

## **9 Mutual recognition agreements**

### **9.1 The South African situation**

At present the South African Government has no over-arching strategy for conducting regional and international MRA<sup>7</sup> agreements, but has had preliminary discussions with the EU, Australia and China.

The need for such an over-arching strategy is recognised, and Section 9.3 of this Report outlines the rationale for such a strategy and some broad guidelines for consideration within the strategy. The Review was also asked to provide some commentary on the issue of “equivalence of legislation” as an approach to facilitation of trade through a MRA framework. An analysis of the opportunity to enhance the Australia-EC MRA through recognition of equivalence of legislation was provided separately to the DTI as part of this review’s examination of these Terms of Reference. It highlighted significant complications for this approach for most of the eight sectoral areas covered in the EU-Australia MRA.

The lack of co-ordination between Government Departments in the regulatory domain is of significant concern, and reinforces the need for the proposed “Regulatory Reform Act”, as well as the establishment of an Office of Regulatory Reform.

### **9.2 International situation and practices**

#### **9.2.1 Concept of MRAs**

Under a MRA on conformity assessment the parties recognise that the conformity assessment bodies in the exporting countries are competent to undertake the necessary assessment of a product’s conformity with the importing country’s requirements. The products can therefore be exported and placed on the importing party’s market without undergoing additional procedures.

---

<sup>7</sup> Inter governmental MRAs are agreements on the conformity assessment of regulated products. As such MRAs are one of a broad variety of measures being applied internationally for trade facilitation purposes. The WTO TBT Agreement specifically refers to MRAs in an inter governmental context (Article 6.3).

### **9.2.2 Development of MRAs**

The European Union began pursuing MRAs in the early 1990s as part of its trade facilitation objective of reducing technical barriers to trade. Negotiations were begun in 1994 with a number of countries including the USA, Canada, Japan, Australia and New Zealand.

Extensive, time consuming negotiations led to the EU signing a number of MRA treaties in 1998. Agreements with Canada and the USA covered the telecommunications equipment, electromagnetic compatibility (EMC), electrical safety, recreational craft, medicinal products and medical devices sectors.

The USA-EU and Canada-EU MRAs provided for two to three year confidence building periods before becoming operational. At this point in time only the USA-EU recreational craft sector has become operational. However, the USA-EU EMC and telecommunications sectors are expected to soon enter the operational phase. Some of the Canadian-EU sectors are also close to becoming operational.

The EU MRA treaty with Australia covers eight sectors: medical devices, pharmaceuticals, automotive products, telecommunications, electromagnetic compatibility, low voltage equipment, pressure equipment and machinery. The New Zealand-EU treaty covers the same sectors with the exception of automotive products.

The Australia/New Zealand treaties became operational on 1 January 1999 and are already providing significant trade facilitation benefits.

### **9.2.3 Accreditation support for MRAs**

The Australia/New Zealand-EU MRAs became operational much earlier than the USA and Canada-EU MRAs. This was because extended confidence building activities were not considered necessary, mainly due to five of the sectors being underpinned by accreditation. Associated with this was the already existing confidence in each other's accredited conformity assessment bodies because most of the EU accreditation bodies were part of the European co-operation for Accreditation (EA) Multilateral Agreement (MLA), and EA had bilateral agreements with the nationally recognised accreditation bodies in Australia and New Zealand.

### **9.2.4 International interest in MRAs**

A significant number of countries are now having discussions, and in a number of cases negotiations, regarding bilateral MRAs. A particularly long queue of countries is waiting to

commence negotiations with the EU - the incentive being to have their conformity assessment bodies recognised as equivalent to EU notified bodies and thus authorised to undertake third party assessments necessary for CE marking of products.

