

1 February 2007, animals and animal products originating in third countries may enter Switzerland with health certificates granted on the basis of the EC regime, including its relevant legislation.¹⁰⁰

96. The Swiss enquiry point for SPS matters is the Swiss Association for Standardization (SNV). The national notification authority is the SECO. Switzerland is a member of the World Organisation for Animal Health (OIE), the International Plant Protection Convention, and CODEX Alimentarius. Switzerland is also member of the EPPO. Liechtenstein became a member of the OIE on 1 January 2008.

97. Switzerland systematically notifies to the WTO all proposed changes in domestic sanitary and phytosanitary measures that may have an impact on trade. During the period under Review, it has made 34 notifications to the Committee on Sanitary and Phytosanitary Measures.¹⁰¹ In August 2006, Switzerland notified to the WTO that as of July 2007, it would start harmonizing its sanitary regulations on imports, including transit, with those of the EC. Since then, it has harmonized its sanitary restrictions on the transit, import, and export of live birds with those of the EC.¹⁰²

98. Under the Customs Treaty between Liechtenstein and Switzerland, Liechtenstein applies the Swiss SPS regime.

(xi) Government procurement

✓ 99. Switzerland and Liechtenstein are signatories to the WTO Plurilateral Government Procurement Agreement (GPA), which remains the main framework regulating purchases by their central governments, subterritorial (e.g. cantonal and municipal) entities, and utilities.

✓ 100. Switzerland's commitments under international agreements on public procurement have been transposed into its national law at the federal level (central administration), and at the sub-federal level (cantonal and municipal). At the federal level, the GPA was integrated into the Swiss federal legislation through the 1994 Federal Law on government procurement (as at 1 January 2008) and its 1995 Ordinance, which sets detailed rules for procurement below and above GPA thresholds. At the sub-federal levels, the 26 Swiss cantons operate under the 1994 Inter-cantonal Concordat (agreement revised in 2001) on government procurement, and its executive directives.¹⁰³ Switzerland's commitments under the GPA are not extended to procurement by the federal railways and the Swiss Post. Exclusions from coverage, on security grounds are also possible for procurement by state-owned enterprises. Switzerland made reservations on the application of the GPA to other signatories who had not extended comparable and effective access in certain activities to Swiss firms.¹⁰⁴ In the ongoing negotiations on public procurement, in 2006 Switzerland made an initial offer, which would further liberalize its government procurement regime.

¹⁰⁰ WTO document G/SPS/N/CHE/52, 17 August 2006.

¹⁰¹ WTO documents G/SPS/N/CHE/36/Rev.2-70, July 2004-October 2007.

¹⁰² WTO documents G/SPS/N/CHE/52, 17 August 2006 and G/SPS/N/CHE/52/Add.1, 2 October 2006.

¹⁰³ *Accord inter-cantonal sur les marchés publics* (AIMP), 25 November 1994/15 March 2001. The Concordat was revised in 2001 and its revision entered into force on 1 January 2002.

✓ ¹⁰⁴ The reservations apply to, *inter alia*: Canada (regional bodies, entities in the water, electricity, local transport, airports and ports subsectors, as well as certain services subsectors); the United States (communal bodies and water, local transport, airports and ports entities, as well as certain services subsectors and challenge procedures); Japan (communal bodies, electricity and local transport entities, as well as challenge procedures); the Republic of Korea (communal bodies, airports and local transport, and challenge procedures); Israel (communal bodies, local transport, certain services subsectors, and challenge procedures); and Singapore (communal bodies, water, and electricity entities). For details, see WTO (2004).

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101. According to the authorities, the cantonal and the federal laws are harmonized to a large extent. The Confederation-Cantons Commission on Government Procurement (Commission des marchés publics Confédération-Cantons, CMCC) is responsible for coordinating the implementation of Switzerland's international commitments at the federal and sub-federal levels, and of ensuring that they are respected and implemented.¹⁰⁵ In addition, the 1995 Federal Law on the internal market provides for non-discrimination in public procurement at cantonal and local levels.¹⁰⁶ The procurement regime at the federal level is under revision with a view to implementing the provisions of the 2006 revised GPA and to meeting the four main objectives of: modernization (e.g. through e-procurement), "clarification", increased "flexibility", and further harmonization of the federal and cantonal legislation.

