



Factsheet

Free Trade Agreement (FTA) between Switzerland and China

Summary

A comprehensive bilateral FTA between Switzerland and the People's Republic of China was signed by Federal Councillor Johann Schneider-Ammann and Minister of Commerce GAO Hucheng on 6 July 2013. Following initial exploratory contacts in November 2007, joint workshops in 2009 and a joint feasibility study in 2010, the negotiations were officially opened in January 2011. The agreement was then negotiated in nine rounds of negotiations and various intersessional meetings from April 2011 to May 2013.

The FTA will improve mutual market access for goods and services, enhance legal security for the protection of intellectual property and bilateral economic exchange in general, contribute to sustainable development and deepen bilateral cooperation. For the vast majority of bilateral trade, the FTA will dismantle tariffs fully or partially, sometimes subject to transition periods. In the area of technical barriers to trade and sanitary and phytosanitary measures, sector-specific cooperation agreements are aimed at reducing non-tariff barriers to trade. For trade in services, more precisely defined rules compared to the GATS of the WTO will apply, e.g. for approval processes, as well as improved market access commitments for various services. Regarding intellectual property, the level of protection in selected areas will be improved compared to the multilateral standards of the WTO and include provisions on enforcement. The FTA provides for coherent implementation, orientated towards the basic principles of international relations and the goal of sustainable development. To this end, the preamble stipulates basic principles of the UNO and of public international law, while other provisions of the FTA and a parallel agreement concluded simultaneously with the FTA contain rules on environmental and labour issues respectively. Finally, the FTA provides for the deepening of bilateral cooperation in various fields.

Importance of the Free Trade Agreement for Switzerland

China is the world's second largest economy after the United States and one of Switzerland's most important foreign trade partners. China is the largest buyer of Swiss industrial products in Asia and the third largest worldwide (after the EU and the United States). In 2012 Switzerland exported goods to the value of CHF 7.8 billion to China (3.7% of all Swiss exports), with imports from China totalling CHF 10.3 billion (5.5% of total imports). The main products exported by Switzerland to China include machines and instruments, watches as well as chemical and pharmaceuticals. Imports include machinery, textiles and clothing, as well as watchmaking components and chemical products. Also trade in services is of importance. Many Swiss service providers operate in China (including banks, insurance companies, logistics companies, goods and quality inspection companies, corporate consultants) and conversely Chinese service providers show increasing interest in Switzerland as a business location.

The agreements cover the following subjects: trade in goods (industrial and agricultural products), rules of origin, customs procedures and trade facilitation, trade remedies, technical regulations, sanitary and phytosanitary measures, trade in services, protection for intellectual property, competition, investment promotion, transparency in government procurement, trade-related environmental and labour issues, economic and technical cooperation, institutional provisions (Joint Committee, consultation process, dispute settlement). With such a comprehensive coverage, the FTA will improve market access for Swiss exports of goods and services to the large and fast-growing Chinese market, facilitate two-way trade, strengthen the protection of intellectual property, generally improve legal certainty for economic exchange, promote bilateral cooperation between Switzerland and China and contribute to sustainable development. The FTA creates a competitive advantage for the Swiss economy over countries which have no FTA with China. At the same time, the FTA will prevent discrimination against Swiss economic operators compared to China's existing and future free trade partners. The FTA also establishes an

institutional framework for cooperation between the authorities for the monitoring and further development of the agreement and for resolving specific issues.

Since the economic relations of Switzerland with China are very important for the diversification of Swiss export destinations, as well as for the procurement of imports, the FTA between Switzerland and China will make a significant contribution towards strengthening the position of Switzerland as a business location.

Key Provisions of the Agreement

Preamble

The preamble lays down the general framework and objectives of the FTA. The contracting Parties recognize that economic and social development and environmental protection are interdependent elements of sustainable development. The Parties are pursuing the aim of furthering prosperity and employment while implementing the FTA with a view to promoting sustainable development and strengthening their cooperation in this respect. The Parties confirm the obligation to respecting fundamental values and principles of international relations and public international law (including democracy, freedom, social progress, justice and the rule of law) and the Memorandum of Understanding concluded between Switzerland and China in 2007 for promoting dialogue and cooperation is referred to, which reaffirms among other things the bilateral dialogue on human rights between Switzerland and China which was initiated in 1990. The two sides reaffirm their commitments under the Charter of the United Nations and recognise the importance of good corporate governance and corporate social responsibility.

