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Tropical Product Act and WTO Compliance Preferential Tariff Treatment Based on PPMs: A Case Study

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INTRODUCTION

This report addresses the following question: What tariff options do countries have in order to discriminate in favour of “sustainable” commodities in a WTO-consistent way? In other words, to what extent can countries create tariff incentives to encourage imports of commodities that are sustainably produced, while discouraging import of primary products with adverse socio-ecological impacts? And can they do so in a “just” and socially inclusive way, affording equal respect for a plurality of values and practices?

We address these questions by means of a case study. We use a hypothetical legal problem scenario to illustrate the regulatory flexibility Switzerland has under WTO rules to support diversified and “just” food systems by framing trade relations in a nuanced way. We present a fictional legal situation in which Switzerland has passed a piece of landmark legislation – called the Tropical Products Act (or simply “Act”) – which envisages preferential tariff treatment for tropical commodities that are “sustainably” harvested, produced, and processed. The Act acknowledges that “sustainable” agriculture is site-specific and sets guiding principles and standards that can be flexibly met through different operational practices. On the basis of our fictional Act, we pose the following twofold question: is the Act’s tariff policy relevant when assessed against the reality of trade flows and tariff structures in specific tropical commodities; and would differential tariff treatment based on process and production methods (PPMs), as envisaged in the ACT, successfully pass a GATT compliance test? The purpose of this hypothetical case study is to gain in-depth, practical knowledge of substantive trade issues in context, by applying legal rules and principles to fictional situations. The structure of the paper is as follows: In Section 1, we present our fictional Act. Section 2 assesses the commercial relevance of the tariff policy options endorsed by the Act, combining legal analysis with analysis of trade flows and tariff data. Section 3 assesses whether the tariff differentiation envisaged in the Act is legally feasible, considering GATT constraints. A final section presents summary conclusions.

The paper is a focused exercise exploring tariff differentiation based on PPMs in respect of cocoa. The scope of the analysis is narrow in a number of respects. First, we focus on a discrete trade policy issue: the tariff options countries have to discriminate in favour of “sustainable” commodities. We do not consider other trade policy measures and approaches tackling non-tariff barriers. Second, the focus is on tropical commodities, specifically cocoa, which is used to test the policy relevance of the approach. Our research findings are specific to that commodity. For a broader analysis of the legal issues that would arise in a hypothetical PPM dispute under WTO law, the reader is referred to the accompanying Livestock Farming Act and WTO Compliance study (Musselli I., Solar J., Bürgi Bonanomi E. & Tribaldos T. 2022).

The paper was prepared under two research projects: the “Just Food” project, which explores how just transitions towards sustainable, fair, and healthy food systems can be achieved, and project “Sustainable Trade Relations for Diversified Food Systems”, which seeks ways of granting tariff preferences for sustainably produced food in a non-discriminatory and balanced way.¹

¹ “Just transition: Tackling inequalities on the way to a sustainable, healthy and climate-neutral food system (JUST-FOOD)” of the Strategic Research Council of Finland, financed by the Academy of Finland and led by Dr. Minna Kaljonen, Finnish Environment Institute: <https://justfood.fi/>; and project “Sustainable Trade Relations for Diversified Food Systems”, financed by the Swiss National Science Foundation (SNF), as part of the National Research Programme 73 on “Sustainable Economy”, and led by Dr. iur. Elisabeth Bürgi Bonanomi of CDE, University of Bern: <http://www.nrp73.ch/en/projects/governance/sustainable-trade-relations-for-diversified-food-systems>. The analysis builds on and feeds into the research project “BIO-TRADE – Protecting biodiversity through regulating trade and international business”, funded under the joint BiodivRestore call by BiodivERsA and Water JPI (with support from the Swiss National Science Foundation SNSF). The authors thank the reviewers participating in the Legal Advisory Workshop on PPMs for Sustainable Food Trade & WTO law, held at CDE on 6 September 2022, under SNSF NRP73 project, for their insightful comments and suggestions. They are thankful to Anu Lannen for editing the paper.

1. THE (HYPOTHETICAL) TROPICAL PRODUCTS ACT

1.1 INTRODUCTION

The hypothetical Topical Products Act (or “Act”) sets preferential import conditions for tropical cash crops and other tropical commodities that are “sustainably” harvested, produced, and processed. By means of trade preferences, it seeks to strengthen agroecological-based farming and forest management systems that meet social, economic, and environmental goals. The Act tries to minimize trade costs associated with certification schemes by endorsing participatory guarantee schemes (PGS) and integrated landscape approaches as an alternative or complementary tool to third-party certification.² The Act acknowledges that “sustainable” agriculture is site-specific and sets guiding principles and standards that can be flexibly met through different operational practices.

1.2 KEY PROVISIONS

The Act is a trade promotion instrument that grants preferential market access to tropical products that are “sustainably” produced, processed, and marketed.

1.2.1 Product scope

The Act covers “traditional” export cash crops from the tropics, such as cocoa, coffee, tea, sugarcane, cotton, palm oil, and groundnuts. It also covers low-volume specialty niche products of tropical origin, including a range of traditional medicinal plants and other non-timber forest products for use in cosmetics and pharmaceuticals.³

1.2.2 Tariff incentives

Under the Act, sustainably produced commodities benefit from tariff reductions in various forms: tariff exemptions or reductions and – for products subject to tariff quotas – preferential in-quota rates, preferential quota allocations, and quota exemptions. As discussed in Section 3.1, these policies are adopted by inserting new PPM-based digits into existing tariff commitments at the most disaggregated level.

1.2.3 Stated objectives and conformity assessment

The Act sets out general sustainability objectives and core “sustainability” criteria, and defines the broad outlines of the compliance assessment process. The Act endorses a comprehensive perspective on sustainability that considers both environmental and social objectives (see below). The implementing ordinances specify detailed rules concerning the operation of the regulation on a sector-by-sector basis.

1.2.3.1 Stated objectives

In terms of *environmental objectives*, the Act promotes context-specific farming/harvesting practices and systems that enable sustainable use and conservation of water and land, preserve and promote sustainable forest management and biodiversity, and reduce/offset carbon emissions. It endorses the consolidated set of agroecological principles elaborated within the FAO and the Committee on World Food Security and Nutrition frameworks (FAO 2018; HLPE 2019).

The *social objectives* are benchmarked against internationally agreed norms, namely: The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas; the ILO Declaration on Fundamental Principles and Rights at Work; and the right to an adequate standard of living as enshrined in the Universal Declaration on Human Rights, the Charter of the United Nations, and the International Covenant on Economic, Social and Cultural Rights. Accordingly, “sustainable” products under the Act shall be produced/harvested and marketed in ways that respect the vested

² For a description, refer to the Livestock Farming Act study (Musselli et al. 2022).

³ The hypothetical Act does not affect other products that raise separate sustainability concerns – dairy and animal products, timber, staple food crops, as well as flowers and horticultural products.

interests of peasants and vulnerable groups.⁴ Farms and processing units should comply with core labour standards, including the right to form and join organizations, trade unions, cooperatives, or any other solidarity-based organization or association. Finally, under the certification schemes, producers should receive fair and remunerative prices, and waged workers should receive decent salaries, ensuring sustainable rural livelihoods.

