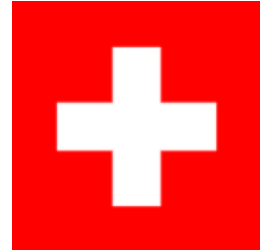


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The new *Swissness* legislation – Background, objectives and effects



1. What is the *Swissness* legislation?

The term *Swissness* refers to the designation “Swiss” as an indication of the geographical origin of goods and services. This designation can appear in different variants such as Swiss Made, Made in Switzerland, of Switzerland, Swiss Quality or other indications and illustrations referring to Switzerland, such as the Swiss cross. The *Swissness legislation* encompasses amendments to the Trade Mark Protection Act (TmPA)¹ and a total revision of the Coat of Arms Protection Act (CAPA)². The Trade Mark Protection Act lays down clear rules about the geographical origin of goods and services, while the Coat of Arms Protection Act regulates the use of the Swiss cross. Both laws are further clarified in four implementing ordinances³.

The *Swissness* legislation strengthens protection of the Swiss designation and the Swiss cross. It helps to prevent and curb their misuse in order to preserve the value of the Swiss brand⁴ in the long term. It has been in force since 1 January 2017.

2. The “Swiss” brand has a global reputation for excellence and is being used with increasing popularity

Swiss goods and services are particularly appreciated by consumers at home and abroad because they are associated with values such exclusivity, tradition and quality. This good reputation inspires confidence, which in turn influences purchasing decisions. It also provides a clear competitive advantage, which is why Swiss products and services can command a higher price than similar foreign products or those of unknown origin. This bonus is known as the *Swissness premium*.

¹ Federal Act on the Protection of Trade Marks and Indications of Source (TmPA): www.admin.ch/opc/en/classified-compilation/19920213/201701010000/232.11.pdf.

² Federal Act on the Protection of the Swiss Coat of Arms and other Public Signs (CAPA): www.admin.ch/opc/en/classified-compilation/20091656/201701010000/232.21.pdf.

³ Trade Mark Protection Ordinance, Ordinance on the Use of Swiss Indications of Source for Foodstuffs, Ordinance on the Register for Designations of Origin and Geographical Indications for Non-Agricultural Products and Ordinance on the Protection of the Swiss Coat of Arms and other Public Signs (further information available on the IPI website: <https://www.ige.ch/en/law-and-policy/national-ip-law/indications-of-source/swiss-indications-of-source/new-legislation/ordinances.html>).

⁴ Reference is often made to the “Swiss” brand in conjunction with the term *Swissness*. However, the “Swiss” brand does not actually exist. It refers to goods or services labelled with the designation Switzerland and all other indications referring to Switzerland or the Swiss cross.

To benefit from this premium, more and more companies are using *Swissness* for promotional purposes. They do so by displaying the Swiss cross on their goods or services alongside their own brand (co-branding), or by using some other appealing reference to Switzerland such as “Swiss”, “Switzerland”, “Swiss Quality”, “Made in Switzerland” or images such as the Matterhorn or William Tell.

3. The *Swissness premium* in figures

According to studies carried out by ETH Zurich and the University of St. Gallen⁵, the added value of typical Swiss products and agricultural produce constitutes up to 20% of the sales price – and even up to 50% for watches and luxury items. The watch, chocolate, jewellery and machine industries alone are said to have generated an increase in revenue of up to CHF 5.8 billion, which corresponds to a good 1% of Switzerland's gross domestic product⁶. This means that the Japanese, for example, are prepared to pay 112% more for a Swiss steel watch than for an identical watch without any indication of source⁷. Simultaneously, the price premium for the same watch in Switzerland is ‘only’ 42%.

More than 60% of Swiss people surveyed are prepared to pay more than double the price for food such as apples, milk, meat or eggs produced in Switzerland⁸. In addition, 84% of them prefer Swiss eggs over foreign ones, for example. For milk and dairy products, this figure is 73%, for grain products 63%, and for sausage products 59%. These are the results of a consumer survey carried out in 2013 by the Federal Office for Agriculture⁹.

