

Switzerland's Sectoral Access to the EU's Single Market

8. Februar 2019

There is a part of Switzerland's relationship with the EU that is almost uncontroversial in Switzerland: the country's sectoral access to the EU's Single Market. This analysis provides an overview based on the four freedoms, the basic principles of the EU's Single Market, and gives some hints about how the specifics of Switzerland's market access can be explained.

Dr Sabine Jenni
Research Associate Liechtenstein Institute
sabinejenni@gmail.com

Summary

From the perspective of political science, Switzerland – as a small and relatively open economy – is a likely case for market integration. Hence, market access fits well with Switzerland's foreign policy tradition, which for many decades has been characterised by the paradigm of economic integration with the least possible political involvement with other countries. The economic character of Switzerland's relationship with the EU is often emphasised in political debates, and it is indeed an important aspect of European integration in general and of Swiss-EU relations in particular.

The development of a common market has been an objective of the European Economic Community (EEC) since its creation in 1957. As a rule, 1993 is given as the year when the EU's single market was established. The single market is based on the four fundamental freedoms: the free movement of goods, persons, services, and capital. Switzerland and the EU have concluded agreements that cover parts of all four freedoms, while none of the freedoms is realised to the same degree as in the EU. This incremental and selective approach to integration reveals the possibilities and limits of selective market integration without common institutions.

Free movement of goods – liberalisation in sectoral agreements

Switzerland is not a member of the EU's customs union and is not subject to the Cassis de Dijon ruling and other rulings by the European Court of Justice (ECJ) which have significantly driven market integration in the EU. But the movement of goods between Switzerland and the EU has been liberalised by several sectoral agreements and by unilateral policy measures. As a result, **Switzerland's sectoral market access far exceeds the scope of a usual free trade agreement.**

The oldest agreement and the foundation stone of the liberalisation is the **1972 Free Trade Agreement (FTA)**. It significantly reduced – and even partially abolished – tariffs on industrial goods of Swiss and EC origin and it prohibited quantitative restrictions on trade. With the Bilaterals I, free trade was extended to processed agricultural products. A **recent study by the State Secretariat for Economic Affairs (SECO)** shows that the FTA functions well: Swiss firms are able to benefit from the tariff reductions for almost all their exports to Switzerland's neighbouring countries, all of them EU or EFTA members.

With the Bilaterals I, trade was further liberalised through the **Public Procurement Agreement** and the **Mutual Recognition Agreement (MRA)**. Both agreements reduce non-tariff or technical barriers to trade. The public procurement agreement reaches further than the **WTO agreement on government procurement** as it liberalises procurement also at the municipal level and for state-owned companies.

Whereas the public procurement agreement equalises Switzerland's rights and obligations with those of a member state, the MRA is a tailor-made solution. Instead of following the Cassis de Dijon principle (cf. below), it lists specific product categories, for which Switzerland and the EU do not demand conformity assessments by their own agencies, as long as the product is legally on the market on the territory of the other party. This falls short of the EU's Cassis de Dijon principle that allows any product legally on the market in an EEA member state (EU and EFTA) to be traded in any other member state without additional requirements.

The MRA is one of the most important Swiss-EU agreements. In 2016, **69 percent of Swiss exports to the EU and 61 percent of Swiss imports from the EU were covered by the agreement**, which resulted in a reduction in costs. In order to maintain this function, the agreement has been regularly updated to cover new product categories (see EFTA-Studies analysis **Functioning of Swiss-EU Agreements: Hidden Dynamics and their Reasons**). Recently, sections on construction products, lifts, biocidal products, cable car installations explosives for civil uses were added.

Free movement of goods – facilitation by unilateral measures

In 2010, Switzerland further reduced technical barriers to trade by a unilateral policy measure. It introduced a partial revision of its federal law on technical barriers to trade (**Bundesgesetz über technische Handelshemmnisse**) and **unilaterally introduced the Cassis de Dijon principle**. The law now allows goods legally on the market in the EU/EFTA to be traded on the Swiss market without additional requirements. A few products, most importantly foodstuffs, are excluded or are nonetheless subject to additional requirements.

This reform is an illustrative example of the aims Switzerland pursues by means of unilateral policy measures. Since the 1990s, Switzerland has progressively harmonised its regulations with EU regulations in order to reduce technical barriers to trade. The harmonisation of legislation facilitates cross-border trade in areas where regulations are harmonised in the EU and thus enhances the

competitiveness of the Swiss economy, because Swiss economic actors can use the same product standards for both the Swiss and European markets.

Where no harmonised EU regulations exist, harmonising Swiss legislation with EU standards is not possible. The unilateral introduction of the Cassis de Dijon principle thus mainly aims to facilitate the movement of goods from the EU/EFTA to Switzerland in non-harmonised areas. It seeks to enhance competition in the Swiss internal market, as the assumption is that more products from the EU will enter the Swiss market if this is possible without producers having to bear extra costs. More competition should reduce the high Swiss prices for consumer goods. An **evaluation of the reform did indeed find effects on prices**, but they were less than had been hoped for.