The hypothetical Tropical Products Act pursues sustainability goals firmly embedded in the Swiss legal framework. In particular, its trade provisions implement the constitutional obligation to promote “cross-border trade relations that contribute to the sustainable development of the agriculture and food sector” (Article 104a of the Swiss Constitution).

1.2.3.2 Accreditation, standard setting, and conformity assessment

The Act stipulates that *standard setting* and *compliance assessment procedures* should be context-specific, inclusive, and locally adapted. The certification process should be anchored in context-based knowledge in producing countries, in particular by combining “modern” social, biological, and agricultural sciences with traditional and local knowledge and community-based innovations. It should leverage the bottom-up construction of knowledge from grassroots horizontal networks, including farmer field schools and farmer exchanges for mutual learning, and systematically integrate local perceptions in the assessment of social goals and distributive outcomes. In this direction, the Act explicitly endorses bottom-up certification such as PGS, as well as relationship-based approaches, as an alternative and complementary tool to third-party certification.⁵ It encourages the adoption of integrative landscape systems that verify the sustainability of entire sourcing areas based on multi-stakeholder compacts involving local government, local civil society organizations, producer groups/cooperatives, and traders. It promotes complementarities and synergies between sustainably integrated landscapes and geographical indicators (GIs).

The Act envisages an accreditation process whereby recognized local platforms in producing countries validate “sustainable” sourcing areas and initiatives in consultation with a dedicated technical unit in the Swiss administration. The Act lists the substantive and procedural requirements that must be fulfilled for an entity to be included in the Swiss list of accredited bodies: eligible entities/initiatives must explicitly seek ecological and social sustainability objectives in line with the objectives of the Act, which are in turn benchmarked against internationally agreed norms (see above); they must be participatory, with cross-sectoral involvement at the level of ministries, local government entities, farmer and community organizations, NGOs, donors, and/or the private sector; and they must work at a landscape scale. Such bodies are accredited to validate entire sourcing areas as “sustainable” and to issue certificates of origin/chain of custody certificates that can serve as attesting documents for preferential imports to Switzerland. They are also competent to assess and eventually endorse individual certification schemes – whether private, public, non-profit or hybrid, and based on third-party certification or self-certification. Such schemes are endorsed if designed in a locally sensitive, inclusive way, based on credible sustainability criteria and metrics that make sense in the local context – rather than being based on importing countries’ consumer-driven or protectionist stances (Franc 2022). The accreditation process is managed by a dedicated unit in the Swiss administration and is linked with technical assistance and transfers in developing partner countries to enhance technical and institutional capacities for implementing the accreditation process.

On a product-specific basis, the implementing ordonnances list the accredited bodies and their certifications. For customs purposes, it includes the list of sourcing areas validated as “sustainable” under accredited land-management initiatives, as well as the individual schemes that grant preferential access to the Swiss market, as identified by the accredited bodies jointly with the Swiss unit. Shipments certified under individual certification schemes, including PGS initiatives, will carry the traceability/chain-of-custody documents issued by the certification scheme as “sustainability” proof.

⁴ Special attention is given to the needs of indigenous peoples and local communities, transhumant and nomadic communities, the landless, hired workers including temporary, seasonal or migrant workers, as well as older persons, women, youth, children and persons with disabilities.

⁵ Refer to the Livestock Farming Act, section 2.4.3.

Shipments from verified “sustainable” landscapes will need to carry a certificate of origin issued by the accredited body. Both will be labelled “sustainable” under the Act and can display the Act label on packaging, once cleared by Customs.

1.2.4 Procedural fairness and due process

The Act reflects “basic fairness and due process” in its application. Switzerland provided “early notice” in the preparation process, notifying concerned members, through the WTO Secretariat, of the proposed measures. It established a dedicated contact point and solicited comments on the proposed conformity assessment procedures. It promptly published its final regulations. There was a reasonable *phase-in* period between the enactment of the Act and its entry into force, so as to allow exporting countries to adjust their processing and production practices. Finally, accreditation of suitable platforms in producing countries was linked with *technical assistance and transfers*, as a way of supporting players who otherwise might lose out in the process of sustainable transition: Switzerland proactively engaged at the local and governmental level in developing partner countries to enhance technical and institutional capacities for implementing equivalence and accreditation under the Act. Such cooperation activities specifically targeted small-scale farmers and private bottom-up organizations in the cocoa sector.

2 IS THE APPROACH RELEVANT IN PRACTICE? THE CASE OF COCOA

Under the hypothetical Tropical Products Act, Switzerland provides preferential tariff treatment for tropical products that are “sustainably” harvested, produced, and processed. Here, we assess the practicability of such a policy— i.e. differential tariff treatment on the basis of PPMs – with respect to cocoa, a key export commodity for many developing countries.⁶ The following analysis highlights the reality of trade flows and tariff structures – an aspect that is too often neglected when addressing trade policies from a legal angle. It concludes that a country like Switzerland has some leeway to provide differential tariff treatment on the basis of PPMs for the processed commodity – semi-processed products like cocoa butter and powder, or processed products like chocolate. By contrast, it has limited flexibility in respect of the primary commodity – cocoa beans. The following analysis summarizes the key findings, with more granular details located in the Appendix.

The primary commodity: Cocoa beans

Cocoa beans enter Switzerland duty free (Table 2). This is not just a matter of applied tariffs, which may vary. Nor is it a matter of preferential rates agreed with some countries: all cocoa beans, from whatever origin, whether raw or roasted, enter Switzerland duty-free. The tariff is bound at zero in Switzerland’s Schedule of Concession.⁷ As a result, Switzerland cannot use tariffs as a lever to discourage import of “unsustainably” produced cocoa beans, while encouraging imports of “sustainably” produced cocoa beans – that is, unless it renegotiates its tariff concessions.

While this tariff profile is common to other tropical commodities, it is not universal. For example, products like cotton and tea, which do not compete with domestic production in Switzerland, are all imported duty free, with tariff rates bound at zero in Switzerland’s Schedule. Note, however, that for other tropical commodities – bananas, coffee, and sugar, for example – tariffs are bound at higher levels,

⁶ Cocoa is a tropical export commodity suitable for small-scale farming. It is easy to integrate in agroforestry systems and has significant value-addition potential, which makes it an interesting case study from a development perspective.

⁷ The tariff bindings are set out in Part I Section IA of Switzerland’s Schedule of commitments (Liste LIX - SUISSE – LIECHTENSTEIN). Switzerland shares its Schedule with Liechtenstein because of the customs union. Domestically, bound and applied tariff rates are set in Annexes 1 and 2 to the Customs Tariff Act (SR 632.10). The Government is empowered to periodically adjust applied rates by means of ordonnances, pursuant to Art. 9 (2) of the Customs Tariff Act. National applied tariff rates may be consulted on the Internet under www.tares.ch.

enabling differential taxation on the basis of PPMs.⁸ If we look at temperate commodities, applied and bound tariff rates tend to be high.

Box 1. Types of tariffs.

“Bound” and “applied” rates: WTO law distinguishes between “bound” and “applied” rates. Bound rates are tariff ceilings that a country must not exceed. They are legally binding commitments set in the tariff’s schedule of the country. Once a tariff rate is bound, it may not be raised above the bound level without compensating the affected parties. Applied rates are duties that are actually charged on imports. These can be below the bound rates, but cannot exceed the bound level.

