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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Amending Protocol to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products

AMENDING PROTOCOL
TO THE AGREEMENT
BETWEEN THE EUROPEAN COMMUNITY
AND THE SWISS CONFEDERATION
ON TRADE IN AGRICULTURAL PRODUCTS

THE EUROPEAN UNION, hereinafter referred to as the "Union",

and

THE SWISS CONFEDERATION, hereinafter referred to as "Switzerland",

hereinafter referred to as the "Parties";

RECALLING the objective of the Agreement between the European Community and the Swiss Confederation on trade in agricultural products, done at Luxembourg, on 21 June 1999 (hereinafter referred to as the "Agreement"), to strengthen the free-trade relations between the Parties by improving the access of each to the market in agricultural products of the other;

RECALLING the Parties' sovereignty over their agricultural policies;

ACKNOWLEDGING the need to amend the Agreement following the establishment of a common food safety area by the Protocol to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products establishing a common food safety area (hereinafter referred to as the "Protocol establishing a common food safety area"), which covers certain fields which have hitherto been governed by the Agreement;

ACKNOWLEDGING the need to adapt the Agreement's institutional provisions, to enhance the Agreement's effectiveness and efficiency and to ensure consistency with the common food safety area;

AFFIRMING that the Agreement should be based on equality, reciprocity and the general balance of advantages, rights and obligations of the Parties in the areas covered by the Agreement;

RECALLING the intrinsic link between the Agreement and the six other Agreements between the European Community and Switzerland, done at Luxembourg, on 21 June 1999;

AFFIRMING the intrinsic link between the Agreement and the common food safety area established by the Protocol establishing a common food safety area, with which the Agreement forms a coherent whole,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Amendments to the Agreement

The Agreement is amended as follows:

- (1) any references to the "European Community" or to "the Community" in the Agreement shall be construed as references to the European Union;
- (2) Article 5 is replaced by the following:

"ARTICLE 5

Removal of technical barriers to trade in agricultural products

With the aim of fostering trade in agricultural products, the Parties shall remove or reduce technical barriers, in accordance with the following Annexes to the Agreement:

- Annex 7 on trade in wine-sector products,
- Annex 8 on the mutual recognition and protection of names of spirit drinks and aromatised wine-based drinks,
- Annex 9 on organically produced agricultural products and foodstuffs,

- Annex 10 on recognition of checks on conformity checks for fresh fruit and vegetables subject to marketing standards,
- Annex 12 on the protection of designations of origin and geographical indications for agricultural products and foodstuffs.";

(3) Article 6 is replaced by the following:

"ARTICLE 6

Joint Committee on Agriculture

1. A Joint Committee on Agriculture is hereby established.

The Joint Committee on Agriculture shall be composed of representatives of the Parties.

2. The Joint Committee on Agriculture shall be co-chaired by a representative of the Union and a representative of Switzerland.

3. The Joint Committee on Agriculture shall:

(a) ensure the proper functioning and the effective administration and application of this Agreement;

- (b) provide a forum for mutual consultation and a continuous exchange of information between the Parties, in particular with a view to finding a solution to any difficulty of interpretation or application of this Agreement in accordance with Article 7a;
- (c) make recommendations to the Parties in matters pertaining to this Agreement;
- (d) adopt decisions where provided for in this Agreement; and
- (e) exercise any other competence granted to it in this Agreement.

4. The Joint Committee on Agriculture shall act by consensus.

Decisions shall be binding on the Parties, which shall take all necessary measures to implement them.

5. The Joint Committee on Agriculture shall meet at least once a year, in Brussels and Bern alternately, unless the co-chairs decide otherwise. It shall also meet at the request of either Party.

The co-chairs may agree that a meeting of the Joint Committee on Agriculture be held by videoconference or teleconference.

The Joint Committee on Agriculture may decide to take decisions by written procedure.

6. The Joint Committee on Agriculture shall adopt its rules of procedure at its first meeting.

7. The Joint Committee on Agriculture may decide to set up any working party or group of experts that can assist it in carrying out its duties.";

(4) Article 7 is replaced by the following:

"ARTICLE 7

Exclusivity principle

The Parties undertake not to submit a dispute regarding the interpretation or application of this Agreement to any method of settlement other than those provided for in this Agreement.";

(5) the following articles are inserted:

"ARTICLE 7a

Procedure in the event of difficulty of interpretation or application

1. In the event of difficulty of interpretation or application of this Agreement, the Parties shall consult each other within the Joint Committee on Agriculture in order to find a mutually acceptable solution. To that end, all useful elements of information shall be provided to the Joint Committee on Agriculture to enable it to make a detailed examination of the situation. The Joint Committee on Agriculture shall examine all possibilities that allow the proper functioning of the Agreement to be maintained.

