

Frequently Asked Questions: After Sales Service Under NAFTA

What Does NAFTA Do

The NAFTA seeks to liberalize trade between the United States, Mexico, and Canada by gradually abolishing tariffs and other trade barriers. It is recognized that in order for trade to expand, individuals must be permitted access to each other's country to sell, provide goods or services, or to trade and invest.

Chapter 16 of the NAFTA, entitled *Temporary Entry for Business Persons*, provides the mechanisms to achieve that objective. Chapter 16 does not replace, but adds to the existing provisions in the *Immigration Regulations*.

Business Persons included in Chapter 16 of the NAFTA are grouped under four categories:

- Business Visitors
- Professionals
- Intra-Company Transferees
- Traders and Investors

What Are Business Visitors?

Business Visitors are persons who engage in international business activities related to research and design, growth, manufacture and production, marketing, sales, distribution, after sales services, and general service. These activities are organized to reflect the components of a business cycle and are fully described in *Appendix 1603.A.1* to Chapter 16 of the NAFTA. This *Appendix* is available on the Citizenship and Immigration Web Site: www.cic.gc.ca. If the proposed activity is not included in *Appendix 1603.A.1*, it may be included in other paragraphs of *Immigration Regulation 19(1)*. The *Appendix* is not intended to be a complete listing of all Business Visitor activities, but illustrates the types of activities covered. A Business Visitor may be admitted to perform activities that are not specified in the *Appendix*, as long as all requirements for Business Visitor entry, including the source of remuneration, are met.

What Requirements Apply to After Sales Service?

The *person* seeking entry as a Business Visitor must be a *citizen* (not a permanent resident) of Mexico or the United States. In order to facilitate entry the applicant should have proof of their citizenship in the form of a birth certificate, passport, or certificate of naturalization.

The *equipment, machinery, or computer software* must be commercial or industrial and must have been purchased from an enterprise outside of Canada. In other words, a **sale** must have taken place. Equipment leased or rented is not covered by the after sales service provision in the NAFTA. Also, Canadian-made equipment or machinery does not qualify under this provision.

Copies of the original sales agreement, warranty or service agreement, including any extensions, must be provided to the Immigration Officer at the Port of Entry so that the purpose of entry can be clearly supported.

What After Sales Activities Can a Business Visitor Do

The purpose of entry must be to install, repair, service, supervise the forgoing, or to train workers to perform services. All activities must be performed pursuant to a warranty or other service contract entered into as an integral part of the sale of equipment or machinery, or during the life of any warranty or service agreement. Installation includes only the setting-up and testing of the commercial or industrial equipment or machinery. It does not include the operation of such equipment in a productive capacity.

The work being performed must require specialized knowledge essential to the seller's contractual obligation. Specialized knowledge is considered to be a high degree of knowledge that can only be imparted to an already skilled person through extensive training. This provision excludes hands-on building and construction work.

Regardless of the wording in any sales, warranty, or service agreements that require company personnel to perform the installation or servicing, entry shall not be granted when those personnel will be performing hands-on building and construction work.

What Constitutes Hands-On Building and Construction Work

Hands-on building and construction work is not considered to require specialized knowledge.

This includes installing, maintaining, and repairing:

- utility services;
- any part of the fabric of a building or structure, and;
- machinery, equipment or structures within a building.

For clarification, it includes activities normally performed by labourers, millwrights, insulators, bricklayers, carpenters, joiners, electricians, operating engineers, teamsters, industrial painters, plumbers, pipe fitters, roofers, and masons.

Additional activities excluded from the after sales service provisions in the NAFTA includes work involving assembly lines, conveyor systems, heating and cooling systems, and the dismantling or demolition of commercial or industrial equipment.

Generally, the entry of foreign trades persons in the building and construction industry is subject to an assessment of the availability of domestic labour and therefore requires Human Resources Development Canada (HRDC) confirmation. As part of the confirmation process, Human Resources Centers (HRCs) will consult with organized labour prior to making a determination.