“Most-favoured-nation (MFN)” and “preferential” rates: MFN rates are normal, non-discriminatory tariffs charged on imports. Preferential rates are set below the MFN level. They can be set under unilateral, non-reciprocal preferential trade agreements (PTA) accorded by developed contracting parties to products originating in developing countries, e.g. according to General System of Preferences (GSP) schemes. They may also be applied reciprocally within the framework of reciprocal, regional trade agreements (RTAs) as well as customs unions and free trade areas. They represent authorized exceptions to the MFN principle under GATT Article XXIV (RTAs) and the “Enabling Clause” (PTAs).

“Ad valorem (AV)” and “specific” duties: AV tariffs are charged as a percentage of the price, e.g. 10 percent of the dutiable value—the invoice value, with some adjustments. Specific tariffs are instead expressed as a specific amount of a given currency per unit of quantity, e.g. USD 100 per ton.

Source: Based on WTO Glossary, https://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm

Semi-processed products: “Intermediate” cocoa products

Intermediate cocoa products like cocoa liquor, butter, fat and oil, paste and powder can have a variety of uses in the confectionary and other industries.⁹ Such products have been in increasing demand in recent years and rising volumes have been traded with the EU market as the main destination (Stapleton 2016). Sustainability requirements are becoming increasingly important in this market segment: in Switzerland, there was an increase of 23 percent of sustainable cacao butter imported in 2020 (Swiss Platform for Sustainable Cocoa 2021).

From the perspective of cocoa-producing countries, such intermediate products involve the application of farming knowledge and capabilities comprising a certain level of specialization and, as a result, such products increase farmers’ incomes because the share of value-added increases in line with the corresponding transformation process (FAO 2020). Therefore, export of cocoa intermediate products tends to benefit domestic industrialization processes.

As regards intermediate cocoa products, Switzerland has bound its tariffs at higher levels than the raw material (Table 2). It follows that, in respect of intermediate cocoa products, Switzerland could in principle practise differential tariff treatment based on PPMs, by allowing duty free entry for cocoa butter, paste or powder from “sustainable” production, while raising applied tariffs to bound levels (wherever possible)¹⁰ for “non-sustainable” products. The challenge is that of securing “sustainability proof” and related attesting documents that a shipment of, for example, cocoa butter, should carry to be classified as stemming from “sustainable” production.

As shown in Table 1, developing countries are a non-negligible source of imports of intermediate cocoa products in Switzerland.¹¹ Switzerland has less tariff flexibility in respect of such imports sourced from developing countries, unless preferential tariff schemes are redesigned to accommodate tariff

⁸ Tariff Download Facility <http://tariffdata.wto.org/ReportersAndProducts.aspx> (Year: 2021; HS version (HS 17); Date of extraction 27/Jan./2022).

⁹ For an overview of cocoa product uses, see, Oddoye et al. 2013.

¹⁰ For most intermediate cocoa products, the Swiss applied (MFN) tariff rates already equal the bound level. This means that tariffs cannot be raised further without violating WTO commitments. In one case only (sweetened cocoa powder), the applied MFN rate is lower than the bound level, and can be increased.

¹¹ For example, in 2021 Switzerland imported approximately 8 percent of cocoa butter, fat and oil and 9 percent of cocoa paste (defatted) from Malaysia and Peru, respectively (refer to Table 1).

differences based on PPMs. Indeed, the bulk of such imports¹² enter duty free under the GSP scheme (Ghana, Côte d'Ivoire, Malaysia, and Indonesia) or under FTA duty rates (Peru) (for details, refer to Table 3). Differential tariffs for products from “sustainable” production would imply fine-tuning the way the Swiss GSP works, by deconsolidating tariffs based on PPMs. The option formally exists, since GSP tariffs are applied tariffs that can be updated. However, if unilaterally imposed by Switzerland, the exercise would raise questions of fairness. It can be explored within the framework of FTAs.

The final product: Chocolate

Turning to chocolate products, tariff “bounds” (maximum levels) are set even higher for most tariff lines. The applied (specific) duties are also relatively high, although there is some “water in the tariff”, that is, applied tariffs remain below their bound levels for most items (Table 2). Preferential rates applied under the GSP or FTAs are lower than applied MFN rates, but still higher than zero for most lines (Table 3). This is of little relevance, however, since no developing country is a significant exporter of chocolate to Switzerland (Table 1).

Hence, with respect to chocolate products, it is theoretically possible to differentiate tariffs based on PPMs, while staying within bound rates. Switzerland would apply full bound rates to chocolate products containing “unsustainably” produced cocoa and would eliminate import duties on products containing chocolate “sustainably” produced and listed in additional digits of the tariff code. The option is not legally excluded.

Nevertheless, a number of implementation difficulties arise, as discussed below. Notably, tariff differentiation based on PPMs would have different industry implications depending on the market segment we consider.

If we look at the standard or conventional consumer market, it would be difficult to differentiate chocolate products based on whether the cocoa ingredients were sustainably produced or not. The conventional chocolate market uses conventional cocoa, which is sourced without conforming to any traceability requirements – whether of “mass balance”, “segregated”, or “identity preserved”. Typically, in the bulk/conventional market segment, the final chocolate product is made from industrial chocolate (*couverture*), which is made from semi-finished cocoa products that blend beans of various and often unknown origin. Note also that cocoa is just one of many ingredients that enter a conventional chocolate bar. Sugars and milk, as well as other edible foodstuffs such as hazelnuts, raisins, marzipan, etc. may be added to form various chocolate products. Such variable combination of cocoa and non-cocoa inputs in the production of chocolate significantly complicates the analysis: costly differential tariff treatment based on credible sustainability claims would require that all the significant ingredients – in particular sugar and milk – come from “sustainable” production.

If we instead look at premium/niche/specialized market segments, such as single origin or “fair” chocolate, tariff differentiation would reflect sourcing practices. In fact, such market segments already imply the traceability of the cocoa content, making tariff differentiation based on PPMs a viable option in practice. They are becoming increasingly important. One notable development is the linkage with value-addition at origin, in cocoa-producing countries. Switzerland and the European Union are witnessing the rising emergence of new strategies of inclusive business and solidarity economy that attempt to integrate small cocoa producers into sustainable value chains at the international level (Oberlack et al. 2022)¹³. Their offer includes chocolate bars with cacao content between 70 and 100 percent and less content of sugar or sweeteners, fats or flavouring materials.¹⁴ For such chocolate makers, eventual tariff preferences can facilitate market access. Moreover, based on their reduced or no sugar and fat content and considering Swiss Nutrition Policy, such products can be incorporated in the

¹² All but sweetened cocoa powder.

¹³ For an overview of these strategies, refer to the Environmental justice for human well-being (COMPASS) project, https://www.cde.unibe.ch/research/projects/environmental_justice_for_human_well_being_compass/index_eng.html (accessed 10 October 2022).

¹⁴ See, e.g. <https://chobachoba.com/de/>.

selection of products that can contribute to healthy choices for the Swiss population (Federal Department of Home Affairs 2017).