2. If the Joint Committee on Agriculture is not able to find a solution to the difficulty referred to in paragraph 1 of this Article within three months of the date on which the difficulty was submitted to it, either of the Parties may request that an arbitral tribunal settle the dispute in accordance with the rules laid down in the Protocol to the Agreement on the arbitral tribunal.

3. Each Party shall take all necessary measures to comply in good faith with the arbitral tribunal's decision.

The Party that has been found by the arbitral tribunal not to have complied with this Agreement shall inform the other Party through the Joint Committee on Agriculture of the measures it has taken to comply with the arbitral tribunal's decision.

4. The procedure referred to in paragraph 2 of this Article shall not affect the concessions as granted and established in Annexes 1 to 3 to this Agreement and their administration.

ARTICLE 7b

Compensatory measures

1. If the Party that has been found by the arbitral tribunal not to have complied with this Agreement does not inform the other Party, within a reasonable time period set in accordance with Article IV.2 (6) of the Protocol to this Agreement on the arbitral tribunal, of the measures it has taken to comply with the arbitral tribunal's decision, or if the other Party considers that the measures communicated do not comply with the arbitral tribunal's decision, that other Party may adopt proportionate compensatory measures within the framework of this Agreement, or of the Protocol establishing a common food safety area (hereinafter referred to as "compensatory measures") in order to remedy a potential imbalance. That other Party shall notify the Party that has been found by the arbitral tribunal not to have complied with the Agreement of the compensatory measures, which shall be specified in the notification. Those compensatory measures shall take effect three months from the date of the notification.
2. If, within one month of the date of the notification of the intended compensatory measures the Joint Committee on Agriculture has not taken a decision to suspend, amend or annul those compensatory measures, either Party may submit to arbitration the question of the proportionality of those compensatory measures, in accordance with the Protocol to this Agreement on the arbitral tribunal.
3. The arbitral tribunal shall decide within the time limits laid down in Article III.8(3) of the Protocol on the arbitral tribunal to this Agreement.

4. Compensatory measures shall not have retroactive effect. In particular, the rights and obligations already acquired by individuals and economic operators before the compensatory measures take effect shall be preserved.";

(6) in Article 9, the title is replaced by the following:

"Professional secrecy";

(7) the following article is inserted:

"ARTICLE 9a

Classified information and sensitive non-classified information

1. Nothing in this Agreement shall be construed as requiring a Party to make available classified information.

2. Classified information or material provided by, or exchanged between, the Parties under this Agreement shall be handled and protected in compliance with the Agreement between the Swiss Confederation and the European Union on the security procedures for the exchange of classified information, done at Brussels on 28 April 2008, and any security arrangement implementing it.

3. The Joint Committee on Agriculture shall adopt, by means of a decision, handling instructions to ensure the protection of sensitive non-classified information exchanged between the Parties.";

(8) in Article 11, Article 12(2) and Article 13(2), the words "the Committee" are replaced by the words "the Joint Committee on Agriculture";

(9) Article 15 is replaced by the following:

"ARTICLE 15

Annexes, Appendices and Protocol

The Annexes to this Agreement, including the Appendices thereto, and the Protocol on the arbitral tribunal to this Agreement, shall form an integral part thereof.";

(10) Article 16 is replaced by the following:

"ARTICLE 16

Territorial scope

This Agreement shall apply, of the one part, to the territory in which the Treaty on European Union and the Treaty on the Functioning of the European Union apply and under the conditions laid down in those Treaties, and, of the other part, to the territory of Switzerland.";

(11) in Article 17, the following paragraphs are added:

"5. Where this Agreement is terminated in accordance with paragraph 3, the Protocol establishing a common food safety area shall cease to apply on the date referred to in paragraph 4.

6. Where this Agreement ceases to apply, the rights and obligations that individuals and economic operators have already acquired by virtue of this Agreement shall be preserved. The Parties shall settle by mutual agreement what action is to be taken in respect of rights in the process of being acquired.";

(12) Annexes 4, 5, 6 and 11 to the Agreement are repealed on the date of entry into force of the Protocol establishing a common food safety area;

(13) the text set out in the Annex to this Protocol is added as a Protocol to the Agreement.

ARTICLE 2

Transitional application of Annexes 4, 5, 6 and 11 to the Agreement

The effects of Annexes 4, 5, 6 and 11 to the Agreement shall be maintained during the transition period established by Article 32 of the Protocol establishing a common food safety area. In accordance with that Article, the transition period shall start on the date of entry into force of that Protocol and end no later than 24 months after its entry into force.