Unilateral measures, be it the harmonisation of legislation to EU standards or others, have shortcomings compared to sectoral agreements. For example, the unilateral introduction of the Cassis-de-Dijon principle does not allow Swiss goods produced according to Swiss standards to be traded on the EU market. They must meet the harmonised EU-standards or, in non-harmonised areas, the respective national standards, unless they are covered by the MRA.

Free movement of persons

The Free Movement of Workers was already introduced with the Treaty of Rome, the founding treaty of the EEC. Better known as the Free Movement of Persons principle, it has its origins in the view of labour as a 'factor of production' and that factors of production need to circulate freely in a common market. The circulation of workers across the EU/EFTA states is facilitated by the right to take up residency, be employed and take up self-employed activities. More specifically, discrimination against citizens from other EU/EFTA states on the labour market is prohibited, administrative requirements for citizens from other member states are reduced to a minimum, professional qualifications are recognised and the social security systems are coordinated.

In Swiss-EU relations, this principle is covered by the **Free Movement of Persons Agreement (FMPA)**, which is part of the Bilaterals I package. This agreement grants Swiss citizens in the EU/EFTA, and EU/EFTA citizens in Switzerland, the same rights. If they work, they obtain equal social security duties and rights. Contributions to social security systems in EU and EEA member states as well as Switzerland count for the determination of the citizen's rights in their state of residency and current employment. Social security systems are coordinated, but not unified, meaning that the social security contributions and entitlements are different in different states depending on the national systems.

Over time, the view of the free movement of persons principle in the EU has increasingly shifted to a view of persons not only as workers, but also as citizens. For example, citizens of EU member states are allowed to participate in local elections if they move to another EU member state. Swiss citizens are not EU citizens and do not have this right. The same is true for citizens of the EEA/EFTA states, who enjoy free movement of persons rights, but no political rights in the EU. In contrast to

the EEA/EFTA states, Switzerland did not incorporate the **2004 directive on union citizenship**, which nowadays is the legal basis for the free movement rights in the EU and, among other things, extended social rights of EU citizens in other member states.

The Schengen agreement on border control considerably facilitates the movement of persons across Europe in technical and practical terms, as it abolishes border controls. Switzerland has been an associate member of the Schengen area since 2008. But the association does not grant Swiss and EU citizens additional free movement rights.

Free movement of services

The issue of services cannot entirely be disentangled from the other freedoms. Hence, although there is no Swiss-EU agreement on liberalising services, service provisions are partly liberalised in the insurance agreement and in several agreements of the Bilaterals I: FMPA, public procurement, overland transport, civil aviation.

The **Insurance Agreement** liberalises trade in services in very limited ways. Namely, it grants the right of establishment to Swiss insurance companies and their branches in the EU, and to EU insurance companies and their branches in Switzerland. It does not liberalise cross-border service provisions in the insurance sector.

The **FMPA** liberalises cross-border service provisions by citizens from the EU/EFTA and Switzerland respectively for up to 90 days a year. Service provisions have to be notified to the Swiss authorities in advance. For periods longer than 90 days, service providers need to obtain an authorisation. The prior notification requirement should make it easier for Swiss authorities to monitor wage dumping. This requirement has been viewed for some considerable time by the EU as a breach of EU law. The draft institutional **framework agreement** defines a shortened prior notification requirement.

Service provisions have been further liberalised in the **public procurement agreement** (Bilaterals I), for example if public entities require services (e.g. in the areas of engineering or architecture); in the **civil aviation agreement**, which grants Swiss airlines the right to fly to and from EU airports and to provide flights between EU airports (with or without a stopover in Switzerland); and, similarly, in the **overland transport agreement**, which liberalises the provision of transport for goods and persons between different EU/EFTA states. Transports between different places in one state are not covered. The restrictions imposed by the FMPA (especially the 90-day limit and prior notification) are only valid for areas that are not covered by these agreements.

Service liberalisation was also included in the Bilaterals II negotiations, but was abandoned because of irreconcilable positions. Today, the economic sectors that would be most affected by a service agreement are the insurance and financial sectors, and in both sectors there are voices both in favour of and against a service agreement. Many companies already have branches in the EU/EFTA which allow them to compete in the EU market on equal grounds. Private banks could benefit from

a liberalisation of financial services that are subject to surveillance. Cantonal banks, on the other hand, fear that they would lose their state guarantees, as state aid is more severely regulated in the EU than in Switzerland. This example - representative of many sectors - shows how Switzerland's selective access to certain aspects of the EU's Single Market can benefit or harm very specific interests and actors in Switzerland.

Free movement of capital

In the EU, as well as in Switzerland, capital movements are in principle not subject to restrictions. In addition, both Switzerland and the EU are subject to the respective OECD rules. However, in the absence of a sectoral agreement on the free movement of capital, only a few areas have been specifically liberalised between Switzerland and the EU. The FMPA liberalises the right of EU citizens to purchase real estate property. The civil aviation agreement grants the right of establishment, including the foundation and management of companies and the taking-up of self-employed activity. However, it excludes the right to take over a firm.