From a trade policy perspective, further issues deserve attention as regards the desirability of raising applied MFN tariffs and its practical implementation.

First, an increase in the applied MFN tariff rates for processed goods would have competitive implications for Switzerland – likely increasing the hurdles for the Swiss economy to integrate into international markets. It could also contribute to undesired tariff escalation and to high domestic consumer prices.

In addition, the feasibility of raising applied MFN-tariff rates is not straightforward. Even if there is a theoretical possibility of raising applied tariffs in order to create a sufficient margin of preference for sustainably produced products, the practical difficulties are important. Increased tariffs on non-sustainable cocoa would have the desired effect if there were a sufficient offer of sustainably produced cocoa or intermediate product to satisfy the demands of Swiss consumers or – in the case of intermediate products – producers. If such an offer did not exist, the sole effect of the measure – at least in the short term – would be to make the products more expensive for consumers.

Finally, credible sustainability standards do not exist for all the products that could possibly be affected by such a measure. This would mean the following: either the foreseen preferences could not be implemented and the measure would have no effect; or the criteria used to accredit sustainability initiatives would be watered down, bearing the risk of rendering the measure meaningless. This points to the importance of technical and financial assistance to strengthen local initiatives directed at establishing credible sustainability standards that reflect context-specific socio-ecological conditions.

As regards lessons learned from past experiments, Switzerland is testing PPM-based trade preferences in its FTA with Indonesia for palm oil. Important preconditions for the scheme included: that the applied MFN tariffs were quite high so that a sufficient rebate could be granted to the trading partners in order for them to accept the additional conditions; that established sustainability standards existed; and that the offer of sustainably produced palm oil was large enough to render the concession meaningful.

3 IS THE APPROACH GATT-COMPATIBLE?

As discussed above, differential tariff treatment based on PPMs can in theory provide a tool to stimulate “sustainable” imports, but much depends on the specific commodity at stake, its tariff profile, and its industry structure. That said, is differential taxation on the basis of PPMs, as envisaged in the Act, compatible with key GATT disciplines? The following analysis briefly considers market access disciplines, before moving on to the non-discrimination analysis and the exceptions regime. The analysis draws upon the Livestock Farming Act analyses (Musseli et al. 2022), which readers are referred to if they wish to gain a deeper understanding of the legal issues at stake.

3.1 MARKET ACCESS

As mentioned, WTO law distinguishes between bound and applied tariff rates (Box 1). Bound rates set ceilings on the tariffs that member governments can apply. They are legally bound commitments included in a member’s schedule of concessions.

Insofar as applied rates do not exceed the bound level, Switzerland’s GATT Article II market access commitments are respected. It follows that Switzerland can freely adjust its applied rates, by charging higher duties on products from “unsustainable” production, to the extent that the applied rate remains below the bound level. It could simultaneously lower the applied duties for products from “sustainable” production, to the extent that they do not already enter duty-free.

In practice, Switzerland would need to deconsolidate its tariffs in its national classification system. It would need to identify subcategories of products based on PPMs (e.g. cocoa from “sustainable” production) by adding more “digits” to the ones currently used – the customs codes used to identify products. Note in this respect that customs codes are the same for all countries up to six digits, the most

detailed level internationally. Countries are free to add more granularity in national classifications and subdivide further at a higher level of digit (eight or more), depending on their needs. WTO (and Swiss) law does not exclude expressing such additional digits on the basis of PPMs and adopting, accordingly, a preferential tariff rate for such products (Cottier et al. 2013). Switzerland would then need to insert new PPM-based digits at a more disaggregated level than its existing commitments.¹⁵ It would then apply full bound rates to “conventional” products (unsustainably produced) and eliminate import duties on products from “sustainable” production, listed in the additional digits of the tariff code.

The option has hardly been explored so far (Potts 2008 and Cottier et al. 2013). However, it is not legally excluded. What matters from a GATT standpoint is that tariffs remain within bound levels and that they are set and administered in a transparent and rational way. If their administration is excessively burdensome for exporters, such differential taxation – even if within bound levels – could give rise to “non-violation” and “situation” complaints pursuant to Article XXIII:1(b) or (c) of GATT 1994.

It is also important to acknowledge that tariff bindings and existing tariff structures are not irreversible. The GATT¹⁶ allows members to modify their tariff schedules, subject to the obligation to offer compensation to the members primarily affected by such modification. As suggested by Cottier et al, compensation for increased tariffs could take the form of lowering tariffs for certain environmental goods (Cottier et al. 2011). While this option offers flexibility to accommodate changing tariff needs in light of sustainability concerns, the renegotiation of tariffs may be procedurally burdensome and politically sensitive, and has not been common in practice.

3.2 NON-DISCRIMINATION

Differential taxation on the basis of PPMs remains subject to the most favoured nation (MFN) principle, meaning that Switzerland cannot discriminate between products of different foreign origin. The relevant rules in our case are set forth in Article I:1 of the GATT 1994: MFN principle. Does differential tariff treatment on the basis of PPMs violate the MFN principle? The issue has been extensively discussed in the Livestock Farming Act study.¹⁷ It will suffice here to recall some main lines of reasoning while referring the reader to that paper for a more thorough analysis

At the outset, it is important to clarify that regulatory distinctions based on PPMs are not *a priori* discriminatory under WTO law. The key issue is not the PPM-character of the measure at stake. What matters is that such differential tariffs are not designed or implemented in ways that discriminate between foreign products. If discriminatory, they must meet the requirements for justification as permissible exceptions under GATT Article XX: General exceptions.

With that in mind, we shall address two separate questions, depending on the terms of the comparison. The first question is whether two otherwise identical products, but produced according to different PPMs, must be treated as “like” products to fulfill the non-discrimination requirements of the GATT. Is cocoa from “sustainable” production “like” conventional cocoa? This is a long-standing question involving the competitive relationship between products in the marketplace. A separate question is whether less favourable treatment is granted to potentially sustainable products sourced from certain WTO Members, in violation of the non-discrimination requirements of the GATT. In this case we are not comparing “sustainably” produced and “unsustainable” cocoa, but cocoa from different origins potentially qualifying as “sustainable”. The WTO Panel would consider either of the two questions (or both) depending on the arguments advanced by the parties to the dispute.

The following analysis tackles each question in turn.

¹⁵ Switzerland bound most tariffs at the HS eight-digit level. It would then need to insert new PPM-based digits at the ten-digit level.

¹⁶ Article XXVIII of the GATT 1994 and corresponding notes, the Understanding on the Interpretation of Article XXVIII of the GATT 1994 and the Procedures for Negotiations under Article XXVIII.

¹⁷ Refer to the Livestock Farming Act (Musselli et al. 2022), section 5.1.2.

3.2.1 “Sustainable” and “non-sustainable” products

The first question is whether two otherwise identical products, but produced according to different production methods – let’s say organic and non-organic – must be treated as “like” products to fulfil the non-discrimination requirements of the GATT.

