par 100 kg brut
02068010	49 par 100 kg brut	40 par 100 kg brut		
02069010	50 par 100 kg brut	40 par 100 kg brut		
6	Animaux pour la boucherie; viandes essentiellement produites sur la base de fourrages concentrés	02072410	30 par 100 kg brut	24 par 100 kg brut
		02072510	30 par 100 kg brut	24 par 100 kg brut
		02072781	30 par 100 kg brut	15 par 100 kg brut
		02072791	30 par 100 kg brut	0
		02073211	30 par 100 kg brut	24 par 100 kg brut
		02073291	30 par 100 kg brut	24 par 100 kg brut
		02073311	30 par 100 kg brut	15 par 100 kg brut
02073691	30 par 100 kg brut	15 par 100 kg brut		
12	Sperme de taureaux	05111010	0.1 par unité d'application	0
13	Fleurs coupées	06031110 (a)	12.5 par 100 kg brut	0
		06031210 (a)	25 par 100 kg brut	0
		06031310 (a)	25 par 100 kg brut	20 par 100 kg brut
		06031410 (a)	25 par 100 kg brut	20 par 100 kg brut
		06031911 (a)	25 par 100 kg brut	20 par 100 kg brut
		06031919 (a)	25 par 100 kg brut	20 par 100 kg brut

¹ As the WTO Schedule of Tariff concessions from Switzerland and Liechtenstein (LIX) is only available in French, we reproduce the description of the goods as well as of the in-quota quantities in this language.

WTO TRQ No.	Goods	(HS) Tariff Classification	MFN in quota rate WTO Commitment (LIX Section I-B)	Preferential in quota rate RTA with Japan Agreement Annex I – Appendix 2
14	Pommes de terre de semence et de table; produits de pommes de terre (en équivalent de pommes de terre)	07011010	1.4 par 100 kg brut	0
15	Légumes	07031013	0.2 par 100 kg brut	0
		07031021	2.9 par 100 kg brut	0
		07031031	2.9 par 100 kg brut	0
		07031041	2.9 par 100 kg brut	0
		07031051	2.9 par 100 kg brut	0
		07031061	2.9 par 100 kg brut	0
		07031071	2.9 par 100 kg brut	0
		07039011	10 par 100 kg brut	5 par 100 kg brut
		07039021	10 par 100 kg brut	5 par 100 kg brut
		07041011	7 par 100 kg brut	0
		07041021	7 par 100 kg brut	0
		07041091	7 par 100 kg brut	0
		07042011	10 par 100 kg brut	5 par 100 kg brut
		07049018	3 par 100 kg brut	0
		07049021	3 par 100 kg brut	0
		07049031	3 par 100 kg brut	0
		07049041	3 par 100 kg brut	0
		07049051	10 par 100 kg brut	0
		07049061	10 par 100 kg brut	5 par 100 kg brut
		07049064	10 par 100 kg brut	5 par 100 kg brut
		07049071	10 par 100 kg brut	5 par 100 kg brut
		07049081	10 par 100 kg brut	5 par 100 kg brut
		07051118	7 par 100 kg brut	3.5 par 100 kg brut
		07051121	7 par 100 kg brut	3.5 par 100 kg brut
		07051198	10 par 100 kg brut	5 par 100 kg brut
		07051911	10 par 100 kg brut	5 par 100 kg brut
		07051921	10 par 100 kg brut	5 par 100 kg brut
		07051931	10 par 100 kg brut	5 par 100 kg brut
		07051941	10 par 100 kg brut	5 par 100 kg brut
		07051951	10 par 100 kg brut	5 par 100 kg brut
		07051991	10 par 100 kg brut	5 par 100 kg brut
		07052111	7 par 100 kg brut	3.5 par 100 kg brut
		07061011	4 par 100 kg brut	2 par 100 kg brut
		07061021	4 par 100 kg brut	2 par 100 kg brut
		07061031	4 par 100 kg brut	2 par 100 kg brut
		07069018	4 par 100 kg brut	2 par 100 kg brut
		07069028	7 par 100 kg brut	3.5 par 100 kg brut
		07069031	10 par 100 kg brut	5 par 100 kg brut
		07069041	10 par 100 kg brut	5 par 100 kg brut
		07069051	10 par 100 kg brut	5 par 100 kg brut
		07069061	10 par 100 kg brut	5 par 100 kg brut
		07070011	10 par 100 kg brut	5 par 100 kg brut
		07070021	10 par 100 kg brut	5 par 100 kg brut
		07070031	10 par 100 kg brut	5 par 100 kg brut
		07070041	10 par 100 kg brut	5 par 100 kg brut
		07081011	10 par 100 kg brut	5 par 100 kg brut
		07081021	10 par 100 kg brut	5 par 100 kg brut
		07082028	10 par 100 kg brut	0
		07082038	10 par 100 kg brut	0
		07082048	10 par 100 kg brut	0
07082098	10 par 100 kg brut	0		
07089081	10 par 100 kg brut	5 par 100 kg brut		
07094011	10 par 100 kg brut	5 par 100 kg brut		
07094021	10 par 100 kg brut	5 par 100 kg brut		
07094091	10 par 100 kg brut	5 par 100 kg brut		
07097011	10 par 100 kg brut	5 par 100 kg brut		
07099041	10 par 100 kg brut	5 par 100 kg brut		
07099051	10 par 100 kg brut	5 par 100 kg brut		
07099084 (a)	10 par 100 kg brut	5 par 100 kg brut		