Multilateral MRAs are also being developed. The best known examples are the four Asia-Pacific Economic Cooperation (APEC) MRAs for electrical and electronic equipment, telecommunications equipment, foods and food products and automotive products. Multilateral MRAs aim to provide better market access to a large number of trading partners. Experience to date indicates that these arrangements are more complex and difficult to negotiate due to the greater range of differences between the parties. In the longer term multilateral models are likely to gain favour as they should reduce the high cost of maintaining a network of bilateral agreements.

#### **9.2.5 Resource demands of MRAs**

Experience to date of MRA negotiations and implementation is that heavy resource demands are placed on the relevant government departments, regulators, and accreditation bodies. It is therefore important that the costs/benefits of possible MRAs are carefully considered. Where MRAs appear to be worthwhile negotiations should be entered selectively according to a priority list.

### **9.3 Conclusions: An MRA overarching strategy**

It is concluded that a Government over-arching strategy is needed covering the approaches and policies relevant to the negotiation and maintenance of MRAs. This is considered necessary because MRA negotiations require considerable resources and therefore care is needed to ensure that only MRAs likely to be of benefit to South Africa are negotiated.

In establishing a strategy for the development of MRAs the task is to be selective in deciding on the countries with which to negotiate, the sectors to involve and the type of MRA which best suits, and enhances the trading relationship between the parties.

#### **9.3.1 Trade benefits of MRAs**

There is considered to be potential for substantial economic efficiency gains when manufacturers can have their products assessed for compliance with the regulatory requirements of the importing country by a conformity assessment body in the exporter's own country. Benefits can be generated through:

- Saving exporters and importers the costs in time and money of duplication of testing and certification.
- Greater certainty that exported products will be able to access the importing market without further conformity assessment.
- Consumer benefits from lower prices and wider choice.
- Increased contact with regulatory agencies and conformity assessment bodies enhancing transparency in regulatory requirements and promoting in the longer term harmonisation of standards and technical regulations.
- Regulatory agencies can free resources for other tasks which may enhance public health and safety issues.

### 9.3.2 Development of an MRA Strategy

There are a number of steps to be taken in a selective and priority approach to negotiation of MRAs.

#### a) Existing Situation

An initial analysis is needed of the sectors in which both domestic and exported products are subject to some form of regulation that involves conformity assessment. While there are differences between countries in their approach to the protection of the health and safety of people and the environment, the following groups cover most regulated products:

**Table 7: Selected groups of regulated products**

Aeronautical/maritime equipment	Machinery
Agricultural and veterinary products	Medical devices
Automotive products	Personal protective equipment
Building and construction materials/products	Pharmaceuticals
Electrical and electronic equipment	Plumbing products
Food and food products	Pressure equipment
Industrial chemicals	Telecommunication equipment

## **b) Significant Trading Partners**

The initial analysis needs to identify the countries with which South Africa has significant trade in regulated products. A sector by sector analysis should be undertaken to obtain data on the countries' pre-market conformity assessment requirements and the existing trade flows. Consideration needs to be given to the likely increases in trade if an MRA reduces regulatory costs. Currently trade may be low because regulatory costs make exporting uneconomic.

## **c) MRA Benefits**

Using data gathered in the initial analysis, estimates should be made of the benefits to two way trade likely to arise from an MRA on conformity assessment.

## **d) Feasibility of MRAs**

For countries identified as the better prospects for MRAs, research is needed on their level of interest in an MRA and the possibility of their systems being amenable to an MRA.

Mutual confidence is a pre-requisite for an MRA, with actions of the other party's conformity assessment bodies only to be challenged on the basis of specific evidence. Therefore there must be a review of the country's technical infrastructure to check that it is sufficiently well developed to give South African regulators confidence that their requirements will be properly addressed. In this regard it is desirable that the conformity assessments are undertaken by bodies accredited for the activity involved and that their national accreditation body is itself part of an international peer review process. This accreditation body could be the regulatory body.

The successful EU Australia/New Zealand MRAs are examples that have shown the benefits of using accreditation to underpin MRAs. A strong South African SQAM sector would therefore increase the feasibility of South Africa negotiating MRAs.