As discussed at some length in the Livestock Farming Act paper,¹⁸ assessing whether two products are “like” for GATT purposes essentially involves “a determination about the nature and extent of a competitive relationship between and among products”.¹⁹ Two products are “like” if they have a sufficient competitive relationship in the marketplace. This is determined on a case-by-case basis, in light of all available evidence – including the product’s properties, nature and quality, the product’s end-uses in a given market, its tariff classification, and, most importantly, consumers’ tastes and habits.²⁰

Turning to our hypothetical case, the key question is whether commodities from “sustainable” production should be seen as competing in the same market as “conventional” commodities, or as having separate markets. On this issue, a WTO Panel may arrive at different conclusions depending on the methodologies used to investigate consumer preferences, interchangeability of use between products, and cross-elasticity of demand. It may satisfy itself with existing evidence on the growing incidence of environmental and ethical concerns on consumer preferences, and arrive at the speculative conclusion that the products are not “like” in light of increasing environmental concerns. Instead, it may opt for a more objective quantitative assessment of how environmental and ethical concerns affect consumer price sensitivity and buying practices, arriving at different results depending on the consumer segment considered. These two hypothetical outcomes reflect different interpretative approaches and understanding of trade law. The former reflects a “systemic” approach that firmly embeds WTO law in an overall regulatory environment informed by sustainability concerns. The latter reflects a narrowly functional interpretation of WTO provisions, in isolation from the broader legal system.²¹

Past jurisprudence offers little guidance since any determination of likeness under WTO law is circumstantial and case-specific. The most pertinent case is perhaps *EC – Seal Products*, where seal products originating from different types of hunt – “commercial” and “subsistence” – were treated as “like” products for purposes of the GATT. However, their “likeness” was not disputed by the parties in that case, as acknowledged by the Panel. In *EC – Seal Products*, as in most “likeness” cases, the question presented to the WTO adjudicator was whether determined procedures favoured some countries and not others, not whether otherwise identical products, but produced according to different PPMs, must be treated as “like” products. The regulatory concern was non-discrimination and expectations of equal competitive opportunities. This is the real issue raised in most PPM cases, whereby abstract issues of “likeness” do not usually come under close examination (Holzer 2014, p. 120; de Schutter 2015, pp. 49-50). We shall tackle it in the following section.

3.2.2 Potentially “sustainable” products of different origin

Even if the origin were neutral on its face, the Act could result in situations where products that may potentially qualify as sustainable would be not certified as such and then denied preferential market access. This would occur, for example, when potentially eligible landscape initiatives do not apply for accreditation, or when accredited schemes source cocoa from some but not all producing countries. How would a WTO Panel argue in this case?

¹⁸ Ibid.

¹⁹ *EC – Asbestos*, AB report, para. 154.

²⁰ See, e.g. *Japan – Alcoholic Beverages II*, *Canada – Periodicals*, *EC – Asbestos*.

²¹ For a more in-depth discussion, refer to the Livestock Farming Act (Musselli et al. 2022).

As discussed,²² based on a narrow textual reading of GATT Article I:1 MFN principle,²³ a Panel may find that the measures at issue do not “immediately and unconditionally” extend the same market access treatment to all products that may potentially qualify as sustainable. As a matter of fact, the operation of the Swiss scheme would result in a *de facto* situation where only some sustainable shipments access the Swiss market on preferential terms.

Following a different line of reasoning, a Panel might conclude that all sustainable tropical products could in principle qualify for preferential market access under the Act. The market access conditions set in the hypothetical Act are per se origin-neutral as they refer to the type of production method, rather than to a defined origin. In addition, the Act sustainability requirements are not designed and applied such that only some countries/areas can *de facto* benefit from them. Instead, the standard-setting process set by the Act is context-sensitive, with variations in sustainability requirements based on legitimate socio-ecological criteria. Further, the list of eligible entities/schemes Switzerland maintains is not limited or closed but constantly updated, and Switzerland proactively engages with all its trading partners to assess their interest in seeking accreditation of specific “sustainability” initiatives.

In our view, as discussed²⁴, the second line of reasoning reflects what is protected under the MFN obligation: as set by the Appellate Body in *EC – Seal Products*, Article I:1 (MFN) protects “expectations of equal competitive opportunities for like imported products from all Members”.²⁵ Such expectations are satisfied insofar as the Swiss procedures ensure that all Members have equal opportunity to sell in the Swiss market under preferential terms after successful completion of the procedures. Otherwise, we would end up with a situation where the MFN obligation is construed as prohibiting a member from attaching *any* conditions to the granting of a competitive advantage to imported products. As pointed out by the Appellate Body in *EC – Seal Products*, this is not what Article I:1 MFN prescribes.²⁶

3.3 GENERAL EXCEPTIONS

If found discriminatory in GATT terms, differential treatment based on PPMs could still be justified under Article XX of the GATT: General exceptions. GATT Article XX justifies violations of GATT rules in the pursuit of legitimate public policy objectives. In particular, pursuant to GATT Article XX, Switzerland may adopt trade measures inconsistent with GATT rules, but “necessary to protect human, animal or plant life or health” (paragraph (b)), or “relating to the conservation of exhaustible natural resources” (paragraph (g)).

We think that, in principle, our hypothetical Act, as designed, would stand the test of Article XX GATT. However, some constraints may arise. Three issues seemingly deserve attention in our hypothetical case. They are discussed at length in the Livestock Farming Act paper, and briefly rehearsed hereafter.²⁷

A first hurdle is the “necessity” test under GATT Article XX(b). In WTO jurisprudence, the evaluation of “necessity” of a trade restriction under Article XX involves “a process of ‘weighing and balancing’ a series of factors, including the importance of the objective, the contribution of the measure to that

²² Ibid.

²³ GATT Article I:1 reads in its relevant part: “... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties”.

²⁴ Refer to the Livestock Farming Act (Musselli et al. 2022).

²⁵ *EC – Seal Products*, AB report, para. 5.87:

Article I:1 thus prohibits discrimination among like imported products originating in, or destined for, different countries. In so doing, Article I:1 protects expectations of equal competitive opportunities for like imported products from all Members. As stated above, it is for this reason that an inconsistency with Article I:1 is not contingent upon the actual trade effects of a measure. We consider that an interpretation of the legal standard of the obligation under Article I:1 must take into account the fundamental purpose of Article I:1, namely, to preserve the equality of competitive opportunities for like imported products from all Members.

²⁶ *EC – Seal Products*, AB report, para. 5.88.

²⁷ For a more detailed discussion, refer to the Livestock Farming Act analysis, section 5.1.3.

objective, and the trade-restrictiveness of the measure”.²⁸ In the process of weighing and balancing, the WTO adjudicator will consider whether there are any less trade-restrictive alternatives, which are reasonably available and which could achieve the same policy goal. In this respect, it is important to note that tariff differentiation along PPM lines is a relatively complex endeavour entailing administrative and trade costs linked to traceability and documentation requirements. Some may argue that industry-led “sustainability” initiatives can attain better results, without raising thorny WTO issues. Indeed, industry-led schemes have proved quite effective in promoting reportedly “sustainable” trade. In 2020, for example, 74 percent of cocoa bean equivalents imported into Switzerland were sourced from sustainable production. This is a significant increase of 17 percentage points compared to 2019 (Swiss Platform for Sustainable Cocoa 2021). Yet questions remain as to the sustainability criteria and metrics used by private initiatives. Trade agreements could help to frame the standard setting process in a more inclusive and context-sensitive way, and make sustainability claims credible from a local perspective.²⁹ More generally, sustainability concerns need to be coherently and structurally embedded in trade relations, requiring a coherent enabling (and disabling) framework in terms of trade law.

