

COMMUNICATION FROM SWITZERLAND

Temporary Admission of Installers and Maintainers under the GATS: A Case for
Mode 4 Commitments

The following communication, dated 30 March 2007, from the delegation of Switzerland, is being circulated to the Members of the Council for Trade in Services.

**I. RATIONALE FOR EXPEDITED PROCEDURES UNDER MODE 4 FOR
“INSTALLERS AND MAINTAINERS”**

1. The purpose of the present communication is to enhance the understanding of the rationale and scope for undertaking horizontal commitments for the category of persons of "Installers and Maintainers" under mode 4.
2. High-tech machinery is one of Switzerland's major export items representing close to one quarter of total exports in 2004. Machines and industry equipment are getting more and more sophisticated including elements of various technologies such as hydraulics, electronics, laser-techniques, etc. each of them calling for highly specialised knowledge. Hence, the installation of machines relies nowadays on interdisciplinary teams to master complex and interrelated problems. It is not possible anymore for one single person to cope with all these fields of technological specialisation. Moreover, time is money: not only the ability to deliver just-in-time is an important factor to secure contracts, but wages and the machine utilisation rate are in many areas of production among the major cost-factors. Therefore, manufacturers (industrial plants) strive to take any action that allows them to minimise stand-still times. Production around the clock, seven days a week is not an exception but the rule.
3. When industry buys these high-tech machines, it is currently not sufficient to convince the buyer of the performance of the machine itself; in addition, various services become an indispensable integral part of the deal. These are: installation and maintenance of the machine by the builder, repair within short notice as well as continuous improvement of the functioning. Given the high cost implications of machine breakdowns, manufacturers try to secure risk sharing with the machine builder. This implies that as long as the builder repairs the machine within a contractually fixed time period – sometimes less than 24 hours – the manufacturer bears the costs of forgone production, but once this time is outrun, the builder is subject to penalties.
4. Entry regimes for installers and maintainers of machinery and industrial equipment is liberal in many countries. Many national regimes provide for facilitated entry conditions, often under a special category of persons.

5. The Secretariat's note JOB(03)/195 recognises "Installers and Maintainers" as a category of its own. From the discussions carried out in the Council for Trade in Services, Switzerland is aware that some Members have different views on whether "Installers and Maintainers" require a category of their own.

II. MEETING INDUSTRY NEEDS BY CREATING A (SUB-)CATEGORY OF PERSONS FOR "INSTALLERS AND MAINTAINERS" UNDER MODE 4

6. With its request for "Installers and Maintainers", Switzerland would like to ensure that above mentioned industry requirements can be met. This is why it has thoroughly worked on the definition and scope of this category of persons, keeping it deliberately narrow in order to allow a broadest possible acceptance of taking commitments in this area taking into account the economic necessities as well as the immigration policies' view points. The proposed scheduling in paragraph 8 reflects a minimal common ground that can, of course, be expanded or fine-tuned to respond to individual Members' specificities. It shall also be highlighted that we are focusing on the provision of a service under mode 4 that is de-linked from mode 3.

7. In order to ensure that the industry requirement for *installers and maintainers* is met, Switzerland has come to the conclusion that *this (sub-)category of persons needs a definition and conditions of its own.*

8. Another rationale for having a (sub-)category for "Installers and Maintainers" of its own is that there is not a perfect correspondence between installation and maintenance of machinery or industrial equipment and any single CPC category. This is even more so if after-sales services and training of technical staff are included. Therefore, securing appropriate Mode 4 specific commitments within specific sectoral commitments by Members does not seem to be a promising avenue to address the issue. Moreover, conditions of admissions usually found for other categories of persons are not sufficiently straightforward to guarantee entry within the required window of time. To overcome these hurdles, Switzerland proposes to undertake a horizontal commitment with a precise and limited scope that allows installers and maintainers to access the market even in cases where no specific commitments have been undertaken in the relevant services sectors.

III. PROPOSED HORIZONTAL COMMITMENT FOR THE (SUB-)CATEGORIES OF "INSTALLERS AND MAINTAINERS"

9. Switzerland proposes to Members to undertake a commitment under the Mode 4 part of the schedule along the following lines :

"Qualified specialists supplying installation or maintenance services for machinery or industrial equipment. The supply of that service has to occur on a fee or contractual basis (installation/ maintenance contract) between the builder of the machinery or equipment and the owner of that machinery or equipment, both of them being juridical persons. Temporary entry is granted for periods of stay of no more than 90 days."

Such commitment should be undertaken under its own category or, alternatively, under a sub-category of a broader category, in order to allow for appropriate conditions of temporary entry and stay.

10. The *main elements of definition* are as follows:

- the buyer (usually the manufacturer) and the seller (builder) are both juridical persons
- the supply of the service occurs on a fee or contractual basis, and
- the service provided (and the contract) are linked to an identifiable piece of machinery or industrial equipment.

11. The **main thrust of the conditions** should be that **entry should not be made conditional on fulfilling specific qualification requirements, prior employment requirements or experience**. The builder should be in a position to decide upon the composition of the team on a very short notice.

12. Switzerland has made its own offer to introduce the category of "Installers and Maintainers" under its horizontal commitments under mode 4 (see Annex). For the sake of transparency, we provide Members with a list of services sectors containing either the word "installation", "maintenance" or "repair" that are not within the scope of our offer: construction work (CPC 51); construction (CPC 52); sale, maintenance and repair services of motor vehicles and motorcycles (CPC 61); retail trade services; repair services of personal and household goods (CPC 63); as well as architecture, engineering and other technical services (CPC 867). However, it is not our intention to suggest that other Members could not opt for a much broader scope in their offers (e.g. general after sales/ after lease services).

IV. PARTICULAR SITUATIONS OF BUYER-SELLER RELATIONSHIPS

13. Builder/owner relationship is not always straightforward. Three situations may occur:

- (a) The physical transfer of the machine may not necessarily coincide with the transfer of ownership. Often, indeed, the installation of the machine is taking place at a moment where the ownership is still with the builder. In many cases, the moment of transfer is fixed in the contract between the buyer and the seller.
- (b) Especially in developing countries enterprises actually do not fully disburse their purchase but use financial leasing services from their banks. In this case, the owner would probably be the bank.
- (c) We have highlighted the importance for installers and maintainers to rapidly intervene on site. Export of machinery and industrial equipment is a global business and it may therefore be that the builder is established far away from the site. In this case, the builder will probably not send his own personnel for the installation of the machinery or industrial equipment but will have to rely – especially for repair – on other arrangements. These may be specialists of a regional branch, joint-venture or a separate company having close ties with the builder materialised through the personnel being trained by the builder and a long-term contract. It may also be an agent on representation.

At this juncture, it is worth recalling, that the two main conditions mentioned in the proposal are 1) the involved parties must be juridical persons, and 2) the service supply (e.g. repair) must be based on the contract related to the sale of machine. It is in the light of these two criteria that situations such as a) to c) above are addressed.

V. CONCLUSION

14. With this contribution, Switzerland strives to demonstrate that in order to respond to business needs, installers and maintainers need conditions that allow them to be rapidly on the spot, and that such conditions indeed are being granted under standard immigration practices. This requirement, strongly suggests a definition and conditions of their own, whether this be under a separate own category or with a separate heading under any other broader mode 4 category.

15. To conclude, undertaking commitments for "Installers and Maintainers" as proposed by Switzerland should be a priority for Members.