Scope

The agreement applies to the customs territory of the People's Republic of China and to the territory of Switzerland. For trade in goods the agreement also applies to the Principality of Liechtenstein on the basis of the Customs Union between Switzerland and Liechtenstein. Within the framework of EFTA, in 2011 Switzerland had already concluded a free trade agreement with Hong Kong Special Administrative Region of China, which constitutes a separate customs territory.

Trade in Goods

Tariffs:

Regarding trade in goods (industrial products, processed and unprocessed agricultural products), the FTA adopts various rules of the GATT¹ (e.g. regarding internal taxation and national treatment, import and export restrictions, state trading enterprises, exceptions).

At the entry into force of the FTA the remaining Swiss tariffs on Chinese industrial products will be abolished. This means that under the FTA, in addition to such industrial products, including those from China, that can already now be imported tariff-free into Switzerland on the basis of the autonomous Generalised System of Preferences for developing countries, also textiles and shoes will be granted tariff-free access to the Swiss market. Conversely the vast majority of Switzerland's industrial exports to China will also enjoy full or partial tariff dismantling, either from the entry into force of the Agreement or with dismantling periods of 5, 10 (in a few cases 12 or 15) years. Transitional periods and partial dismantling relate to products for which China has claimed to have a specific need for adjustment given the sometimes substantially higher level of tariffs (e.g. selected products in the watchmaking, machinery and chemical-pharmaceutical sectors), exceptions from tariff dismantling relate to particularly sensitive, individual tariff lines (notably in the latter two sectors).

The FTA will enable many Swiss agricultural products with export potential (including dairy products such as cheese, yoghurt, skimmed milk powder and butter, beef jerky, processed products such as chocolate, baby food, biscuits, jams, roasted coffee, confectionery, ice cream, non-alcoholic beverages, wine) to be imported into China tariff-free or at reduced tariffs. Conversely, within the framework of its agricultural policy, Switzerland will grant preferential tariff treatment for selected products (in the area of basic agricultural products e.g. for tropical prod-

¹ General Agreement on Tariffs and Trade of the World Trade Association, WTO

ucts, for imports outside the harvest periods in Switzerland or within the WTO tariff quotas, in this context e.g. for certain meat products, honey, cut flowers, certain vegetables and fruit as well as certain fruit juices). Swiss regulations on product safety, health and labelling continue to fully apply. As in previous FTAs, the industrial protection element will be removed from the import tariffs on processed agricultural products (pastries, chocolate, sugar confectionery, pasta, etc.), with an additional reduction being granted for specific tariff lines which are of particular export interest to China (primarily in the area of sugar, bakery and pasta products and peanut butter). The compensation of price disadvantages regarding basic agricultural inputs in exported processed products according to the "Chocolate-law" continues to be possible.

With a view to further improvements of market access conditions, the Agreement includes a review clause which provides for a biennial review of the tariff concessions.

Rules of Origin:

The processing in the various product categories which has to take place in the country of origin for a product to benefit from the tariff concessions of the FTA as an originating product is defined in so-called list rules, standard practice for FTAs. The list rules agreed with China take account of modern production methods, allowing for effective utilization of preferential market access. For industrial products, in most cases a change in the four-digit tariff heading or domestic value added of 40% (in relation to the ex-factory price) confers origin status. As in previous Swiss FTAs, the list rules for basic agricultural products and processed agricultural products take the specific needs of the sector into account. Originating products of both Parties can be cumulated. The direct shipping rule allows for splitting up of consignments in third countries under customs control, without the products losing the country of origin status.

Proof of origin is provided either by the standard movement certificate EUR. 1 or the declaration of origin on the invoice or delivery note ("self-declaration"). Compared to other FTAs the EUR. 1-form requires additional information. The declaration of origin, which allows to provide proof of origin without any additional forms, is reserved for authorized exporters. The declarations of origin must be consecutively numbered. Requests for reviews must be answered within a period of six months.