A second hurdle is the “extraterritorial” nature of the measure at issue. The Swiss PPM-based tariffs for tropical products would promote sustainable farming practices outside Switzerland. In this respect, the measure is extraterritorially applied because it contributes to socio-environmental sustainability objectives outside the Swiss jurisdiction. Can a trade measure protect socio-environmental interests outside the jurisdiction of the State taking the measure? In *US – Shrimp*, the Appellate Body noted: “conditioning access to a Member’s domestic market on whether exporting Members comply with, or adopt, a policy or policies unilaterally prescribed by the importing Member may, to some degree, be a common aspect of measures falling within the scope of one or another of the exceptions (a) to (j) of Article XX”.³⁰ However, based on *US – Shrimp*, there should be a “sufficient nexus” between the situation in exporting countries and the sustainability risks for the importing country that imposes the measure. In the *US – Shrimp* case, the “nexus” was established since the species of sea turtles at stake were “highly migratory animals, passing in and out of waters subject to the rights of jurisdiction of various coastal states”, and were “all known to occur in waters over which the United States exercises jurisdiction”.³¹ The case is different for the tropical commodities covered by the Act. One may argue that climate change and loss of biodiversity are issues of “common concern of humankind” enshrined in international treaties (for an overview, Cottier 2021).³² Further, if import requirements are linked to sustainability initiatives in the exporting countries, concerns about the extraterritoriality of the measure would certainly ease.

Finally, to be justified under GATT Article XX: General exceptions, a measure would also have to satisfy the conditions of the chapeau of Article XX.³³ The chapeau requires that a trade measure does not constitute “a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade”. WTO jurisprudence has specified some of the conditions which may help to demonstrate that a measure is applied in accordance with the chapeau. These include the flexibility of the measure to consider different situations in different

²⁸ *EC – Seal Products*, AB report, para. 5.214 (in analysing “necessity” under Article XX(a) of the GATT 1994). See also *Brazil – Retreaded Tyres*, AB report, para. 5.169.

²⁹ In this direction, for example, the initiative towards an Agreement on Climate Change, Trade and Sustainability (ACCTS) aspires to develop guidelines for voluntary eco-labelling programmes and mechanisms.

³⁰ *US – Shrimp*, AB report, para. 121. The case concerned a measure that applied not only to turtles within the United States’ waters but also to those living beyond its national boundaries. The Appellate Body assessed the measure as within the scope of Article XX(g).

³¹ *US – Shrimp*, AB report, para. 133. The issue is embraced in food systems. As stated in UNEP 2019 (p. 13), “policies developed through a food systems lens tackle unsustainable production patterns by acknowledging the consumption drivers that shape the design of these production systems (e.g. consumer preferences for processed livestock products and fast food, lifestyles, education, etc.)”

³² See, in particular, the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change.

³³ *US – Gasoline*, AB report, p. 22.

countries, basic fairness and due process in its implementation, and relevant cooperation activities undertaken by the defendant. Our hypothetical Act, as designed, would likely meet the requirements.

4 CONCLUSIONS

This working paper has explored the issue of differential tariffs on the basis of PPMs. While the issue deserves further and more thorough scrutiny based on actual, rather than hypothetical, case studies, we can advance some preliminary conclusions with regard to the usefulness of such a policy option, as well as its desirable design in view of averting a trade dispute.

From a policy perspective, differential tariffs on the basis of PPMs can provide incentives for “sustainable” imports of tropical products, but it ultimately depends on the specific commodity at stake, its tariff profile, and its underlying industry structures. In the case of cocoa products, for the primary commodity (cocoa beans), the current applied tariffs are low or zero. Even more crucially, they are legally bound at zero, which excludes all flexibility to raise tariffs for products produced unsustainably. However, the tariff differentiation option theoretically exists for semi-processed and processed cocoa products, on account of tariff escalation. Its implementation would still face a number of practical obstacles, as discussed.

From a legal standpoint, the option is not legally excluded under WTO law. Differential tariffs on the basis of PPMs can be construed as GATT compatible. In terms of market access disciplines, a country can freely adjust its applied rates and charge higher duties on products from “unsustainable” production, to the extent that the applied rate remains below the bound level and is transparently set and administered. As regards non-discrimination obligations, a key aspect is that the sustainability requirements of the hypothetical Act are not designed and applied such that only some countries/areas *de facto* benefit from them. The best thing to do is to link with sustainability initiatives in producing countries and endorse their requirements and conformity assessment. If tariff differentiation on the basis of PPMs is found discriminatory, based on a broad understanding of “likeness”, GATT Article XX can still be invoked to justify it. If well-designed, the measure has good chances of standing the Article XX GATT test. However, it should satisfy a number of substantive and procedural requirements as summarized below.

A key aspect is that the PPM requirements are not designed and applied such that only some countries/areas can *de facto* benefit from them. The requirements *must be flexibly construed in a context-sensitive way*, so as to reflect a variety of socio-ecological conditions, as well as variations in development, legal frameworks, and cultural values. In a related way, they should *link with sustainability initiatives in producing countries*, as done in our hypothetical Act.

A related aspect is *ensuring transparency and procedural fairness and “due process” rights in the accreditation of “sustainability” initiatives*. This involves setting transparent, predictable certification processes open to all potentially qualifying members; setting procedure for review of, or appeal from, a denial of an application; and avoiding negotiating with some, but not with other members where the same conditions exist. The measure should not leave accreditation units with an excessive margin of appreciation.

It is important to integrate *transparency processes*, including early notice and consultations, into the regulatory lifecycle of the measure at issue. This includes “early notice” in the preparation process, notifying concerned members – via the WTO Secretariat – of the proposed measures; the establishment of a dedicated contact point that receives solicited comments on the proposed accreditation/conformity assessment procedures; the prompt publication of the final regulations. There should be a reasonable *phase-in* period between the enactment of the Act and its entry into force, so as to allow exporting countries time to adjust.

Finally, the country taking the measure should engage in *negotiations and coordination activities with its affected trading partners*, or at least attempt to do that. As regards developing countries, it is important to *link accreditation and equivalence processes with technical assistance and transfers*. It is important to proactively engage at the local and governmental level in developing partner countries in

order to enhance technical and institutional capacities for implementing equivalence and accreditation under the Act. This involves, among other things, the facilitation of multi-stakeholder partnerships and dialogue and the piloting of agroecological solutions in partnership with local actors.