4. Consumer expectations

Consumers pay the *Swissness premium* for Swiss products because they assume that when it says “Swiss” on the packaging, then the product genuinely comes from Switzerland.

- This applies particularly to food products for which the majority of Swiss consumers have very high expectations. More than 80% of those surveyed expect food produced in Switzerland to be made under more stringent conditions than those produced abroad¹⁰.

⁵ Conradin Bolliger, “Switzerland as the Product Origin: Swiss Domestic Consumers and their Associations with and Preferences for Domestic Agricultural Products”, conference proceedings of the 18th Annual Conference of the Austrian Society of Agricultural Economics (studies by ETH Zurich, which show that consumers in Switzerland are also willing to pay considerably more for quality Swiss products); and Stephan Feige et al., “Swissness Worldwide” – International Study on the Perception of the Swiss Brand, University of St. Gallen et al., 2008, 2010, 2013 and 2016.

⁶ Extrapolation based on the study by Stephan Feige et al., “Swissness Worldwide” – International Study on the Perception of the Swiss Brand, University of St. Gallen et al., 2008.

⁷ Study by Stephan Feige et al., “Swissness Worldwide 2013”, University of St. Gallen et al., 2013, p. 44 and 50.

⁸ Federal Office for Agriculture, Origin of Agricultural Products 2007, Bern 2007.

⁹ DemoSCOPE, commissioned by the Federal Office for Agriculture, Origin of Agricultural Products, 2013, Bern 2013.

¹⁰ DemoSCOPE Research & Marketing, commissioned by the Federal Office for Agriculture, Origin of Agricultural Products, Bern 2007, slide 22 on question 9.

- The majority of consumers abroad expect that at least 60-70% of the raw materials in a Swiss product come from Switzerland, and that 70-80% of the product's processing takes place in Switzerland¹¹.

5. Strengthening the “Swiss” brand against misuse and free riders

However, in parallel to the success of the “Swiss” brand, cases of misuse have also risen sharply. As a result, some products labelled with the designation “Swiss” or the Swiss cross have little to do with Switzerland. Misuse and misapplication of *Swissness* has led to the “Swiss” brand losing its image and value, which damages those companies that are using the “Swiss” brand correctly. This, in turn, leads to a loss of confidence by consumers, who consequently look for more reliable alternatives. This negative development not only led to complaints from the business community and consumers, but also provoked many parliamentary procedural requests that demanded stricter rules for maintaining the value of the “Swiss” brand.

6. Preserving the value of the “Swiss” brand with clear statutory rules

New, clearly defined rules laid down in law aim to make clear under what conditions a product or service can be labelled with the “Swiss” brand or the Swiss cross.

Origin of goods

For the purposes of determining origin, goods are divided into three categories:

- For **natural products** (Art. 48a TmPA), the criteria depend on the type of product (for mineral products, for example, origin is determined by the place of extraction, while for plant products it is the place of harvest).
- For **food products** (Art. 48b TmPA), the essential processing step must occur at the place of origin. In addition, 80% of the weight of available raw materials must come from the place in which they are produced. Various exceptions have been provided for in the law to make applying these regulations practical.
- For **industrial products** (Art. 48c TmPA), it is the essential manufacturing step as well as the manufacturing costs incurred at the place of origin (at least 60%) that determine their origin. Exceptions in the law have also been provided for here.

Origin of services

A **service** (Art. 49 TmPA) is considered Swiss if the registered office as well as the service provider's actual place of administration is in Switzerland.

The new criteria take globalisation into account. They make allowance for the fact that even for traditional products, some manufacturing steps take place abroad and certain raw and other materials are not available Switzerland. The new rules create an incentive for investing in the quality and authenticity of Swiss products. They also promote transparent competition and prevent economic damage through loss of reputation and confidence.

