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The new 'Swissness' legislation - the most important changes

The core of the amendment is anchored in the **Trade Mark Protection Act** with **specific regulations** concerning the geographical origin of goods and services.

At the same time, the new legislation also introduces the possibility of being permitted to affix the **Swiss cross to goods**.

Different regulations for different categories of goods

Natural products, foodstuffs and industrial products are treated differently under the new law because consumers do not expect the same amount of 'Swissness' to be in a Swiss apple, a Swiss toothbrush or Swiss cheese.

a) 'Swissness' for natural products

For natural products¹, it is the type of product that is paramount. The criteria correspond substantively to those under foodstuffs law². For plant products, it is the place where they are harvested, i.e. a Swiss apple or a Swiss lettuce must be harvested in Switzerland. However, the scope of Article 48a in the Trade Mark Protection Act (TmPA³) is broader since certain natural products – such as gravel or sand – are not foodstuffs.

b) 'Swissness' for foodstuffs

For foodstuffs,⁴ at least 80% of the weight of the available raw materials in Switzerland must actually originate in Switzerland. For milk and milk products, this figure is 100% (i.e. the entire quantity of milk). This principle is specified in more detail or, in some cases, even disregarded:

- Only raw materials actually available in Switzerland are taken into account. The deciding factor is the rate of self-supply for natural products: if the self-supply rate is more than 50 per cent, the corresponding natural product is included completely in the calculation; if the self-supply rate is between 20 and 50 per cent (e.g. strawberries), only half of the

¹ Products that can be used without processing such as plants, mineral water, products from hunting and fishing, etc.

² See Art. 15 FDHA Ordinance on the Labelling and Advertising of Foodstuffs (FLO; SR [817.022.21](#)).

³ The new TmPA provisions are published in the 2013 Federal Gazette on pages 4795 et seq: <https://www.admin.ch/opc/de/federal-gazette/2013/4795.pdf>. An English translation is available on the IPI website: https://www.ige.ch/fileadmin/user_upload/Swissness/e/TmPA_Amendments_of_21_June_2013_EN.pdf.

⁴ Applicable to products that are considered as foodstuffs under the Foodstuffs Act of 9 October 1992 (FoodA; SR [817.0](#)) with the exception of natural products under Article 48a TmPA. Since the revision of the Foodstuffs Act, tobacco and tobacco products no longer fall under the category of foodstuffs and are therefore regarded as industrial products.

corresponding natural product is included in the calculation; if the self-supply rate is under 20 per cent (e.g. hazelnuts), the natural product in question can be completely ignored.

- Natural products that are temporarily unavailable due to crop failure do not need to be included in the calculation during this period.
- Natural products that cannot be produced in Switzerland due to natural conditions (e.g. pineapple, avocado, coffee, cocoa) are not taken into consideration.
- Ingredients that are negligible in terms of weight may be disregarded from the calculation.
- Natural products that cannot be produced in Switzerland for a certain purpose due to technical requirements are also not included in the calculation.
- As an exception, it is permitted to make reference to a single Swiss raw material ingredient if the foodstuff in question has been completely manufactured in Switzerland and the raw material ingredient is significant for the foodstuff in terms of weight and is either responsible for the name or determines a characteristic of the product (e.g. lasagne with Swiss beef). In this case, however, it would not be permitted to affix the Swiss cross to the product in question. For consumers, it must be clear that the 'Swiss' label is referring only to the individual raw material ingredient and not to the entire food product. The reference may therefore not be written larger than the product name.

In addition, the activity that gave the product its essential characteristics must have taken place in Switzerland (e.g. processing milk into cheese).

In future, all foodstuffs must also fulfil the requirements of the Foodstuffs Act as is already the case today. This means that the country of production and the geographical origin of the raw materials in a food product must be specified. This will not change. This information must also continue to be affixed to the product. Requirements for menus also remain the same. Even though indications may be correct under foodstuffs law, the 'Swissness' criteria must still be fulfilled for the indication to be used on a product as advertising or branding. Under foodstuffs law, for example, the packaging for cheese made in Switzerland using foreign milk may state "Country of production Switzerland"; under the 'Swissness' criteria, however, the cheese may not be labelled "Swiss cheese".

c) 'Swissness' for industrial products

For industrial products,⁵ at least 60% of the manufacturing costs must occur in Switzerland. All production costs (i.e. costs for raw materials, semi-finished products, accessory parts, product-

⁵ Industrial products and handicraft products, i.e. all products that are not considered to be natural products or foodstuffs (e.g. machines, knives, watches).

related salaries and production overhead costs) can be taken into account and now additionally the costs for research and development, quality assurance and certification. There are also exceptions provided for under the new law:

- Natural products that are not found in Switzerland (e.g. precious metals, steel, mineral oils) are not included in the calculation.
- Materials that are not available in sufficient quantities in Switzerland are simply taken into consideration as a percentage, i.e. only to the extent they are available in Switzerland.
- Additives of minor importance may be ignored.

In addition, at least one essential manufacturing step must have taken place in Switzerland.

d) Possibility of promoting specific activities

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", 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 declarations such as "Swiss Research" if the 'Swissness' criteria have been fulfilled for the product as a whole.

e) 'Swissness' for services

A company can offer Swiss services as long as its headquarters and an actual administrative centre is located in Switzerland.

f) New register and geographical trade marks

Additional tools for making enforcement easier at home and abroad have also been provided for under the new legislation. Among them is the register for geographical indications of source for non-agricultural products (similar to the register for agricultural products maintained by the Federal Office for Agricultural FOAG) and the geographical trade mark.

The new register will be maintained by IPI. This will make it possible to register geographical indications of source for goods such as watches and textiles as well. In addition, all geographical indications of source entered in the registers, such as "Gruyère" for cheese or "Switzerland" for watches, can be protected as geographical trade marks. A registered geographical trade mark is an official IP right as is an entry in the register for an indication of source. This significantly simplifies protection and enforcement abroad as an indication of source has a clearly identifiable rights owner (i.e. a trade association or the representative group for the foodstuff in question) who can use the IP right to take legal action against free riders.

Using the Swiss cross on goods is legal

With the **total revision of the Federal Act on the Protection of the Swiss Coats of Arms and Other Public Signs (Coat of Arms Protection Act)⁶**, the Swiss cross may now be used on Swiss goods. This makes an important advertising tool available to producers. Up until today, it was only permitted to use the Swiss cross for Swiss services.

The *Swiss coat of arms*⁷ principally remains reserved for the Confederation. Those companies that have been using the Swiss coat of arms for decades as part of their company symbol to label *Swiss* goods and services, will be exceptionally accorded – upon request – a right of continued use.

Up-to-date information on the 'Swissness' legislation can be found on the website of the Swiss Federal Institute of Intellectual Property: www.ipi.ch/swissness

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⁶ The new provisions have been published in the 2013 Federal Gazette on pages 4777 et seq: <https://www.admin.ch/opc/de/federal-gazette/2013/4777.pdf>. An English translation is available on the IPI website: https://www.ige.ch/fileadmin/user_upload/Swissness/e/Coat_of_Arms_Protection_Act.pdf.

⁷ The Swiss coat of arms is a Swiss cross in a triangular shield.