Until developing countries have an appropriate level of regulatory sophistication, including the use of an appropriate conformity assessment infrastructure, it will be difficult for South Africa to enter into MRAs with them. Throughout this report it has been highlighted that the South African system for formulating and maintaining technical organisations requires urgent attention. The review also found that the South African SQAM is generally sound and provides valuable underpinning for MRA development.

### **e) Domestic Considerations**

Once the most favourable prospects with regard to MRA partners and associated product sectors have been determined it is necessary to consult widely to both gauge and influence the level of domestic support. All stakeholders should be contacted including government departments, regulators, conformity assessment bodies, industry associations and industry members including exporters and importers.

There may be both winners and losers when new trade facilitation measures are introduced – it is therefore important to determine the levels of both support and opposition to the negotiation of an MRA. Often an education program will need to be undertaken to explain the benefits of the proposed MRA and to correct misunderstandings.

A key part of the consultation process will be determining whether the proposal has the support of the relevant South African regulators. Without their full support it is unlikely an MRA could be successfully negotiated and implemented.

### **f) Treaty Processes**

As MRAs are agreements at treaty level there will be strict constitutional and protocol requirements to be met. There will usually need to be formal consultation with government departments and approvals by Ministers, Parliamentary Committees and Parliament itself. A timeline for these activities should be developed and information exchanged on this issue with prospective MRA partners. If regulatory areas also affect Provincial Governments they also need to be committed.

### **g) Types of MRAs**

MRAs can take a number of forms: bilateral single-sector, bilateral-multi-sector and multilateral-single-sector. Using data gathered from the preliminary analyses, decisions need to be made on the most appropriate type of MRA for the high priority countries and sectors.

- **Bilateral-multi-sector**

Experience to date suggests that bilateral multi-sector MRAs have significant advantages over multilateral MRAs. There is a greater possibility for frank exchanges of views and information and there is more likelihood that the parties will be strongly committed to concluding a mutually beneficial agreement. They have the important advantage of being able to be extended to include additional sectors.

- **Multilateral-single-sector**

Multilateral single-sector MRAs aim to provide better market access to a large number of trading partners within the same sector. Experience to date shows that these are complex and difficult to negotiate because of the greater range of differences between the parties. There is the possibility that a less than optimum agreement will be reached due to the need to take a consensus approach. The complexity of multilateral negotiations has resulted in them being limited to single sectors. In the longer term multilateral models are likely to gain in favour because of their potential to reduce the high cost associated with maintaining a network of bilateral arrangements.

- **Bilateral-single-sector**

Bilateral single sector arrangements are commonly negotiated on an agency to agency basis. A major advantage is the ease and speed of negotiation. On the other hand they are often not negotiated for trade facilitation purposes, do not have the possibility of being able to “balance benefits” and do not offer scope for expansion to include other sectors.

#### **h) MRA Sectors**

In preparing for multi-sector negotiations both parties need to make decisions about sectors to propose for inclusion. Preliminary analyses of trade flows and pre market conformity assessment requirements will have identified sectors with potential for benefits to exporters and/or importers. Information should also be available on stakeholders support and the capabilities of the conformity assessment infrastructure.

A priority should be given to inclusion of sectors that cover all the other party’s regulatory requirements for key products. For example a machine being exported to the EU may need to conform to regulations in the machinery, electromagnetic compatibility, electrical safety and pressure equipment sectors.

There is a tendency for MRA parties to look for reciprocal benefits in each sector. However using a “balance of benefits” approach it is important to also consider sectors where the benefits appear to flow to only one of the parties. This is particularly relevant where one of the parties has a less regulated approach, either across the board or in specific sectors.

Trends in both the South African and international regulatory environment also need to be considered. For example in the EU there is now a very light pre market conformity assessment

regime for telecommunications products, but there are likely to be additional regulatory requirements for assessment of energy efficiency of products.