Trade Facilitation:

The provisions on trade facilitation commit the Parties to comply with international standards when drafting of customs procedures. Furthermore, the Parties undertake to publish laws and regulations relevant for the movement of goods, to cooperate in the area of trade facilitation, to issue binding information on tariffs and country of origin to economic operators and to base customs controls on objective risk analyses.

Trade Remedies:

For anti-dumping measures, subsidies and related countervailing duties, the FTA refers to the relevant provisions of the WTO. In addition prior bilateral consultations between the Parties are foreseen. The agreement further allows the Parties to apply bilateral safeguard measures subject to certain conditions. If tariff concessions under the FTA should lead to an increase in imports to such an extent as to cause or threatens to cause serious damage to a domestic industry, tariff concessions may be temporarily suspended.

Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS):

The provisions on TBT and SPS include various rules over and above those of the WTO, particularly with regards to basing national regulations on standards and guidelines of recognised international standardisation organisations, including for marking of textiles. The high standard of health and safety protection in Switzerland remains unaffected.

The FTA provides for an intensification of cooperation on TBT and SPS issues between the competent authorities, a key factor for resolving specific corporate problems and concerns in this area on a pragmatic basis. In the area of SPS the aim e.g. is to limit the number of Chinese inspections of production sites in Switzerland. These provisions are supplemented by four additional agreements. In the areas of telecommunications equipment, certification/accreditation and SPS the agreements provide for an intensification of the existing cooperation between competent authorities; in the area of measuring equipment and instruments the agreement provides

for mutual recognition of test results. A fifth supplementary agreement provides as a transitional measure that the four above-mentioned agreements are applied on a provisional basis from the date of the signing of the FTA until its entry into force.

Services

The provisions on the trade in services are based on the GATS², adopting its definitions and relevant rules (in particular the four modes of service delivery³, market access, national treatment, exceptions), or adapting them to the bilateral context or wording them more specifically (e.g. domestic regulation, payments and transfers). The rules of the agreement apply to all measures on the central, regional and local government levels that affect trade in services, as to measures of non-governmental bodies performing delegated regulatory functions. The general obligations apply to all service sectors with the exception of services which are rendered by government bodies in the performance of regulatory duties (i.e. on a non-commercial basis and not in competition with other suppliers). As in the GATS, traffic rights in air transport are not covered by the FTA. Regarding traditional Chinese medicine (TCM) a dialogue is foreseen with a view to strengthen cooperation.

By, compared to the GATS, more precisely specified horizontal rules e.g. on transparency and approval processes, legal security is enhanced. Sector-specific provisions for financial services specify e.g. the rules for regulatory measures (these are required to be appropriate and may not discriminate against foreign suppliers in favour of domestic ones) and include specific transparency and information obligations with regard to financial regulation. The provisions relating to the supply of services by natural persons limit the categories of persons covered by the FTA (intra-corporate transfers of executives and specialists, highly qualified providers of certain short-term contractual services, sales persons, business visitors) and specify certain framework conditions for procedures concerning work and entry permits (as regards transparency, time limits and obligations to provide information). Measures governing access to the labour market or permanent residency remain unaffected by the FTA.

As in the GATS, the specific commitments regarding market access and national treatment are recorded in positive lists. Compared with the GATS, China's commitments contain additional sectors and improvements in areas such as environmental services (waste water treatment, emission and noise control services), financial services (in particular trading in securities), air transport services (aircraft maintenance and repair, ground handling), logistics services (customs clearance services) and for providers of short-term contractual services (in particular installation and repair of machinery, architects and engineers). Switzerland improves its specific commitments in relation to private training services (foreign languages in particular), financial services (e.g. cross-border aircraft liability insurance, issues of securities in Swiss francs), air transport services (ground handling, airport management) and for additional activities by highly qualified providers of short-term contractual services (in particular installation and repair of machinery, engineers and management consultants). As in the GATS, in various sectors (e.g. audio-visual and cultural services, concessioned transport services, cantonal buildings insurance, public education and health services). Furthermore, both sides reserve the same exemptions from MFN as in the GATS (Switzerland e.g. for various areas in which there are bilateral agreements with the EU). A review clause provides for a biennial review of the lists of commitments with regard to further liberalisation of trade in services.

