

**AUTONOMOUS RECOGNITION OF THE RESULTS OF
FOREIGN CONFORMITY ASSESSMENTS**

Communication from Switzerland

I. INTRODUCTION

1. At the conclusion of the First Triennial Review of the implementation of the Agreement on Technical Barriers to Trade (TBT), the Committee reiterated "Members' rights and obligations under Article 6.1" of the Agreement (G/TBT/5, paragraph 25). This Article provides that "... Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures ...". Based on this provision, Switzerland has developed a system for the autonomous recognition of the results of foreign conformity assessments. In this communication, Switzerland explains the system and describes its experience in this respect.

II. PURPOSE OF AUTONOMOUS RECOGNITION

2. The autonomous recognition of the results of foreign conformity assessments is an important corollary to the dismantling of technical barriers to trade that may occur as a result of the implementation of conformity assessment procedures. In this respect, it is an essential complement to all conformity assessment procedures other than the manufacturer's declaration of conformity, in other words all those necessitating action by a third organization. Unlike a manufacturer's declaration of conformity, an organization issues a conformity certificate after it has assessed conformity. When exporting its products to another country, a manufacturer would like to make use of the certificates already issued (and the conformity assessments already carried out) and not have to undergo another assessment, which is often lengthy and costly.

3. In order to respect the sense of Article 2.1 of the TBT Agreement, the recognition process must be based on the qualifications of the author of the assessment and not on the origin of the goods imported. In addition, there should not systematically be a reciprocity requirement because, in Switzerland's view, this is not consistent with the spirit of Article 6.1 of the Agreement: in principle, if there is no prior examination of the qualifications of a foreign organization, reciprocity is no guarantee of the equivalence of a foreign certificate.

III. OPERATION IN SWITZERLAND

4. In Article 18.2 of the Federal Law of 6 October 1995 on technical barriers to trade (LETC), which entered into force on 1 July 1996, Switzerland formally established the principle of autonomous recognition of conformity assessment results as one of the measures to eliminate technical barriers to trade. According to this provision "test reports or conformity certificates by foreign organizations are only acceptable if it can be shown that:

- (a) The test or conformity assessment procedures followed meet Swiss requirements;
- and

- (b) the foreign organization has standards equivalent to those required in Switzerland."

As the title of this provision indicates, both these conditions have to be met. In order to be able to utilize this provision, Swiss technical regulations on the product concerned naturally have to be respected as well.

5. Subparagraph (a) of Article 18.2 of the Law indicates that the rules on test or conformity assessment procedures differ from product to product. Nevertheless, in the majority of cases they are based on the relevant international standards. Where Swiss requirements are more stringent than the relevant international requirements, recognition of equivalence concerns those requirements that are covered by international standards and reassessment only relates to the requirements additional to international standards.

6. The equivalent qualifications of foreign organizations specified in subparagraph (b) are evaluated in three different ways. These highlight the difficulty of proving equivalence for an organization seeking recognition of a foreign test report or assessment certificate. In Switzerland, the capacity of a laboratory or a conformity assessment organization is in principle proved by means of accreditation. The equivalence of the qualifications of a foreign laboratory or assessment organization therefore depends on accreditation in Switzerland. This is based on the EN 45,000 series of standards, and the corresponding ISO/IEC Guides (future standards).

7. If a foreign laboratory or organization is recognized abroad and the accreditation scheme is applied by a regional organization [(European Cooperation for Accreditation (EA), Northern American Accreditation Cooperation (NAAC), Interamerican Accreditation Cooperation (IAAC), Southern African Regional Accreditation Cooperation (SARAC), Pacific Accreditation for Certification (PAC), Asia Pacific Laboratory Cooperation Accreditation (APLAC)] or an international accreditation organization (International Laboratory Accreditation Cooperation (ILAC), International Accreditation Forum (IAF)], it is assumed that the foreign organization has equivalent competence. Membership of the aforementioned organizations and reciprocal assessment under the various accreditation schemes are confirmation of the equivalent level of quality of the affiliated schemes. The Swiss Accreditation Authority (Service d'accréditation suisse, SAS) has a list of foreign accreditation schemes deemed to be the equivalent of the Swiss scheme.