For the purposes of the Agreement, the date of the end of that transition period shall be determined by a decision of the Joint Committee on Agriculture established by Article 6 of the Agreement, upon notification by the Joint Committee on Food Safety established by Article 11 of the Protocol establishing a common food safety area.

ARTICLE 3

Entry into force

1. This Protocol shall be ratified or approved by the Parties in accordance with their own procedures. The Parties shall notify each other of the completion of the internal procedures necessary to the entry into force of this Protocol.
2. This Protocol shall enter into force on the first day of the second month following the last notification regarding the following instruments:
 - (a) Institutional Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons;
 - (b) Amending Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons;

- (c) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;
- (d) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;
- (e) State Aid Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;
- (f) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (g) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (h) State Aid Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (i) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment;
- (j) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment;

- (k) Agreement between the European Union and the Swiss Confederation on Switzerland's regular financial contribution towards reducing economic and social disparities in the European Union;
- (l) Agreement between the European Union and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, on the participation of the Swiss Confederation in Union programmes;
- (m) Agreement between the European Union and the Swiss Confederation on the terms and conditions for the participation of the Swiss Confederation in the European Union Agency for the Space Programme.

This Protocol is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

Done at ... this day of ... in the year ...

For the European Union

For the Swiss Confederation

PROTOCOL
TO THE AGREEMENT
BETWEEN THE EUROPEAN COMMUNITY
AND THE SWISS CONFEDERATION
ON TRADE IN AGRICULTURAL PRODUCTS
ON THE ARBITRAL TRIBUNAL

CHAPTER I

PRELIMINARY PROVISIONS

ARTICLE I.1

Scope

If one of the Parties (hereinafter referred to as the "parties") submits a dispute for arbitration in accordance with Article 7a(2) or Article 7b(2) of the Agreement, the rules set out in this Protocol shall apply.

ARTICLE I.2

Registry and secretarial services

The International Bureau of the Permanent Court of Arbitration at the Hague (hereinafter referred to as the "International Bureau") shall fulfil the functions of registry and provide the necessary secretarial services.

ARTICLE I.3

Notices and calculation of time limits

1. Notices, including communications or proposals, may be sent by any means of communication that certifies their transmission, or enables them to be certified.
2. Such notices may be sent electronically only if an address has been designated or authorised by a party specifically for this purpose.
3. Such notices served on the parties shall be sent, for Switzerland, to Switzerland's Europe Division of the Federal Department of Foreign Affairs and, for the Union, to the Commission's Legal Service.

4. Any time limit laid down in this Protocol shall run from the day after an event occurs or an action takes place. If the last day for delivery of a document falls on a non-working day of the institutions of the Union or of the government of Switzerland, the time period for the delivery of the document shall end on the first following working day. Non-working days that fall within the time period shall be counted.

ARTICLE I.4

Notice of arbitration

1. The party taking the initiative to use arbitration (hereinafter referred to as the "applicant") shall send to the other party (hereinafter referred to as the "defendant") and to the International Bureau a notice of arbitration.
2. Arbitration proceedings shall be deemed to commence on the day after that on which the notice of arbitration is received by the defendant.
3. The notice of arbitration shall include the following information:
 - (a) the demand that the dispute be referred to arbitration;
 - (b) the names and contact details of the parties;
 - (c) the name and address of the applicant's agent(s);

- (d) the legal basis of the proceedings (Article 7a(2) or Article 7b(2) of the Agreement) and:
 - (i) in the cases referred to in Article 7a(2) of the Agreement, the question causing the dispute as officially entered, for resolution, on the agenda of the Joint Committee on Agriculture in accordance with Article 7a(1) of the Agreement; and
 - (ii) in the cases referred to in Article 7b(2) of the Agreement, the decision of the arbitral tribunal, any implementation measures mentioned in Article 7a(3) of the Agreement and the disputed compensatory measures;
- (e) the designation of any rule causing the dispute or related to it;
- (f) a brief description of the dispute; and
- (g) the designation of an arbitrator or, if five arbitrators are to be appointed, the designation of two arbitrators.

4. Any claims on the sufficiency of the notice of arbitration shall not prevent the constitution of the arbitral tribunal. The dispute shall be decided definitively by the arbitral tribunal.