Persons may be granted entry to *train* or to *supervise* workers performing installation, repair, or maintenance work, including those activities that are considered to be hands-on building and construction work.

What Documentation Is Required at the Port of Entry?

In order to facilitate entry, Business Visitors should have proof of their citizenship in the form of a birth certificate, passport, or certificate of naturalization.

It would be helpful for Business Visitors to have documentation to support the purpose of entry relating to one of the business activities listed in Appendix 1603.A.1. It would also be helpful to have evidence in the form of a letter from the American or Mexican employer indicating that the business activity is international in scope, that the person is not intending to enter the Canadian labour market, that the primary source of remuneration is outside Canada, that the person's primary place of business remains outside Canada, and that the profits of the business are accumulated primarily outside Canada.

Business Visitors who are providing after sales service are required to provide copies of the original sales agreement, warranty, or service agreement, including any extensions, which clearly support the purpose of entry.

Business Visitors, including those engaged in after sales service activities, are not exempt from compliance with other Immigration requirements relating to temporary entry. These include the provisions of the Immigration legislation relating to identity and compliance with health, criminality, and safety and security to Canada issues.

What Documentation Will Be Issued to After Sales Service Personnel?

Business Visitors can carry out their activities without the need for an work permit since they are not entering the Canadian labour market. The duration of stay granted to after sales service personnel is normally related to the length of time required to fulfill the service obligation related to a specific sales, warranty or service contract. Persons granted entry to Canada for more than two days under the after sales service provision will automatically be issued a document by an Immigration Officer called a *Visitor's Record*. This document is a useful mechanism for providing information to the person seeking entry regarding the activities that are allowed in Canada. For example, a normal condition of admission on a Visitor's Record is a date indicating the length of time a person may remain in Canada. It may also contain an endorsement that no hands-on work is allowed. There is no cost associated with the issuance of a Visitor's Record.

What Conditions Apply to Third Party Service Providers

Third party service occurs when a seller located in the United States or Mexico or in another country contracts the after sales servicing to another firm. The third

party must be established in the United States or Mexico. Clear wording must exist in the sales agreement specifying that a third party will perform the installation, warranty, or service work. All other provisions relating to after sales service continue to apply.

What Provisions Exist for After Sales Service Personnel Outside of NAFTA?

1. Canada Chile Free Trade Agreement:

Similar provisions relating to after sales service exist in the Canada Chile Free Trade Agreement (CCFTA). Like the NAFTA, the CCFTA facilitates temporary entry of citizens of Chile into Canada for business purposes. In the case of Business Visitors, it removes the need for a work permit.

The agreement allows each party to impose, or continue to impose, a visa on the citizens of the other party. At this time, citizens of Chile require visas in order to travel to Canada and they are required to obtain these visas prior to seeking entry to Canada.

2. Immigration Regulation 20(5)(e)(i)

Immigration Regulation 20(5)(e)(i) also provides for the entry of persons to provide after sales service. This Regulation allows for the entry of persons who will be setting up and testing commercial or industrial equipment, including computer software, persons who will be providing familiarization sessions to potential users, and supervisors of installers. It also allows for the entry of persons engaged in the repair or service of specialized equipment which has been purchased or leased outside of Canada. The service being performed must be pursuant to the original sales agreement, lease agreement, warranty, or service contract, or extensions of these contracts. As in the NAFTA, hands-on building and construction work is not covered by this provision.

This Regulation differs from the NAFTA in two ways. It allows for after sales service in lease situations. It also requires an Immigration Officer to issue a work permit to persons engaging in these activities.

Where Can I Get Further Information

Citizenship and Immigration
Canada Call Centre:
(416) 973-4444 Metro Toronto
1-888-242-2100 Outside
Toronto
Internet: www.cic.gc.ca

Human Resources Development
Canada
(416) 954-3111
Internet: www.hrdc-drhc.gc.ca

This is not a legal document. For precise legal information, consult Chapter 16 of the North American Free Trade Agreement, the Immigration Act, and the Immigration Regulations, 1978.