Protection of Intellectual Property Rights

As regards the protection for intellectual property the Parties commit to apply high level international standards in accordance with the principles of MFN and national treatment. The Parties undertake to deepen their cooperation within the framework of the institutionalized bilateral dialogue on intellectual property which was initiated in 2007.

² General Agreement on Trade in Services of the World Trade Organisation, WTO

³ (1) cross-border service delivery; (2) consumption abroad; (3) place of business abroad; (4) service delivery by natural persons deployed abroad

Compared to the multilateral standards of the TRIPS Agreement⁴, the level of protection in various areas is specified more precisely or enhanced. In the area of copyright e.g., the rights applicable to audio media under the WIPO Agreement⁵ are extended to audio-visual media (video, DVD, etc.). Protection must be provided for acoustic trademarks as a new category of trademark. In the field of patents, the patentability of biotechnological inventions is specified in accordance with the European Patent Convention. Furthermore, the Parties may require in case a patent application is filed and the invention is based on genetic materials or traditional knowledge, such materials and knowledge are indicated. The confidentiality of test data in relation of marketing approval procedures for pharmaceutical and agro-chemical products must be protected for at least six years. The level of protection for geographical indications for wines and spirits under article 23 TRIPS is extended to all products. Goods and services must be protected from misleading indications of origin, and country names, national flags and coats-of-arms of the Parties must be protected from misleading use and registration as company or brand names. Compared to the UPOV⁶ Convention (1978 version, of which China is a signatory) the protection for new varieties of plants is extended to the exportation of such varieties. Furthermore, in the 2016 revision of the national list of protectable varieties China declares that it is prepared to give priority to certain plant varieties which are important to Swiss industry.

With regard to legal enforcement, the FTA provides that measures taken by customs authorities to combat counterfeiting and piracy are to be applied not only at import of goods but at export as well. The seizure of suspect products (on an ex officio basis or at the request of the rights holder), as well as the possibility to analyse samples and specimens of retained goods is foreseen. The measures shall apply in the event of infringement of trademarks and copyrights, as well as of patents and protected designs. In addition, civil and criminal proceedings for the prosecution of breaches of the law and for claiming compensation have to be made available, with the possibility to order precautionary measures as well as immediate provisional measures. In civil proceedings measures both against infringing goods and materials and tools which were used for the production of such goods must be available (including confiscation and destruction). Finally, the agreement contains general and specific review clauses (e.g. in the case of protection for plant varieties) with a view to further improvements in protection.

Investment promotion

The provisions relating to investment promotion supplement the bilateral agreement between the Switzerland and China on the promotion and mutual protection of investments (investment protection agreement BIT) which came into force in April 2010. The BIT remains in force unchanged, consequently the provisions of the FTA are confined to investment promotion. In particular cooperation between the Parties will be strengthened (e.g. in the form of an exchange of information on investment regulations and investment promotion measures) as well as supporting investors wishing to gain a better understanding of the investment and regulatory environment. A review clause envisages negotiations at the request of one of the Parties if a Party should conclude an agreement with a third country which goes beyond the FTA between Switzerland and China.

Competition

The Parties are required to apply their competition law with the aim of preventing anti-competitive practices by companies (in particular agreements, abuse of dominant market positions and anti-competitive mergers) diminishing the advantages resulting from the agreement. The competition authorities will work together to effectively implement their respective competition law in connection with cases which affect trade between the Parties. At the request of one of the Parties consultations will be held in the Joint Committee to resolve differences of opinion.

⁴ Agreement on Trade Related Aspects of Intellectual Property Rights of the World Trade Organisation, WTO

⁵ World Intellectual Property Organisation

⁶ International Union for the Protection of New Varieties of Plants

Environmental issues

With the provisions of the agreement on environmental issues, the Parties acknowledge the principle that economic development, social development and environmental protection are mutually supportive elements of sustainable development. They reaffirm their commitment to promoting economic development and bilateral trade in a way that contributes to sustainable development and to effectively implemented in national law and practice the multilateral environmental agreements and the obligations under other multilateral environmental instruments applicable to them. They will endeavour to improve the level of environmental protection, in particular through effective implementation of their environmental legislation. The Parties acknowledge that the level of environmental protection as laid down in the national legislation shall not be reduced in order to attract investment or to obtain a trade advantage and that environmental standards should not be abused for protectionist purposes. The Parties will seek to facilitate investment and the dissemination of goods, services and technologies which have a beneficial effect on the environment, as well as to promote cooperation between companies in this respect. They will also intensify their cooperation on environmental issues on the bilateral and multilateral levels.