✓ 102. The Swiss legislation covers purchases of goods and services and projects related to construction and civil engineering. The law does not apply to, *inter alia*, the purchase of weapons and defence projects.¹⁰⁷ The law provides exclusions for postal services, which are not covered by the GPA¹⁰⁸; and for railway services that are not covered by the Bilateral Agreement on Public Procurement with the EC.¹⁰⁹ Nonetheless, all these purchases are regulated by Section 3 of the Ordinance on government procurement of 11 December 1995.¹¹⁰ The Swiss legislation provides for, *inter alia*, periodic adjustments to definitions and threshold values to the relevant GPA provisions.

103. Special provisions (including on thresholds) are stipulated in the law for public and private enterprises that have a dominant position in the Swiss market. The Federal Law on government procurement also covers certain activities carried out by public entities under control or influence of the Swiss state (i.e. organizations in which the Federal Government holds the majority of shares or where more than half of the members of the management or supervisory boards are representatives of the Federal Government), or by private entities with special or exclusive rights to provide a service throughout the Swiss territory. These activities originally included the provision of public telecommunication services, the construction or operation of railway facilities by CFF, and generation, transmission, and distribution of electricity.¹¹¹ If conditions are met for free access by all suppliers, and for international competition in, these markets (or segments thereof) are met, the Federal Department for the Environment, Transport, Energy, and Communications (DETEC) may partially or totally exempt the industry or sector from the Federal Law on government procurement.¹¹² These exemptions are based on recommendations made by the Federal Competition Commission.¹¹³

104. For contracts below the thresholds, procuring entities may use limited tendering, tendering by invitation (of three potential suppliers), open tendering, or selective tendering.¹¹⁴ For contracts reaching the international agreed thresholds, the procuring entity must use open, selective or limited tendering.¹¹⁵ Contracts must be awarded to the supplier that has presented the most economically advantageous offer, closest to the criteria specified in the tender documentation. Neither the law nor the ordinance provide for preferential treatment for Swiss suppliers. Complaints against the federal

¹⁰⁵ The CMCC comprises an equal number of representatives from the Confederation and from the cantons.

¹⁰⁶ RS 943.02.

¹⁰⁷ Article 3 of RS 172.056.1.

¹⁰⁸ Article 2 of RS 172.056.1.

¹⁰⁹ Article 2 of RS 172.056.11.

¹¹⁰ Articles 32-36 of RS 172.056.11.

¹¹¹ Article 2a of RS 172.056.11.

¹¹² Article 2b of RS 172.056.11.

¹¹³ RS 172.056.111.

¹¹⁴ Article 36 of RS 172.056.11.

¹¹⁵ RS 172.056.1.

entities, related to public procurement, may be lodged with the Federal Administrative Court (TFA), which replaced the Federal Commission of Appeal (CRM) in the field of public procurement on 1 January 2007. The TFA's decisions may be appealed to the Federal Supreme Court (FSC). At cantonal level, administrative tribunals are competent to deal with complaints arising from tendering procedures, which can be appealed to the FSC.

105. In 1999, Switzerland concluded a bilateral agreement on government procurement with the EC, which has been in force since June 2002. This agreement filled the gap between the scopes of the GPA and the EEA. It provides for extension of the GPA to purchases by communes, the railways, telecommunications utilities, and entities active in the field of energy other than electricity; and to private entities operating on the basis of special or exclusive rights in connection with drinking water, electricity, airports, ports, and urban and cable transport.¹¹⁶ On the grounds of the criteria listed above, the telecommunication subsector was exempted from the scope of the agreement, by the Swiss authorities upon its entry into force, and by the EC Commission (for most Members) in May 1999. In 2007, transportation of goods by rail was also exempted. A best-endeavour clause encourages purchasers not to discriminate against suppliers from other parties to the agreement in procurement below the relevant threshold values.

✓ 106. The free trade agreements with Chile and Mexico also contain market-access commitments in regard to public procurement. Under the EFTA, agreements on public procurement are being negotiated with Colombia and Peru, and with the countries of the Gulf Cooperation Council (GCC).

