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ECOLOGICALLY SUSTAINABLE USE OF NATURAL RESOURCES AND AGRICULTURE IN SWITZERLAND:

BALANCING CONSTITUTIONAL REQUIREMENTS AND FREE TRADE AGREEMENTS

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1. INTRODUCTION

2. POSSIBLE CONFLICTS

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4. NECESSARY MEASURES

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INTRODUCTION

- Agriculture one of the main factors for the increasing loss of biodiversity
- Differing Objectives: Sustainable use of natural resources vs. Free trade in the agricultural sector (?)
- What does the constitution say?
- Example of the relation Switzerland-EU: Negotiations for a complete liberalisation of trade in the agricultural sector since 2008

POSSIBLE CONFLICTS

- Abolishment of tariff and non-tariff barriers
- ‘Race to the bottom’-phenomenon
- Particular market reactions

CONSTITUTIONAL FRAMEWORK

1. CONSERVATION OF NATURAL RESOURCES

Art. 104 Cst.: Agriculture

(1) The Confederation shall ensure that agricultural sector, by means of a sustainable and market oriented production policy, makes an essential contribution towards:

- a. the reliable provision of the population with foodstuffs;
- b. the **conservation of natural resources** and the upkeep of the countryside;
- c. decentralised population settlement of the country.

CONSTITUTIONAL FRAMEWORK

1. CONSERVATION OF NATURAL RESOURCES

Art. 54 Cst.: Foreign relations

(1) Foreign relations are the responsibility of the Confederation.

(2) The Confederation shall ensure that the independence of Switzerland and its welfare is safeguarded; it shall in particular assist in the alleviation of need and poverty in the world and promote respect for human rights and democracy, the peaceful co-existence of peoples as well as the **conservation of natural resources**.

CONSTITUTIONAL FRAMEWORK

2. SUSTAINABILITY

Art. 104 Cst.: Agriculture

(1) The Confederation shall ensure that agricultural sector, by means of a **sustainable** and market oriented **production policy**, makes an essential contribution towards:

- a. the reliable provision of the population with foodstuffs;
- b. the conservation of natural resources and the upkeep of the countryside;
- c. decentralised population settlement of the country.

CONSTITUTIONAL FRAMEWORK

2. SUSTAINABILITY

Art. 73 Cst.: Sustainable Development

The Confederation and the Cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population.

CONSTITUTIONAL FRAMEWORK

3. PRINCIPLE OF PRECAUTION

Art. 74 Cst.: Protection of the environment

(1) The Confederation shall legislate on the protection of the population and its natural environment against damage or nuisance.

(2) **It shall ensure that such damage or nuisance is avoided.** The costs of avoiding or eliminating such damage or nuisance are borne by those responsible for causing it.

NECESSARY MEASURES

EXCEPTION CLAUSE:

Art. XX GATT: General Exception

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: [...]

(b) necessary to protect human, **animal or plant life or health**;

(g) relating to the **conservation of exhaustible natural resources** [...]

NECESSARY MEASURES

'RACE TO THE BOTTOM' CLAUSE:

Art. 35 FTA EFTA-Serbia: Upholding Levels of Protection in the Application and Enforcement of Laws, Regulations or Standards

[...]

2. Subject to Article 34, a Party shall not:

(a) **weaken or reduce the level of environmental** or labour **protection** provided by its laws, regulations or standards with the sole intention to encourage investment from another Party or to seek or to enhance a competitive trade advantage of producers or service providers operating in its territory; or

NECESSARY MEASURES

NATIONAL LAW:

- Precautionary principle: obligation to foresee measures as soon as a breach of the constitutional requirements appears probable
- Example Switzerland-EU: e.g. regulation of feed imports or maximum number of livestock units per hectare

CONCLUSION

- Free trade in the agricultural sector can stand in conflict with constitutional requirements
- Constitutional obligation to foresee certain provisions in the free trade agreements and in national law
- Taking a closer look at the constitution as a means of integrating the objective of the ecologically sustainable use of natural resources in international (trade) law