¹¹ Stefan Feige et al. 2008: “Swissness Worldwide”, University of St. Gallen, p. 53/54.

For companies that do not fulfil the *Swissness* criteria, there is still a possibility of promoting individual production steps. However, the specific step or activity mentioned must be completely performed in Switzerland, e.g. sausage "Smoked in Switzerland" or furniture "Designed in Switzerland". In these cases, however, the Swiss cross may not be used. This is because consumers generally interpret the Swiss cross to be an indication of the origin of the product as a whole, and not as an indication of an individual production step. Therefore, the Swiss cross may only be used with designations such as "Swiss Research" when the *Swissness* criteria have been met for the product as a whole.

7. Using the Swiss cross and the Swiss coat of arms

With the total revision of the Coat of Arms Protection Act, the Swiss cross can now also be used on Swiss goods. This provides producers with an important advertising tool. The Swiss coat of arms (the Swiss cross in a triangular shield), however, remains reserved for use by the Swiss Confederation. An exception to this rule is a right of continued use, which is granted – on request – to companies that have been using the Swiss coat of arms for several decades as part of their company symbol to label Swiss goods and services.

8. Using *Swissness* is voluntary and free of charge.

Anyone wishing to use the "Swiss" brand to benefit from its associated value, does not need any authorisation to do so. As previously, it is up to each individual company to check whether a product meets the requirements for using *Swissness* for promotional purposes. A company simply has to comply with the statutory rules and, in the event of a dispute, be able to prove that it has done so. The administrative effort is limited to clarifying internally whether one's own product meets the requirements for being labelled as "Swiss", as in the past. The *Swissness* provisions must only be observed if a company wishes to label its products or services with the "Swiss" brand. There is no obligation, however, to use the *Swissness* label.

9. New instruments in the fight against misuse

The new legislation also provides for additional tools to facilitate enforcement at home and abroad.

These include the **Register for Geographical Indications for Non-Agricultural Products** maintained by the IPI, and the Register for Agricultural Products, which is maintained by the Federal Office for Agriculture FOAG. This means that geographical indications for industrial products such as "Swiss" or "Geneva" for watches, "St. Gallen" for textiles or "Glarner" for textile cloths, can be registered.

Protected designations of origin (PDOs) and protected geographical indications (PGIs) entered in a federal register (e.g. "Gruyère" for cheese), wine designations protected at cantonal level (e.g. "Epresses" in the canton of Vaud) and geographical indications that are regulated in a Federal Council ordinance (e.g. watches), can be registered as **geographical marks**. Geograph-

ical marks were created to simplify enforcing the protection of these denominations in Switzerland and abroad.

10. How are the *Swissness* rules enforced?

It is opponents, trade associations, consumer organisations, cantons and the IPI that are responsible for enforcing the *Swissness* rules. It depends on the interests at stake as to who is called upon to act. If it concerns signs that belong to an individual or several companies or associations, then it is up to those affected to assert their own interests, and – after a prior warning – to file a civil or criminal complaint.

The IPI always becomes active whenever the interests of the Confederation are affected, particularly if there is a presumption that the Swiss coat of arms and/or the Swiss cross are being misused.

In Switzerland, the IPI informs the person or company concerned about the unlawful conduct in writing and draws their attention to the applicable legal provisions. In cases where this measure is unsuccessful, the IPI may also report an offence or bring the case before a civil court.

If such cases occur abroad, any intervention by the IPI takes place in collaboration with the Swiss embassies. The IPI notifies the company concerned of its unlawful conduct via the respective embassy and blocks the trade mark application if necessary. It also informs the relevant trade associations, who can then decide on what measures to take.

You can find constantly updated information about the *Swissness* legislation on the Swiss Federal Institute of Intellectual Property's website: <https://www.ige.ch/en/law-and-policy/national-ip-law/indications-of-source/swiss-indications-of-source.html>.

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