✓ 107. In Switzerland, total public spending at all levels of government on goods, services, and construction amounted to about Sw F 34 billion in 2007, representing 25% of total public spending. The total was shared between the Confederation (19%), cantons (38%), and communes (43%).

✓ 108. In Liechtenstein, in addition to the GPA, public procurement is governed by the relevant EEA rules and the EFTA Convention (e.g. the threshold values are those set by the EEA). The Department of Public Procurement, under the Office of the Prime Minister, is responsible for procurement. In 2005, the 1998 Act on Public Procurement was separated into the 2005 Act on the Procurement of Utilities (i.e. public works contracts, and supply and services contracts in water, energy, transport, and telecommunications), and the 2005 Act on Public Procurement (for all the other public purchases). These laws apply to public purchases, and to projects jointly undertaken by public and private entities when the financial contribution of the public contracting entity exceeds 50%. According to the 2005 Public Procurement Act, open tenders are the rule to assign contracts. Contracts above the threshold are awarded according to international rules; they are announced in the EC electronic government procurement system.

✓ 109. Selective tenders are used for architectural services. For contracts below the threshold, public utilities are usually purchased through tenders by invitation; otherwise, relevant international rules apply. Under the two laws, contracts are awarded according to the most economically advantageous tender or to the tender with the lowest price. Additional criteria, such as quality, qualifications of personnel, and training, may also be taken into account. There are no *de jure* preferences for local suppliers. A joint declaration by Liechtenstein and certain neighbouring Swiss cantons enables suppliers from the latter to participate in tenders (on a reciprocal basis) for purchases below the threshold values. Complaints related to public purchases may be lodged with the Government, the Administrative Court, or with the EFTA Surveillance Authority if EEA provisions are concerned. In 2006, public procurement by the Liechtenstein Government, the communities, and companies with

¹¹⁶ Federal Department of Economic Affairs online information, "Public procurement market". Viewed at: <http://www.europa.admin.ch/themen/00500/00506/00521/index.html?lang=en> [20 March 2008].

exclusive or special rights (i.e. the public transport company, water distribution company, and the post) amounted to €74 million, up from €62 million in 2004.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Export procedures

110. Similar registration and documentation requirements apply to importers and exporters in Switzerland and Liechtenstein. An export declaration is required for statistical purposes (regardless of the type of product and its destination). Goods must be exported within one day of submission of the customs declaration. Goods that have been delivered to a duty-free or customs warehouse must be exported within six months of the exporter's submission of the customs declaration.

(ii) Export prohibitions, restrictions, and licensing

111. Switzerland and Liechtenstein continue to maintain export controls on certain products on grounds of safety, security, and environment, and to ensure compliance with international obligations under treaties and conventions to which they are signatories (e.g. the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, CITES¹¹⁷, the Convention on Chemical Weapons, the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade (PIC-Convention), the Stockholm convention on Persistent Organic Pollutants (POPs-Convention), the Montreal Protocol on substances that deplete the ozone layer, and the Treaty on Nuclear Non-Proliferation).

112. As in the case of imports, export prohibitions and restraints may be put in place in accordance with economic sanctions stipulated by the UN Security Council. In Switzerland, the sanctions are implemented by ordinances, which are based on the Federal Law on the application of international sanctions of 2003 (RS 946.231).¹¹⁸ Switzerland may, on a case-by-case basis, also implement economic sanctions applied by the EC.¹¹⁹ Liechtenstein implements UN Security Council Resolutions and aligns itself with the EC Common Positions on Foreign Security (CFSP) in regard to export embargoes.¹²⁰

113. The Federal Law on external economic measures allows Switzerland to keep exports of goods and services under surveillance, to impose special export authorization requirements, to limit or prohibit exports, if trade partners take any measures or if there are any extraordinary events in a foreign country that affect the Swiss economy.¹²¹ A decision to take any such measures is made by the Federal Council, based on petitions by the Federal Department of Economy. Prior to taking a decision, harmful effects of events on the Swiss national economy must be identified by the relevant

¹¹⁷ The Federal Veterinary Office issues CITES permits for (re-)exports of species that fall under the Convention, if the applicant provides evidence for their legal acquisition (according to CITES). The species that require CITES permits are listed in the CITES Appendices I – III. Viewed at: http://www.admin.ch/ch/d/st/c0_453.html.