WTO TRQ No.	Goods	(HS) Tariff Classification	MFN in quota rate WTO Commitment (LIX Section I-B)	Preferential in quota rate RTA with Japan Agreement Annex I – Appendix 2
17	Pommes noires et coings frais	08081022	2 par 100 kg brut	0
		08081032	5 par 100 kg brut	0
		08082022	2 par 100 kg brut	0
		08082032	5 par 100 kg brut	0
18	Abricots, cerises, prunes et prunelles frais	08091018	3 par 100 kg brut	0
		08091098	5 par 100 kg brut	0
		08092011	3 par 100 kg brut	0
		08094013	3 par 100 kg brut	0
		08094093	10 par 100 kg brut	0
19	Autres fruits frais	08101011	3 par 100 kg brut	0
		08102011	5 par 100 kg brut	0
		08102021	5 par 100 kg brut	0
20	Fruits pour la cidrerie et la distillation	ex08082011	2 par 100 kg brut	0
8	Caséines	35011010	4 par 100 kg brut	0
		35019011 (a)	4 par 100 kg brut	0

(a): Tariff line not contained in List LIX (Customs Union Switzerland-Liechtenstein), Section I-B.

Source: Annex I, Appendix 2 of the Agreement (Schedule of Switzerland) complemented by information received from Switzerland.

9. In addition, for three products (table grapes, peaches, and nectarines), Switzerland opened a specific bilateral TRQ, through which customs duties are eliminated "within the limits of a tariff quota of 50 tons/year" only for "gift fruits". These additional, bilateral, TRQs can be summarized as follows:

Table AII.3

Summary of Specific bilateral TRQs referred to in Switzerland Schedule of tariff concessions (column 6)

TRQ No.	Goods	(HS) Tariff Classification	Annual Preferential quota quantity for Japan	Preferential in quota rate RTA with Japan	Note
Special TRQ mentioned in column 6 of the Schedule	Table grapes	ex0806.1011	50 tons/year	0	Seasonal TRQ (from July 15 to September 15)
	Table grapes	ex0806.1011	50 tons/year	0	Seasonal TRQ (from September 16 to July 14)
	Peaches	ex0809.3010	50 tons/year	0	
	Nectarines	ex0809.3020	50 tons/year	0	

Source: Annex I, Appendix 2 of the Agreement (Schedule of Switzerland) complemented by information received from Switzerland.