
CHAPTER 9

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 116: General Principles

Further to Article 117 (General Obligations), this Chapter reflects the preferential trading relationship between the Parties, the mutual objective to facilitate temporary entry for business persons on a reciprocal basis and in accordance with Annex 7 (Commitments for Temporary Entry for Business Persons), the need to establish transparent criteria and procedures for temporary entry and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 117: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 116 (General Principles) and, in particular, shall expeditiously apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.
2. Nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement.

Article 118: Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who comply with existing immigration measures applicable to temporary entry such as those relating to public health and safety and national security, in accordance with this Chapter and the terms and conditions of Annex 7 (Commitments for Temporary Entry for Business Persons).
2. Each Party shall limit any fees for processing applications for temporary entry of business persons so as to not unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

Article 119: Provision of Information

1. Further to Article 167 (Transparency) of the Chapter 13 (Transparency), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:

- (a) provide to the other Party relevant materials that will enable it to become acquainted with its measures relating to this Chapter; and
- (b) no later than 6 months after the date of entry into force of this Agreement, make available explanatory material regarding the requirements for temporary entry under this Chapter in such a manner that will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect and maintain, and, on request, make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation.

Article 120: Working Group

1. The Parties hereby establish a Working Group on Temporary Entry for Business Persons, which shall meet at least once every 3 years or on request of the Free Trade Commission to consider any matter arising under this Chapter.

2. The Working Group's functions shall include:

- (a) to review the implementation and operation of this Chapter;
- (b) to consider the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
- (c) the identification of measures that affect the temporary entry of business persons under this Chapter; and
- (d) the observance of the issues established under Article 121 (Cooperation).

Article 121: Cooperation

Taking into account the principles set out in Article 116 (General Principles), the Parties shall:

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- (a) share information and experiences on regulations and implementation of programs and technology in the framework of migratory issues, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programs and security in travel documents; and
 - (b) endeavor to coordinate actively in multilateral forums, in order to promote the facilitation of temporary entry of business persons.

Article 122: Dispute Settlement

1. A Party may not initiate proceedings under the general dispute settlement provisions of this Agreement regarding a refusal to grant temporary entry under this Chapter unless:

- (a) the matter involves a pattern of practice; and
- (b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 123: Relation to Other Chapters

1. No provision of this Agreement shall be interpreted to impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter, and Chapters 1 (Initial Provisions), Chapter 8 (Trade in Services), Chapter 13 (Transparency), Chapter 14 (Administration of the Agreement), Chapter 15 (Dispute Settlement), Chapter 16 (Exceptions) and Chapter 17 (Final Provisions).

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Article 124: Transparency

1. Further to Chapter 13 (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding laws and regulations relating to the temporary entry of business persons.

2. Each Party shall endeavor to, within a reasonable period that should not exceed 30 days after an application requesting temporary entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application.

Article 125: Definitions

For purposes of this Chapter:

business person means a national of a Party who is engaged in trade in goods, trade in services or investment activities;

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence;

business visitor means a natural person of a Party who is:

- (i) a service seller who is a sales representative of a service supplier of that Party and is seeking temporary entry to the other Party for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly;
- (ii) an investor of a Party or a duly authorized representative of an investor of a Party, who is seeking temporary entry into the territory of the other Party to establish, develop, administer, expand, monitor, or dispose an investment of that investor; or
- (iii) a goods seller who is seeking temporary entry to the territory of the other Party to negotiate the sale of goods where such negotiations do not involve direct sales to the general public;

intra-corporate transferee means a manager, an executive, or a specialist, who is a senior employee of a service supplier of a Party with a commercial presence, as defined in Chapter 8 (Trade in Services), in the territory of the other Party;

executive means a natural person within an organization who primarily directs the management of the organization, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors and/or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment;

immigration measure means any law, regulation or procedure affecting the entry and sojourn of foreign nationals;

manager means a natural person within an organization who primarily directs the organization or a department or sub-division of the organization, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization), and exercises discretionary authority over day-to-day operations; and

specialist means an employee within an organization who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organization's service, research equipment, techniques or management.