Conclusion

In terms of the four freedoms, Switzerland has, through its sectoral agreements, almost fully liberalised the movement of persons (with the exception of the union citizenship directive) and, to a very large degree, also the free movement of goods. The free movement of services has only been liberalised for specific sectors and always with some restrictions, whereas there are almost no specific rules for the movement of capital, mainly because Switzerland already has very liberal rules.

Despite this extensive liberalisation, Switzerland's access to the EU market remains selective. Switzerland does not participate in the common agricultural and fisheries policies (only trade in agricultural products is partly liberalised), is not part of the customs union, and, in contrast to the EU member states, pursues an independent trade policy. While these exceptions are similar to those of the EEA/EFTA states, Switzerland's market access is more limited even in the areas that are covered by sectoral agreements. Good examples are the less comprehensive and less dynamic MRA, the piecemeal liberalisation of cross-border service provisions and the prior notification requirements for service-provisions by EU/EFTA citizens. These limitations grant Switzerland some autonomy, which it uses, for example, in its policy measures against wage-dumping. But they also create tensions with the EU, which increasingly ties Switzerland's market access to the application of the rules that are valid for EU members in the single market.

The Swiss case thus shows that market access has been possible below the threshold of EU or even EEA membership. Economic interdependence, and especially the Swiss economy's export dependence, explains why the movement of goods is liberalised to a degree that by far exceeds a free trade agreement. On the other hand, the almost complete liberalisation of the free movement of persons is better explained by negotiation dynamics (see EFTA-Studies analysis **The Logic of Negotiations between Switzerland and the EU**). The piecemeal liberalisation of service provisions shows how

the particularistic and in part contradictory interests of Swiss economic actors shape Switzerland's relationship with the EU.

To cite this article

Jenni, Sabine (2019): Switzerland's sectoral Access to the EU's Single Market. Analysis. efta-studies.org.

Sources and Further Reading

Amgwerd, Matthias. 1998. „Autonomer Nachvollzug von EU-Recht durch die Schweiz unter spezieller Berücksichtigung des Kartellrechts.“ In *Basler Schriften zur Europäischen Integration: Europainstitut der Universität Basel*.

Bütikofer, Christian. 2013. „Versicherungen pfeifen auf EU-Abkommen.“ *Handelszeitung*, 11.08.2013, URL:

Church, Clive H., Christina Severin, and Bettina Hurni. 2007. "Sectors, structures and suspicions. Financial and other aspects of Swiss economic relations with the EU." In *Switzerland and the European Union. A close, contradictory and misunderstood relationship.*, ed. C. H. Church. London and New York: Routledge.

Epiney, Astrid. 2009. "How does the European Union Law Influence Swiss Law and Policies?" In *Rediscovering Public Law and Public Administration in Comparative Policy Analysis: a Tribute to Peter Knoepfel*, ed. S. Nahrath and F. Varone. Bern: Haupt.

Forstmoser, Peter. 1999. „Der autonome Nach-, Mit- und Vorvollzug europäischen Rechts: das Beispiel der Anlagefondsgesetzgebung.“ In *Der Einfluss des europäischen Rechts auf die Schweiz. Festschrift für Professor Roger Zäch zum 60. Geburtstag.*, ed. P. Forstmoser, H. C. v. d. Crone, R. H. Weber and D. Zobl. Zürich: Schulthess Polygraphischer Verlag.

Goetschel, Laurent. 2007. "The wider setting of Swiss foreign policy." In *Switzerland and the European Union. A close, contradictory and misunderstood relationship*, ed. C. H. Church. London and New York: Routledge.

Herren, David. 2012. "Das Cassis de Dijon-Prinzip im schweizerischen Recht: Gemeinsamkeiten und Divergenzen zum EU-Recht". In: *Die Europakompatibilität des schweizerischen Wirtschaftsrechts: Konvergenz und Divergenz.*, ed. Cottier, Thomas. Basel: Helbing Lichtenhahn Verlag.

Jenni, Sabine. 2016. Switzerland's differentiated European integration. The last Gallic village? Basingstoke: Palgrave Macmillan.

Mach, Andre, Silja Häusermann, and Yannis Papadopoulos. 2001. "Economic regulatory reforms in Switzerland: adjustment without European integration, or how rigidities become flexible." *Journal of European Public Policy* 10 (2):301-18.

Mach, André, and Christine Trampusch. 2011. "The Swiss political economy in comparative perspective." In *Switzerland in Europe. Continuity and change in the Swiss political economy.*, ed. A. Mach and C. Trampusch. London and New York: Routledge.

Schöchli, Hansueli. 2014. „Zweifel am Marktzugang für Schweizer Banken. Privatbanken wollen Abkommen mit der EU.“ *nzz online*, 17.01.2014, URL: <https://www.nzz.ch/finanzen/privatbanken-wollen-abkommen-mit-der-eu-1.18223096>

EFTA-Studies.org provides in-depth analyses of the institutions and processes that link the EFTA states to the EU. An independent academic blog addresses developments in the EFTA states from a political and legal perspective, thus providing up to date information on the EFTA states' relations with the EU.

Liechtenstein-Institut | info@liechtenstein-institut.li | www.liechtenstein-institut.li