ARTICLE I.5

Response to the notice of arbitration

1. Within 60 days of receiving the notice of arbitration, the defendant shall send a response to the notice of arbitration to the applicant and the International Bureau, which shall include the following information:
 - (a) the names and contact details of the parties;
 - (b) the name and address of the defendant's agent(s);
 - (c) a response to the information given in the notice of arbitration in accordance with points (d), (e) and (f) of Article I.4(3); and
 - (d) the designation of an arbitrator or, if five arbitrators are to be appointed, the designation of two arbitrators.
2. The lack, or an incomplete or late, response from the defendant to the notice of arbitration shall not prevent the constitution of an arbitral tribunal. The dispute shall be decided definitively by the arbitral tribunal.
3. If the defendant requests that the arbitral tribunal consist of five arbitrators in its response to the notice of arbitration, the applicant shall designate an additional arbitrator within 30 days of receipt of the response to the notice of arbitration.

ARTICLE I.6

Representation and assistance

1. The parties shall be represented before the arbitral tribunal by one or more agents. The agents may be assisted by advisers or lawyers.
2. Any change to the agents or their addresses shall be notified to the other party, the International Bureau and the arbitral tribunal. The arbitral tribunal may, at any time, on its own initiative or at the request of a party, request evidence of the powers conferred on the agents of the parties.

CHAPTER II

COMPOSITION OF THE ARBITRAL TRIBUNAL

ARTICLE II.1

Number of arbitrators

The arbitral tribunal shall be composed of three arbitrators. If the applicant in its notice of arbitration or the defendant in its response to the notice of arbitration so request, the arbitral tribunal shall be composed of five arbitrators.

ARTICLE II.2

Appointment of arbitrators

1. If three arbitrators are to be appointed, each of the parties shall designate one of them. The two arbitrators appointed by the parties shall select the third arbitrator, who shall be the chair of the arbitral tribunal.
2. If five arbitrators are to be appointed, each of the parties shall designate two of them. The four arbitrators appointed by the parties shall select the fifth arbitrator, who shall be the chair of the arbitral tribunal.
3. If, within 30 days of the designation of the last arbitrator appointed by the parties, the arbitrators have not reached agreement on the selection of the chair of the arbitral tribunal, the chair shall be appointed by the Secretary-General of the Permanent Court of Arbitration.
4. To assist in the selection of arbitrators to compose the arbitral tribunal, an indicative list of persons possessing the qualifications referred to in paragraph 6, which shall be common to all bilateral agreements in the fields related to the internal market in which Switzerland participates as well as the Agreement between the European Union and the Swiss Confederation on health (hereinafter referred to as the "Agreement on health"), the Agreement between the European Community and the Swiss Confederation on trade in agricultural products, done at Luxembourg on 21 June 1999 (hereinafter referred to as the "Agreement on trade in agricultural products"), and the Agreement between the European Union and the Swiss Confederation on Switzerland's regular financial contribution towards reducing economic and social disparities in the European Union, done at (hereinafter referred to as the "Agreement on Switzerland's regular financial contribution") shall be established and updated when necessary. The Joint Committee on Agriculture shall adopt and update that list by a decision for the purposes of the Agreement.

5. Where a party fails to designate an arbitrator, the Secretary-General of the Permanent Court of Arbitration shall appoint that arbitrator from the list referred to in paragraph 4. In the absence of such a list, the arbitrator shall be appointed by lot by the Secretary-General of the Permanent Court of Arbitration from the individuals who have been formally proposed by one party or both parties for the purposes of paragraph 4.

6. The persons constituting the arbitral tribunal shall be highly qualified persons, with or without ties to the parties, whose independence and lack of conflicts of interest is guaranteed, along with a wide range of experience. In particular, they shall have demonstrated expertise in law and the matters covered by this Agreement; they shall not take instructions from either party; and they shall serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute. The chair of the arbitral tribunal shall also have experience in dispute settlement procedures.

ARTICLE II.3

Arbitrators' declarations

1. When a person is being considered for appointment as an arbitrator, that person shall report all circumstances likely to give rise to legitimate doubts as to his or her impartiality or independence. From the appointment and throughout the entire arbitration proceedings, an arbitrator shall report such circumstances to the parties and to the other arbitrators without delay, if the arbitrator has not already done so.

2. Any arbitrator may be dismissed if circumstances exist that could give rise to legitimate doubts about his or her impartiality or independence.

3. A party may only request the dismissal of an arbitrator that it has appointed for a reason that becomes known to it after that appointment.
4. If an arbitrator fails to act or if it is impossible *de jure* or *de facto* for an arbitrator to fulfil his or her role, the procedure for the dismissal of arbitrators laid down in Article II.4 shall apply.