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7 COCOA RELATED TRADE DATA

Table 1: Ranking of top 10 exporters of cocoa and cocoa products to Switzerland and their market share

Rank	180100	Cocoa beans; whole or broken, raw or roasted	Value	%	Rank	180200	Cocoa; shells, husks, skins and other cocoa waste	Value	%
1		Ghana	272,951,421	51%	1		Germany	396,400	89%
2		Ecuador	125,017,400	24%	2		Netherlands	47,592	11%
3		Côte d'Ivoire	39,921,616	8%	3		Denmark	1,988	0%
4		Dominican Rep.	20,131,852	4%	4		France	624	0%
5		Madagascar	19,459,748	4%	5		Peru	112	0%
6		Peru	15,241,565	3%	6		Austria	-	0%
7		Grenada	5,620,818	1%	7		Austria	-	0%
8		Honduras	5,609,016	1%	8		Austria	-	0%
9		Venezuela	4,908,694	1%	9		Austria	-	0%
10		Trinidad and Tobago	3,047,008	1%	10		Austria	-	0%
		World	531,726,362	96%			World	446,720	100%
Rank	180310	Cocoa; paste, not defatted	Value	%	Rank	180320	Cocoa; paste, wholly or partly	Value	%
1		Netherlands	56,501,460	33%	1		Belgium	78,464	64%
2		France	51,977,926	31%	2		France	32,560	27%
3		Belgium	25,646,826	15%	3		Peru	10,388	9%
4		Germany	25,305,771	15%	4		Germany	328	0%
5		Ghana	3,743,120	2%	5		Austria	-	0%
6		Spain	1,909,284	1%	6		Austria	-	0%
7		Italy	1,757,664	1%	7		Austria	-	0%
8		Poland	1,603,428	1%	8		Austria	-	0%
9		Côte d'Ivoire	562,468	0%	9		Austria	-	0%
10		Peru	39,402	0%	10		Austria	-	0%
		World	169,074,442	100%			World	121,746	100%
Rank	180400	Cocoa; butter, fat and oil	Value	%	Rank	180500	Cocoa; powder, not containing added sugar or other sweetening matter	Value	%
1		Netherlands	485,708,116	70%	1		Netherlands	38,331,124	70%
2		Germany	75,396,852	11%	2		France	10,100,772	18%
3		Malaysia	55,384,304	8%	3		Germany	2,196,488	4%
4		Ghana	20,435,508	3%	4		Austria	2,016,600	4%
5		Indonesia	11,708,404	2%	5		Ghana	668,468	1%
6		Spain	10,656,628	2%	6		Italy	428,030	1%
7		India	9,430,288	1%	7		Belgium	249,736	0%
8		Italy	4,405,332	1%	8		Spain	178,520	0%
9		Côte d'Ivoire	3,584,204	1%	9		Peru	158,050	0%
10		Cameroon	2,873,158	0%	10		Turkey	127,764	0%
		World	689,902,838	99%			World	54,763,666	99%
Rank	180610	Cocoa; powder, containing added sugar or other sweetening matter	Value	%	Rank	180620	Chocolate & other food preparations containing cocoa; in blocks, slabs or bars weighing more than 2kg or in liquid, paste, powder [...] exceeding 2kg	Value	%
1		Germany	1,510,954	31%	1		Belgium	12,568,294	31%
2		USA	986,884	20%	2		Germany	11,528,076	28%
3		Austria	872,234	18%	3		France	9,360,510	23%
4		Italy	644,244	13%	4		Netherlands	2,164,874	5%
5		France	412,296	8%	5		Spain	1,593,250	4%
6		United Kingdom	123,638	3%	6		Italy	1,567,054	4%
7		China	77,340	2%	7		United Kingdom	695,504	2%
8		Sweden	66,104	1%	8		USA	402,496	1%
9		Paraguay	56,860	1%	9		Austria	264,600	1%
10		Portugal	35,956	1%	10		Sweden	169,944	0%
		World	4,916,976	97%			World	40,872,797	99%

(continues)

Rank	180631 Chocolate and other food preparations containing cocoa; in blocks, slabs or bars, filled, weighing 2kg or less	Value	%	Rank	180632 Chocolate and other food preparations containing cocoa; in blocks, slabs or bars, (not filled), weighing 2kg or less	Value	%
1	Germany	109,683,540	64%	1	Germany	85,377,780	57%
2	Netherlands	26,403,253	15%	2	France	19,636,453	13%
3	Italy	7,480,858	4%	3	Austria	13,993,626	9%
4	Austria	5,587,776	3%	4	United Kingdom	7,383,990	5%
5	Croatia	5,340,926	3%	5	Belgium	5,532,838	4%
6	France	4,967,505	3%	6	Italy	4,202,672	3%
7	Poland	2,109,497	1%	7	Netherlands	3,701,245	2%
8	United Kingdom	1,650,890	1%	8	USA	2,337,359	2%
9	USA	1,488,316	1%	9	Portugal	2,247,088	1%
10	Sweden	1,484,396	1%	10	Spain	1,361,890	1%
	World	170,731,532	97%		World	150,561,984	97%
Rank	180690 Chocolate and other food preparations containing cocoa; n.e.c. in chapter 18	Value	%				
1	Germany	278,585,319	42%				
2	Italy	85,052,730	13%				
3	France	82,873,308	13%				
4	Netherlands	52,658,698	8%				
5	Belgium	52,074,309	8%				
6	Poland	49,222,825	7%				
7	United Kingdom	18,482,222	3%				
8	Austria	8,268,353	1%				
9	Hungary	5,481,366	1%				
10	USA	5,291,357	1%				
0	World	660,653,599	97%				

Source: Author's calculations. Data from UN Comtrade, Reporter "Switzerland"; Trade flows "Imports"; Years avg 2019-2020; Classification "H5", 6 digit level. Data extracted on 27 January 2022.