#### **i) Negotiation of MRAs**

Experience to date shows that MRA negotiations, particularly because they are at treaty level, place heavy demands in terms of time and resources on the participants. Usually those with a significant involvement will include the government department with carriage of the negotiations, the relevant regulators and the national accreditation bodies. These costs need to be taken into account and budgeted.

MRAs are a newly developed and still evolving trade facilitation tool. Successful and not so successful examples should be monitored by South Africa and the lessons learnt taken into account at the negotiating stage.

#### **j) Rules of Origin**

An example of an issue to be considered during preparation for MRA negotiations is whether agreements should only cover goods originating, i.e. manufactured, in the territories of the parties. Varied approaches have been taken to this issue. In the EU-USA/Canada MRAs there are no origin provisions, but there are in the EU-Australia/New Zealand MRAs. Removal of the origins provisions from the latter agreements is now under consideration.

MRAs with origin provisions are focussed solely on bilateral trade facilitation – without them there is a broader trade facilitation objective. Origin provisions are a complication. Where they are considered necessary they are best placed in annexes to the treaty to make future amendment easier. This approach also allows origin provisions to be negotiated into some sectors, but left out of others.

#### **k) Implementation and Maintenance of MRAs**

An MRA strategy must include implementation and maintenance plans. Costs can again be substantial and need to be included in cost/benefit analyses and budgets. There will need to be publicity and educational events and material. In particular there will need to be overall explanatory documents and guidance for local industry and conformity assessment bodies on the other party's regulatory requirements. These documents will need to be maintained up to date.

It is critical that the MRA parties have both the capacity and the political will to implement and maintain MRA treaties. Otherwise the concept will be discredited and extension of the network of MRAs made difficult.

### **9.3.3 Conclusion**

As MRAs have the potential to provide considerable trade facilitation benefits, South Africa should continue to develop and pursue MRA discussions and negotiations.

**Recommendation 12: An overarching government strategy for entry into MRAs in the regulated sector be developed, taking into account the issues raised in this Review, to ensure that only MRAs that have the potential to become cost effective are negotiated.**

Because of the heavy resource demands of MRAs, both in their negotiation and their ongoing maintenance and extension, such negotiations should be entered into on a very selective basis. As part of the MRA strategy there needs to be an early analysis of South African regulatory requirements which involve conformity assessment. This is consistent with the Review's recommendation for establishment of an Office of Regulatory Reform. Similarly there needs to be an analysis of the regulatory requirements of South Africa's major trading partners to identify conformity assessment requirements which are trade barriers. The sectors highlighted previously are likely candidate areas for technical barriers in many of South Africa's markets, but industry's experiences of specific trade barriers needs to be determined on a sector by sector basis.

Without such information it is not possible to make the initial determination of the potential MRA benefits for a sector. Further, if negotiations are commenced, they will be delayed by the lack of detailed regulatory information.

For MRAs to be successful it is considered crucial for both parties to have a well developed technical infrastructure in the relevant product sectors. It would be desirable for the conformity assessments in each country to be able to be undertaken by accredited bodies and for there to be mutual recognition agreements between the national accreditation bodies. (Note: If this is the case and the respective regulators accept conformity assessments undertaken by their accreditation bodies' mutual recognition partners, there may not be a great need for an inter governmental MRA. The added advantage of an MRA is the certainty it adds to the situation because it is binding on the relevant regulators).

In undertaking MRA negotiations, South Africa would benefit from a higher degree of coordination of SQAM institutions and from having one Government department deal with the SQAM institutions on behalf of all government departments. In summary, government to government MRAs on conformity assessments are one of the broad variety of measures being applied internationally for trade facilitation purposes. A systematic approach is needed both to the identification of situations in which an MRA is an appropriate measure, and then to the undertaking of preliminary discussions, negotiations, implementation and finally maintenance of MRAs.