ARTICLE II.4

Dismissal of arbitrators

1. Any party wishing to dismiss an arbitrator shall make a request for dismissal within 30 days of the date on which it is notified of the appointment of that arbitrator or within 30 days of the date on which it becomes aware of the circumstances referred to in Article II.3.
2. The request for dismissal shall be sent to the other party, to the dismissed arbitrator, to the other arbitrators and to the International Bureau. It shall set out the reasons for the request for dismissal.
3. When a request for dismissal has been made, the other party may accept the request for dismissal. The arbitrator in question may also step aside. The acceptance or stepping aside does not imply acknowledgement of the reasons for the request for dismissal.
4. If, within 15 days of the date of the notification of the request for dismissal, the other party does not accept the request for dismissal or the arbitrator in question does not step aside, the party requesting the dismissal may ask the Secretary-General of the Permanent Court of Arbitration to take a decision on the dismissal.

5. Unless the parties agree otherwise, the decision referred to in paragraph 4 shall indicate the reasons for that decision.

ARTICLE II.5

Replacement of an arbitrator

1. Subject to paragraph 2 of this Article, if it is necessary to replace an arbitrator during the arbitration proceedings, a replacement shall be appointed or selected in accordance with the procedure laid down in Article II.2 applicable to the appointment or selection of the arbitrator to be replaced. That procedure shall apply even if one party had not exercised its right to appoint or to participate in the appointment of the arbitrator to be replaced.
2. In the event of replacement of an arbitrator, the procedure shall resume at the stage where the replaced arbitrator ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

ARTICLE II.6

Exclusion of liability

Except in cases of intentional wrongdoing or gross negligence, the parties renounce, to the maximum extent permitted by the applicable law, any action against the arbitrators for any act or omission related to the arbitration.

CHAPTER III

ARBITRATION PROCEEDINGS

ARTICLE III.1

General provisions

1. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator has accepted his or her appointment.
2. The arbitral tribunal shall ensure that the parties are treated equally and that, at an appropriate stage of the proceedings, each of them has sufficient possibility to assert their rights and present their case. The arbitral tribunal shall conduct the proceedings in such a way as to avoid delays and unnecessary expenditure and to ensure the dispute between the parties is settled.
3. A hearing shall be organised, unless the arbitral tribunal decides otherwise, having heard the parties.
4. When a party sends a communication to the arbitral tribunal, it shall do so through the International Bureau and shall send a copy to the other party at the same time. The International Bureau shall send a copy of that communication to each of the arbitrators.

ARTICLE III.2

Place of arbitration

The place of arbitration is The Hague. The arbitral tribunal may, if exceptional circumstances so require, meet at any other place that it considers appropriate for its deliberations.

ARTICLE III.3

Language

1. The languages of the proceedings shall be French and English.
2. The arbitral tribunal may order all documents enclosed with the statement of claim or the statement of defence and all further documents produced during the proceedings, submitted in their original language, to be accompanied by a translation in one of the languages of the proceedings.

ARTICLE III.4

Statement of claim

1. The applicant shall send its statement of claim in writing to the defendant and to the arbitral tribunal through the International Bureau, within the time limit set by the arbitral tribunal. The applicant may decide to deem its notice of arbitration referred to in Article I.4 a statement of claim, provided that it also meets the conditions in paragraphs 2 and 3 of this Article.

2. The statement of claim shall include the following information:
 - (a) the information set out in points (b) to (f) of Article I.4(3);
 - (b) a statement of facts submitted in support of the claim; and
 - (c) the legal arguments put forward in support of the claim.
3. The statement of claim shall, as far as possible, be accompanied by any documents and other evidence mentioned by the applicant or shall refer to them.

ARTICLE III.5

Statement of defence

1. The defendant shall send the statement of defence in writing to the applicant and to the arbitral tribunal through the International Bureau, within the time limit set by the arbitral tribunal. The defendant may decide to deem the response to the notice of arbitration referred to in Article I.5 a statement of defence, provided that the response to the notice of arbitration also meets the conditions in paragraph 2 of this Article.
2. The statement of defence shall respond to the points in the statement of claim indicated in accordance with points (a), (b) and (c) of Article III.4(2) of this Protocol. It shall, as far as possible, be accompanied by any documents and other evidence mentioned by the defendant or shall refer to them.

3. In the statement of defence, or at a later stage in the arbitration proceedings if the arbitral tribunal decides that a delay is justified by circumstances, the defendant may make a counterclaim provided that the arbitral tribunal has jurisdiction in respect of it.
4. Article III.4(2) and (3) shall apply to a counterclaim.