Table 2: Swiss applied (MFN) and bound tariffs, cocoa

HS code	Number of TL	Applied MFN (2021)			Bound rates				
		Number of AV duties	Duty Free TL (%)	Number of Non-AV Duty	Non-AV Duties	Number of AV duties	Duty Free TL (%)	Number of Non-AV Duty	List of Non-AV Duties (for HS 6-digit codes only)
180100	1	1	100	0		1	100	0	
180200	2	1	50	1	[0.6 Fr./ 100 kg brut]	0	0	2	[0.6 Fr./100 kg brut] [29.00 Fr./100 kg brut]
180310	1	0	0	1	[28 Fr./ 100 kg brut]	0	0	1	[28.00 Fr./100 kg brut]
180320	1	0	0	1	[28 Fr./ 100 kg brut]	0	0	1	[28.00 Fr./100 kg brut]
180400	1	0	0	1	[2 Fr./ 100 kg brut]	0	0	1	[2.00 Fr./100 kg brut]
180500	1	0	0	1	[20 Fr./ 100 kg brut]	0	0	1	[20.00 Fr./100 kg brut]
180610	2	0	0	2	[11.15 Fr./ 100 kg brut] [11.6 Fr./ 100 kg brut]	0	0	2	[45.00 Fr./100 kg brut] [63.00 Fr./100 kg brut]
180620	17	0	0	17	[26.1 Fr./ 100 kg brut] [56.7 Fr./ 100 kg brut] [43.8 Fr./ 100 kg brut] [56.05 Fr./ 100 kg brut] [74.4 Fr./ 100 kg brut] [23.25 Fr./ 100 kg brut] [41.6 Fr./ 100 kg brut] [11 Fr./ 100 kg brut] [43.55 Fr./ 100 kg brut] [70.05 Fr./ 100 kg brut] [93.7 Fr./ 100 kg brut] [145.15 Fr./ 100 kg brut] [81.75 Fr./ 100 kg brut] [224.35 Fr./ 100 kg brut] [259.25 Fr./ 100 kg brut] [488.05 Fr./ 100 kg brut] [602.25 Fr./ 100 kg brut]	0	0	17	[101.00 Fr./100 kg brut] [107.00 Fr./100 kg brut] [114.80 Fr./100 kg brut] [1488.00 Fr./100 kg brut] [150.00 Fr./100 kg brut] [170.00 Fr./100 kg brut] [1971.00 Fr./100 kg brut] [222.70 Fr./100 kg brut] [232.90 Fr./100 kg brut] [296.70 Fr./100 kg brut] [42.00 Fr./100 kg brut] [564.00 Fr./100 kg brut] [840.70 Fr./100 kg brut]
180631	4	0	0	4	[10.95 Fr./ 100 kg brut] [33.25 Fr./ 100 kg brut] [43.05 Fr./ 100 kg brut] [57.7 Fr./ 100 kg brut]	0	0	4	[101.00 Fr./100 kg brut] [107.00 Fr./100 kg brut] [132.00 Fr./100 kg brut] [42.00 Fr./100 kg brut]
180632	4	0	0	4	[10.95 Fr./ 100 kg brut] [36.1 Fr./ 100 kg brut] [58.35 Fr./ 100 kg brut] [84.4 Fr./ 100 kg brut]	0	0	4	[114.00 Fr./100 kg brut] [170.00 Fr./100 kg brut] [222.00 Fr./100 kg brut] [42.00 Fr./100 kg brut]
180690	8	0	0	8	[10.85 Fr./ 100 kg brut] [20 Fr./ 100 kg brut] [29.15 Fr./ 100 kg brut] [36.8 Fr./ 100 kg brut] [41.95 Fr./ 100 kg brut] [49.65 Fr./ 100 kg brut] [58.1 Fr./ 100 kg brut] [65.2 Fr./ 100 kg brut]	0	0	8	[101.00 Fr./100 kg brut] [107.00 Fr./100 kg brut] [150.00 Fr./100 kg brut] [42.00 Fr./100 kg brut]

Source: WTO Tariff Download Facility <http://tariffdata.wto.org/ReportersAndProducts.aspx>. Data on bound and applied MFN (2021) tariffs, six digits of the Harmonized System (HS) codes (as reported in tariff schedule).

Table 3: Swiss applied MFN and preferential (GSP and LDC) tariffs (2021), cocoa

HS code description	HS version	HS code	Applied MFN (2021)	Preferential applied tariffs/Applied nonMFN	
			AV and specific duties	GSP	LDC
Cocoa beans, whole or broken, raw or roasted	HS17	180100	duty free	duty free	duty free
Cocoa paste (excl. defatted)	HS17	180310	[28 Fr./ 100 kg brut]	duty free	duty free
Cocoa paste, wholly or partly defatted	HS17	180320	[28 Fr./ 100 kg brut]	duty free	duty free
Cocoa butter, fat and oil	HS17	180400	[2 Fr./ 100 kg brut]	duty free	duty free
Cocoa powder, not containing added sugar or other sweetening matter	HS17	180500	[20 Fr./ 100 kg brut]	duty free	duty free
Cocoa powder, sweetened	HS17	180610	[11.15 Fr./ 100 kg brut] [11.6 Fr./ 100 kg brut]	[1.15 Fr./ 100 kg brut] [1.6 Fr./ 100 kg brut]	duty free
Chocolate and other food preparations containing cocoa, in blocks, slabs or bars weighing > 2 kg or in liquid, paste, powder, granular or other bulk form, in containers or immediate packings of a content > 2 kg (excl. cocoa powder)	HS17	180620	[26.1 Fr./ 100 kg brut] [56.7 Fr./ 100 kg brut] [43.8 Fr./ 100 kg brut] [56.05 Fr./ 100 kg brut] [74.4 Fr./ 100 kg brut] [23.25 Fr./ 100 kg brut] [41.6 Fr./ 100 kg brut] [11 Fr./ 100 kg brut] [43.55 Fr./ kg brut] [70.05 Fr./ 100 kg brut] [93.7 Fr./ 100 kg brut] [145.15 Fr./ 100 kg brut] [81.75 Fr./ 100 kg brut] [224.35 Fr./ 100 kg brut] [259.25 Fr./ 100 kg brut] [488.05 Fr./ kg 100 brut] [602.25 Fr./ 100 kg brut]	[1 Fr./ 100 kg brut] [16.1 Fr./ 100 kg brut] [46.7 Fr./ 100 kg brut] [33.8 Fr./ 100 kg brut] [46.05 Fr./ 100 kg brut] [64.4 Fr./ 100 kg brut] [13.25 Fr./ 100 kg brut] [31.6 Fr./ 100 kg brut] [33.55 Fr./ 100 kg brut] [60.05 Fr./ 100 kg brut] [83.7 Fr./ 100 kg brut] [144.15 Fr./ 100 kg brut] [80.75 Fr./ 100 kg brut] [223.35 Fr./ 100 kg brut] [258.25 Fr./ 100 kg brut] [487.05 Fr./ 100 kg brut] [601.25 Fr./ 100 kg brut]	duty free
Chocolate and other preparations containing cocoa, in blocks, slabs or bars of <= 2 kg, filled	HS17	180631	[10.95 Fr./ 100 kg brut] [33.25 Fr./ 100 kg brut] [43.05 Fr./ 100 kg brut] [57.7 Fr./ 100 kg brut]	[0.95 Fr./ 100 kg brut] [23.25 Fr./ 100 kg brut] [33.05 Fr./ 100 kg brut] [47.7 Fr./ 100 kg brut]	duty free
Chocolate and other preparations containing cocoa, in blocks, slabs or bars of <= 2 kg (excl. filled)	HS17	180632	[10.95 Fr./ kg brut] [36.1 Fr./ kg brut] [58.35 Fr./ kg brut] [84.4 Fr./ kg brut]	[0.95 Fr./ 100 kg brut] [26.1 Fr./ 100 kg brut] [48.35 Fr./ 100 kg brut] [74.4 Fr./ 100 kg brut]	duty free
Chocolate and other preparations containing cocoa, in containers or immediate packings of <= 2 kg (excl. in blocks, slabs or bars and cocoa powder)	HS17	180690	[10.85 Fr./ 100 kg brut] [20 Fr./ 100 kg brut] [29.15 Fr./ 100 kg brut] [36.8 Fr./ 100 kg brut] [41.95 Fr./ 100 kg brut] [49.65 Fr./ 100 kg brut] [58.1 Fr./ 100 kg brut] [65.2 Fr./ 100 kg brut]	[0.85 Fr./ 100 kg brut] [10 Fr./ 100 kg brut] [19.15 Fr./ 100 kg brut] [26.8 Fr./ 100 kg brut] [31.95 Fr./ 100 kg brut] [39.65 Fr./ 100 kg brut] [48.1 Fr./ 100 kg brut] [55.2 Fr./ 100 kg brut]	duty free

Source: WTO Tariff Download Facility <http://tariffdata.wto.org/ReportersAndProducts.aspx>. Data on applied MFN and preferential tariffs (GSP and LDC preferential schemes), 2021, HS17, six-digits.