¹¹⁸ During the review period, new sanctions were adopted by the Swiss Federal Council, based on UN Security Council resolutions, against: Côte-d'Ivoire (2005); Sudan (2005); the Democratic Republic of the Congo (2005); certain persons in connection with the killing of former Lebanese Prime Minister Rafiq Hariri (2005); the Democratic People's Republic of Korea (2006); Lebanon (2006); and Iran (2007). Based on EC decisions, the Federal Council has adopted new sanctions against Uzbekistan and Belarus (both in 2006).

¹¹⁹ For an overview of all ordinances related to sanctions currently in force, see SECO online information, "Sanctions/Embargo: Sanctions de la Suisse". Viewed at: <http://www.seco.admin.ch/themen/00513/00620/00622/index.html?lang=fr> [4 March 2008].

¹²⁰ Information provided by the authorities.

¹²¹ RS 946.201.

of the legally prescribed academic qualifications, practical experience of at least three years under a licensed auditor or auditing company, and success in the auditors' examinations. The professional domicile must be in Liechtenstein. Auditing activities may also be undertaken by legal entities (auditing companies (*Revisionsgesellschaften*)) with their head office in Liechtenstein. In order to be granted a licence, the majority of the capital and of voting rights must be held by Liechtenstein-licensed auditors or audit companies, the majority of the members of the administrative body of the company must be licensed auditors, and management must include a full-time managing director who is a Liechtenstein-licensed auditor.

191. EEA and Swiss nationals who are licensed for auditing activities in their home state enjoy freedom of establishment in Liechtenstein. Licence requirements for these categories of foreign auditors are: academic qualifications equivalent to those requested from domestic auditors; success in special qualification examinations for foreigners; liability insurance; and professional domicile in Liechtenstein.

192. EEA citizens holding an auditing licence from their home country may exercise auditing activities in Liechtenstein temporarily. Licence requirements are: academic qualifications equivalent to those required of domestic auditors, success in special qualification examination for foreigners, membership in the relevant professional association in the home country, and liability insurance.¹¹⁶ Non-EEA auditors wishing to undertake auditing in Liechtenstein temporarily may be approved by the FMA under the conditions applicable to EEA auditors. However, unlike for EEA auditors, there is no right to approval.¹¹⁷

(c) Engineering and architectural services

Switzerland

193. Switzerland's market for engineering and architectural services is highly fragmented; the types of business range from independent specialists to large offices and companies. The main professional societies are the Swiss Society of Engineers and Architects, and the Technical Union of Switzerland (UTS/STV). Generally Switzerland has not imposed any limitations on market access or national treatment for the architectural and engineering professions.

194. Professional names such as "architect", "engineer" or "technician" are not legally protected in most cantons, and no licence is required for the exercise of those professions. Thus, anyone, Swiss or foreign, can practice these professions.¹¹⁸ On the other hand, six cantons (Fribourg, Geneva, Lucerne, Neuchatel, Vaud, and Ticino) regulate the professions of architect and civil engineer by requiring a professional qualification. Membership in a professional association is generally not necessary. Registration in the Swiss Register of Engineers, Architects, and Technicians (REG) typically requires a diploma plus at least three years of professional experience (two years for technical school graduates). These registers are open to foreign professionals if they have been exercising their profession generally for two to three years in Switzerland or abroad.

Liechtenstein

195. As at August 2008, 211 architects and 114 engineers were registered in Liechtenstein, working as independent specialists or in architectural and engineering offices and companies. The

¹¹⁶ LLG 1993, No. 44, Article 42, paragraph 2.

¹¹⁷ LLG 1993, No. 44, Article 41, paragraph 2.

¹¹⁸ A country-wide exception applies to official land measurements, which may be carried out only by licensed surveyors (*ingénieur-géomètre breveté*). For further details, see WTO (2004).

main professional society in Liechtenstein is the Liechtensteinische Ingenieur und Architektenvereinigung. "Architect", "engineer" and "technician" are legally protected professional names. Requirements to obtain a licence to work as an engineer or architect are, in addition to a diploma, at least three years of professional experience, and an office in which to carry out the profession. Citizens from non-EEA-member countries need twelve years' prior residence in Liechtenstein. Permanent domicile in Liechtenstein is required for non-EEA citizens.