ARTICLE III.6

Arbitral jurisdiction

1. The arbitral tribunal shall rule on whether it has jurisdiction on the basis of Article 7a(2) or Article 7b(2) of the Agreement.
2. In the cases referred to in Article 7a(2) of the Agreement, the arbitral tribunal shall have a mandate to examine the question causing the dispute as officially entered, for resolution, on the agenda of the Joint Committee on Agriculture in accordance with Article 7a(1) of the Agreement.
3. In the cases referred to in Article 7b(2) of the Agreement, the arbitral tribunal that heard the main case shall have a mandate to examine the proportionality of the disputed compensatory measures, including where those measures have in whole or in part been taken in the Protocol establishing a common food safety area.

4. A preliminary objection of lack of jurisdiction of the arbitral tribunal shall be made at the latest in the statement of defence or, in the case of a counterclaim, in the reply. The fact that a party has appointed an arbitrator or has taken part in their appointment shall not deprive it of the right to make such a preliminary objection. The preliminary objection that the dispute would exceed the arbitral tribunal's powers shall be made as soon as the question alleged to exceed its powers is raised during the arbitration proceedings. In any event, the arbitral tribunal may allow a preliminary objection made after the time limit laid down has elapsed if it believes that the delay was for a valid reason.

5. The arbitral tribunal may rule on the preliminary objection referred to in paragraph 4 either by treating it as a preliminary question or in the decision on the substance of the case.

ARTICLE III.7

Other written submissions

The arbitral tribunal shall, after having consulted the parties, decide what other written submissions, in addition to the statement of claim and statement of defence, the parties shall or may submit and shall set the time limit for their submission.

ARTICLE III.8

Time limits

1. The time limits set by the arbitral tribunal for the communication of the written documents, including the statement of claim and the statement of defence, shall not exceed 90 days, unless the parties agree otherwise.
2. The arbitral tribunal shall take its final decision within 12 months of the date of its establishment. In exceptional circumstances of particular difficulty, the arbitral tribunal may extend that period by up to three additional months.
3. The time limits laid down in paragraphs 1 and 2 shall be halved in the following cases:
 - (a) upon request by the applicant or the defendant, if, within 30 days of that request, the arbitral tribunal rules, after hearing the other party, that the case is urgent; or
 - (b) if the parties so agree.
4. In the cases referred to in Article 7b(2) of the Agreement, the arbitral tribunal shall take its final decision within six months of the date on which the compensatory measures have been notified in accordance with Article 7b(1) of the Agreement.

ARTICLE III.9

Interim measures

1. In the cases referred to in Article 7b(2) of the Agreement, either party may, at any stage of the arbitration procedure, apply for interim measures consisting of the suspension of the compensatory measures.
2. An application pursuant to paragraph 1 shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for. It shall contain all the evidence and offers of evidence available to justify the grant of the interim measures.
3. The party requesting the interim measures shall send its application in writing to the other party and to the arbitral tribunal through the International Bureau. The arbitral tribunal shall set a short time limit within which that other party may submit written or oral observations.
4. The arbitral tribunal shall, within one month of the submission of the application referred to in paragraph 1, adopt a decision on the suspension of the contested compensatory measures if the following conditions are met:
 - (a) the arbitral tribunal is *prima facie* satisfied of the merit of the case submitted by the party requesting the interim measures in its application;
 - (b) the arbitral tribunal considers that, pending its final decision, the party requesting the interim measures would suffer serious and irreparable harm absent the suspension of the compensatory measures; and

(c) the harm caused to the party requesting the interim measures by the immediate application of the contested compensatory measures outweighs the interest in the immediate and effective application of those measures.

5. A decision taken by the arbitral tribunal in accordance with paragraph 4 shall have only an interim effect and shall be without prejudice to the decision of the arbitral tribunal on the substance of the case.

6. Unless the decision taken by the arbitral tribunal in accordance with paragraph 4 of this Article sets an earlier date for the end of the suspension, the suspension shall lapse when the final decision pursuant to Article 7b(2) of the Agreement is taken.

7. For the avoidance of doubt, for the purposes of this Article, it is understood that, in considering the respective interests of the party requesting the interim measures and the other party, the arbitral tribunal shall take into account those of the individuals and economic operators of the parties, but that consideration shall not amount to granting any standing to such individuals or economic operators before the arbitral tribunal.