8. If a foreign laboratory or organization is accredited abroad but its accreditation scheme is not part of one of the aforementioned regional or international cooperation organizations it will not be able to benefit from this presumption. The person responsible for placing the product on the market in Switzerland will then have to prove that the qualifications of the foreign laboratory or organization mentioned on the report or certificate it is intended to use are equivalent. The SAS, on a case-by-case basis, decides whether the equivalence is valid.

9. Where there is no foreign accreditation, in principle recognition is of course possible. In practice, proving the probable equivalence of qualifications will require considerable efforts on the part of the person placing the product on the market, for example, using "proficiency testing" based on international criteria. "Proficiency testing" concerns the certification of products. It involves the comparison of results of tests carried out on the same product by different laboratories in various countries which cooperate amongst themselves. If a foreign laboratory – which is seeking recognition – takes part in this type of comparative test and obtains results that are identical to those of Swiss laboratories accredited by the SAS, the equivalence of qualifications is proved. The SAS is responsible for assessing the equivalence within reasonable limits.

10. In principle, it is the person seeking to make use of a foreign report or certificate (the supplier, the person placing the product on the market or utilizing it) to prove the equivalent qualifications of the foreign test laboratory or conformity assessment organization. The LETC does not therefore make provision for prior positive recognition of equivalence. It might however be useful to effect such

recognition under Article 18.2 of the LETC, either through inclusion on the list of foreign organizations whose qualifications are recognized as equivalent, or by giving appropriate recognition (recognition decision) to the equivalence of organizations in a particular State where this is a requirement for the recognition of Swiss testing or conformity assessment organizations in the country in question (reciprocity).

11. Switzerland does not have any systematic reciprocity requirement for the recognition of foreign test reports or certificates. The possibility of such a requirement has, however, been envisaged in Article 18.3 of the LETC in order to safeguard Switzerland's economic interests, particularly those of exporters. This is the case where Swiss certificates are not recognized abroad: even if they are issued by organizations with recognized competence, the Swiss Government may refuse to recognize certificates issued by the country in question as long as reciprocity is not given to Swiss certificates. Switzerland's economic interests as a whole have to be taken into account before this possibility may be utilized. To date, the conditions for the implementation of a reciprocity mechanism have not been met.

IV. TRADE IMPACT

12. The autonomous recognition of foreign test reports and certificates on an objective basis (qualifications of the organization instead of origin of the product) helps to reduce the technical barriers related to conformity assessment. It allows a significant reduction in the costs of reassessment abroad for the manufacturer or the person placing the product on the market.

13. Switzerland considers that autonomous recognition is a liberalization tool because it helps to open up domestic markets, promotes the establishment of healthy competition and, as a result, gives consumers a greater choice of products.

14. Recognition helps to safeguard the interests of consumers by ensuring that imported products do not cost more because of reassessment. This is an important aspect, particularly for a country such as Switzerland which depends to a great degree on exports but also on imports. Many imported products are high-value added products that often necessitate the intervention of a third party in order to assess their conformity (for example, medical instruments, chemicals, electrical and telecommunications equipment).

15. The objective, namely recognition of foreign test reports and certificates, can also be met through the conclusion of mutual recognition agreements (MRAs). These have the advantage of offering the contracting parties a legal framework which they can use to seek recognition of their certificates. Nevertheless, the negotiation of such agreements is often long and difficult. Autonomous recognition can therefore be used where such agreements have not yet been concluded or trade flows do not justify the conclusion of an MRA because the volume of trade is too low.

V. FUTURE WORK

16. As mentioned above, the Committee on Technical Barriers to Trade has decided to reaffirm the importance of Article 6.1 of the Agreement. For Switzerland, the conditions governing autonomous recognition are closely linked to the use of international standards and guides on accreditation and certification. Switzerland would be interested to learn of other countries' experience in this field. It would be interesting to see how other Members apply this Article and examine to what extent they also make use of international standards and guides in this context.