Specific points of contact are defined to facilitate the implementation of the environmental provisions. At the request of a Party, consultations on matters which fall under the environmental provisions will take place in the Joint Committee of the FTA. Differences of opinion over the application of the environmental provisions are to be resolved by the Parties within this framework. A review clause provides that the Parties periodically review the progress made in the implementation of the objectives on environmental issues, taking into account relevant international developments.

Economic and technical cooperation

The provisions on economic and technical cooperation establish that the objective of cooperation is to promote the mutual benefits of the agreement from the viewpoint of sustainable development, including in relation to trade and investment opportunities and through strengthening competitiveness and capacity for innovation. Potential areas for cooperation include sustainable development, in particular relating to environmental and labour issues, with reference to the agreement on cooperation in labour and employment issues (see below), concluded simultaneously with the FTA, as well as the areas of services, industry, agriculture, protection of intellectual property and quality control. The envisaged areas of cooperation are described in more detail in a separate work programme, e.g. in the areas of industry (establishment of a Working Group on watches and clocks), health (including traditional Chinese medicine), services (including tourism), agriculture (including ecologically sustainable production), quality control (including product safety), protection of intellectual property (protection standards and enforcement).

Within the framework of the provisions on economic and technical cooperation, the Parties agree to hold consultations and to cooperate in the area of **government procurement**. In addition, the agreement provides for specific obligations to transparency and points of information on government procurement. Furthermore, the Parties undertake to start negotiations on a bilateral agreement on government procurement following completion of the current negotiations on China's accession to the GPA⁷.

Joint Committee and dispute settlement

A Joint Committee with equal representation and taking decisions by consensus is established in order to monitor the implementation and further development of the agreement. The Joint Committee will meet at least once every two years or more frequently if required. The on-going communication between the Parties will take place through designated points of contact. The Joint Committee will be assisted by a number of sub-committees (on origin issues, customs procedures, TBT, SPS, and services). The Joint Committee may appoint additional sub-committees and working groups if needed.

In the event of differences of opinion over the application of the FTA, the Parties are required to resolve these by way of consultation. Failing this, an inter-governmental arbitration procedure

⁷ Agreement on Government Procurement of the World Trade Organisation (WTO)

can be convened for specific areas. The decision of the arbitration panel is final and binding on the Parties to the dispute.

Agreement on cooperation on labour and employment issues

Supplementing the embodiment of the concept of sustainable development in the FTA and its provisions on environmental issues, Switzerland and China concluded an agreement on cooperation on labour and employment issues in parallel to the FTA. This labour agreement is linked with the FTA by a reference in the FTA.

China and Switzerland reaffirm the commitments arising from their membership of the ILO⁸ including the obligation to effectively implement the applicable ILO conventions. Furthermore, the Parties reaffirm their commitments under the "Ministerial Declaration of the United Nations Economic and Social Council (ECOSOC) on Full Employment and Decent Work" (2006), as well as the "ILO Declaration on Social Justice for a Fair Globalisation" (2008). The Parties reaffirm their resolve to improve working conditions and to protect and enhance the fundamental rights at work. They commit to effectively implement their labour legislations. The Parties acknowledge that the level of labour standards as laid down in the national legislation shall not be reduced in order to attract investment or to obtain a trade advantage and that labour standards should not be abused for protectionist purposes. The labour agreement underlines the importance of bilateral cooperation on labour and employment issues. This should be carried out in particular in the framework of the 2011 bilateral Memorandum of Understanding on cooperation on labour and employment issues. In order to facilitate its implementation, reference is made in the labour agreement to specific points of contact. In the event of differences of opinion over the application of the agreement, each of the contracting Parties can request consultations between the Parties, within the framework of which the Parties are required to reach an amicable solution. If necessary these consultations can take place at ministerial level. 6 July 2013

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⁸ International Labour Organisation (ILO)