ARTICLE III.10

Evidence

1. Each party shall provide evidence of the facts forming the grounds of its claim or its defence.

2. On request of a party, or on its own initiative, the arbitral tribunal may seek from the parties relevant information it considers necessary and appropriate. The arbitral tribunal shall set a time limit for the parties to respond to its request.
3. On request of a party, or on its own initiative, the arbitral tribunal may seek from any source any information it considers appropriate. The arbitral tribunal may also seek the opinion of experts as it considers appropriate and subject to any terms and conditions agreed by the parties, where applicable.
4. Any information obtained by the arbitral tribunal under this Article shall be made available to the parties, and the parties may submit comments on that information to the arbitral tribunal.
5. After seeking the views of the other party, the arbitral tribunal shall adopt appropriate measures to address any questions raised by a party with regard to the protection of personal data, professional secrecy and the legitimate interests of confidentiality.
6. The arbitral tribunal shall be the judge of the admissibility, relevance and strength of the evidence submitted.

ARTICLE III.11

Hearings

1. When a hearing must take place, the arbitral tribunal, having consulted the parties, shall notify the parties sufficiently far in advance of the date, time and place of the hearing.

2. The hearing shall be public, unless the arbitral tribunal, of its own motion or on application by the parties, decides otherwise for serious reasons.
3. Minutes of each hearing shall be drawn up and signed by the chair of the arbitral tribunal. Only those minutes shall be authentic.
4. The arbitral tribunal may decide to hold the hearing virtually in accordance with the practice of the International Bureau. The parties shall be informed of this practice in a timely manner. In such cases, paragraph 1, *mutatis mutandis*, and paragraph 3 shall apply.

ARTICLE III.12

Default

1. If, within the time limit set by this Protocol or by the arbitral tribunal, without showing sufficient cause, the applicant has not submitted its statement of claim, the arbitral tribunal shall order the closure of the arbitration proceedings, unless there are outstanding questions on which a ruling may be necessary and if the arbitral tribunal considers it appropriate to do so.

If, within the time limit set by this Protocol or by the arbitral tribunal, without showing sufficient cause, the defendant has not submitted its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order the continuation of the proceedings, without considering that default of itself to constitute acceptance of the applicant's allegations.

The second subparagraph also applies where the applicant fails to submit a reply to a counterclaim.

2. If a party, duly convened in accordance with this Article III.11(1), does not appear at a hearing and does not demonstrate sufficient cause for its failure to do so, the arbitral tribunal may continue the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce further evidence, fails to do so within the time limits set without showing sufficient cause for its failure to do so, the arbitral tribunal may rule on the basis of the evidence it has available.

ARTICLE III.13

Closure of the procedure

1. Where it is demonstrated that the parties have reasonably had the possibility of presenting their arguments, the arbitral tribunal may declare the closure of the proceedings.

2. The arbitral tribunal may, if it considers it necessary because of exceptional circumstances, decide on its own initiative or at the request of a party to reopen the proceedings at any time before it has taken its decision.

CHAPTER IV

DECISION

ARTICLE IV.1

Decisions

The arbitral tribunal shall strive to take its decisions by consensus. If, however, it proves impossible to take a decision by consensus, the arbitral tribunal's decision shall be taken by a majority of the arbitrators.

ARTICLE IV.2

Form and effect of the decision of the arbitral tribunal

1. The arbitral tribunal may take separate decisions on different questions at different times.
2. All decisions shall be issued in writing and shall state the reasons on which they are based. They shall be final and binding on the parties.
3. The decision of the arbitral tribunal shall be signed by the arbitrators, shall contain the date on which it was taken and state the place of arbitration. A copy of the decision signed by the arbitrators shall be communicated to the parties by the International Bureau.

4. The International Bureau shall make the decision of the arbitral tribunal public.

When making the decision of the arbitral tribunal public, the International Bureau shall respect the relevant rules on the protection of personal data, professional secrecy and the legitimate interests of confidentiality.

The rules referred to in the second subparagraph shall be identical for all bilateral agreements in the fields of the internal market in which Switzerland participates, as well as for the Agreement on health, the Agreement on trade in agricultural products and the Agreement on Switzerland's regular financial contribution. The Joint Committee on Agriculture shall adopt and update those rules by a decision for the purposes of the Agreement.

5. The parties shall comply with all decisions of the arbitral tribunal without delay.

6. In the cases referred to in Article 7a(2) of the Agreement, having obtained the opinion of the parties, the arbitral tribunal shall set a reasonable time limit in the decision on the substance of the case to comply with its decision in accordance with Article 7a(3) of the Agreement taking account of the parties' internal procedures.

ARTICLE IV.3

Applicable law, rules of interpretation, mediator

1. The applicable law consists of the Agreement, as well as any other rule of international law relevant to the application thereof.

2. Prior decisions taken by a dispute settlement body with regard to the proportionality of compensatory measures under the Protocol establishing a common food safety area referred to in Article 7b(1) of the Agreement shall be binding upon the arbitral tribunal.
3. The arbitral tribunal shall not be permitted to decide as mediator or *ex aequo et bono*.

ARTICLE IV.4

Mutually agreed solution or other reasons for closure of the proceedings

1. The parties may, at any time, mutually agree a solution to their dispute. They shall jointly communicate any such solution to the arbitral tribunal. If the solution requires approval pursuant to the relevant domestic procedures of either party, the notification shall refer to that requirement, and the arbitration procedure shall be suspended. If such approval is not required, or upon notification of the completion of any such domestic procedures, the arbitration procedure shall be closed.
2. If, in the course of proceedings, the applicant informs the arbitral tribunal in writing that it does not wish to further pursue the proceedings, and if, at the date on which that communication is received by the arbitral tribunal, the defendant has not yet taken any step in the proceedings, the arbitral tribunal shall issue an order officially recording the closure of the proceedings. The arbitral tribunal shall decide on the costs, which shall be borne by the applicant if this appears justified by the conduct of that party.

3. If, before the decision of the arbitral tribunal is taken, the arbitral tribunal concludes that the continuation of the proceedings has become pointless or impossible for any reason other than those referred to in paragraphs 1 and 2, the arbitral tribunal shall inform the parties of its intention to issue an order closing the proceedings.

The first subparagraph does not apply where there are outstanding questions on which it may be necessary to rule and if the arbitral tribunal judges it appropriate to do so.

4. The arbitral tribunal shall communicate to the parties a copy of the order closing the arbitration proceedings or of the decision taken by agreement between the parties, signed by the arbitrators. Article IV.2(2) to (5) shall apply to arbitration decisions taken by agreement between the parties.

ARTICLE IV.5

Correction of the decision of the arbitral tribunal

1. Within 30 days of receiving the decision of the arbitral tribunal, a party may, by giving notice to the other party and to the arbitral tribunal through the International Bureau, ask the arbitral tribunal to correct in the text of the decision of the arbitral tribunal any errors in computation, any clerical or typographical errors, or any errors or omissions of a similar nature. If it considers the request to be justified, the arbitral tribunal shall make the correction within 45 days of receiving the request. The request shall not have a suspensive effect on the time limit provided for in Article IV.2(6).

2. The arbitral tribunal may, within 30 days of communicating its decision, make the corrections referred to in paragraph 1 on its own initiative.
3. The corrections referred to in paragraph 1 of this Article shall be done in writing and form an integral part of the decision. Article IV.2(2) to (5) shall apply.

ARTICLE IV.6

Arbitrators' fees

1. The fees referred to in Article IV.7 shall be reasonable, taking account of the complexity of the case, the time spent on it by the arbitrators and all other relevant circumstances.
2. A list of daily compensation and maximum and minimum hours, which shall be common to all bilateral agreements in the fields related to the internal market in which Switzerland participates as well as the Agreement on health, the Agreement on trade in agricultural products and the Agreement on Switzerland's regular financial contribution, shall be established and updated when necessary. The Joint Committee on Agriculture shall adopt and update that list by a decision for the purposes of the Agreement.

ARTICLE IV.7

Costs

1. Each party shall bear its own costs and half of the costs of the arbitral tribunal.

2. The arbitral tribunal shall set its costs in its decision on the substance of the case. Those costs shall include only:

- (a) the arbitrators' fees, to be stated separately for each arbitrator and to be set by the arbitral tribunal itself in accordance with Article IV.6;
- (b) the travel and other expenses incurred by the arbitrators; and
- (c) the fees and expenses of the International Bureau.

3. The costs referred to in paragraph 2 shall be reasonable, taking account of the amount in dispute, the complexity of the dispute, the time that the arbitrators and any experts appointed by the arbitral tribunal have spent on it and any other relevant circumstances.

ARTICLE IV.8

Deposit of costs

- 1. At the start of the arbitration, the International Bureau may ask the parties to deposit an equal amount as an advance for the costs referred to in Article IV.7(2).
- 2. During the arbitration proceedings, the International Bureau may request from the parties deposits supplementary to those referred to in paragraph 1.

3. All amounts deposited by the parties in application of this Article shall be paid to the International Bureau and paid out by it to cover the costs actually incurred, including, in particular, the fees paid to the arbitrators and to the International Bureau.

CHAPTER V

FINAL PROVISIONS

ARTICLE V.1

Amendments

The Joint Committee on Agriculture may adopt, by decision, amendments to this Protocol.
