

CHAPTER 14

MOVEMENT OF BUSINESS PERSONS

Article 1 Objectives

The objectives of this Chapter are to:

- (a) facilitate the movement of business persons of either Party engaged in the conduct of trade and investment between the Parties;
- (b) establish streamlined and transparent immigration procedures for applications made by business persons of the other Party; and
- (c) provide for rights and obligations additional to those set out in Chapter 13 (Trade in Services) and Chapter 3 (Trade in Goods) in relation to the movement of natural persons between the Parties for business purposes,

while recognising the need to ensure border security and to protect the domestic labour force and employment in the Areas of the Parties.

Article 2 Scope

1. This Chapter shall apply to measures affecting the temporary entry of business persons of one Party into the Area of the other Party, where such persons include:

- (a) business visitors;
- (b) intra-corporate transferees;
- (c) independent service suppliers; and

(d) installers or servicers.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.

3. Nothing in this Chapter or Chapter 13 (Trade in Services) shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its Area, 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 nullify or impair the benefits accruing to the other Party under the terms of this Chapter. The sole fact of a Party requiring an immigration formality in respect of natural persons of the other Party and not those of non-Parties shall not be regarded as nullifying or impairing benefits accruing to the other Party under the terms of this Chapter.

Article 3 Definitions

For the purposes of this Chapter:

- (a) **business visitor** means a natural person of a Party who:
 - (i) is seeking temporary entry to the Area of the other Party for the purpose of:
 - (1) attending meetings or conferences, or engaging in consultations with business colleagues;

- (2) taking orders or negotiating contracts for an enterprise located in the Area of the Party but not selling goods or providing services to the general public; or
 - (3) undertaking business consultations concerning the establishment, expansion or winding up of an enterprise or investment in the other Party;
 - (ii) who is not seeking to enter the labour market of the other Party; and
 - (iii) whose principal place of business, actual place of remuneration and predominant place of accrual of profits remain outside the Area of the other Party;
- (b) **granting Party** means a Party who receives an application for temporary entry from a business person of the other Party who is covered by Paragraph 1 of Article 2;
- (c) **immigration formality** means a visa, permit, pass or other document or electronic authority granting a natural person permission to enter, stay, work or establish commercial presence in the Area of the granting Party;
- (d) **installer or servicer** means a natural person of a Party who is an installer or servicer of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract;

- (e) **intra-corporate transferees** means a senior manager or a specialist who is an employee of a service supplier or investor of a Party with a commercial presence in the Area of the other Party;
- (f) **natural person** means a natural person as defined in Article 3 (Definitions) of Chapter 13 (Trade in Services);
- (g) **senior manager** means a natural person of a Party within an organisation of a Party who:
 - (i) is a senior employee of that organisation with responsibility for the entire organisation's operations, or a substantial part of it, in the Area of the other Party;
 - (ii) has proprietary information of the organisation and receives only general supervision or direction from higher level executives or the board of directors or stockholders of the organisation; and
 - (iii) supervises and controls the work of other supervisory, professional or managerial employees. This does not include a first-line supervisor unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment;
- (h) **specialist** means a natural person of a Party within an organisation of a Party who:
 - (i) possesses knowledge at an advanced level of technical expertise;

- (ii) possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; and
 - (iii) is essential to the operation of the concerned service supplier's or investor's establishment in the Area of the other Party; and
- (i) **temporary entry** means entry by a business person covered by this Chapter, without the intent to establish permanent residence.

Article 4

Grant of Temporary Entry

1. The Parties shall make commitments in respect of the temporary entry of business persons covered by Article 2. Each Party shall set out in Annex I a Schedule containing such commitments. These Schedules shall specify the conditions and limitations for entry and temporary stay, including the requirements and length of stay, for each category of business persons included in each Party's Schedule of commitments.
2. Where a Party makes a commitment under Paragraph 1, that Party shall grant temporary entry or extension of temporary stay to the extent provided for in that commitment, provided that those business persons:
 - (a) follow prescribed application procedures for the immigration formality sought; and
 - (b) meet all relevant eligibility requirements for entry to the granting Party.
3. Temporary entry granted to a business person pursuant to this Chapter does not exempt that person from the requirements needed to carry out a profession or activity according to the domestic law, and any applicable mandatory

codes of practice made pursuant to the domestic law, in force in the Area of the Party authorising the temporary entry.

4. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with domestic law.

5. Neither Party may, except as provided for in its Schedule of commitments set out in Annex I, impose or maintain any numerical restriction relating to temporary entry as a condition for entry under Paragraph 1.

Article 5 **Expeditious Application Procedures**

1. Where an application for an immigration formality is required by a Party, the Party shall process expeditiously completed applications for immigration formalities or extensions thereof received from business persons of the other Party covered by Paragraph 1 of Article 2.

2. A Party shall, within ten working days of receipt of an application for temporary entry that has been completed and submitted in accordance with its domestic law, either:

- (a) make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions; or
- (b) if a decision cannot be made in that time period, inform the applicant when a decision will be made.

3. At the request of an applicant, a Party in receipt of a completed application for temporary entry shall provide, without undue delay, information concerning the status of the application.

Article 6 Transparency

Each Party shall:

- (a) publish, such as on the website of its immigration authority, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable business persons of the other Party to become acquainted with the Party's requirements; and
- (b) upon modifying or amending the requirements for temporary entry referred to in subparagraph (a) that affect the temporary entry of business persons, ensure that the information published pursuant to subparagraph (a) is updated by the date that modification or amendment comes into effect.

Article 7 Dispute Settlement

1. Any differences or disputes arising out of the implementation of this Chapter shall be settled amicably through consultations or negotiations between the Parties.
2. Neither Party shall have recourse to Chapter 16 (Dispute Settlement) 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 all available administrative remedies regarding the particular matter.

Article 8
Contact Points

1. Each Party shall designate a contact point to facilitate communication and the effective implementation of this Chapter, and respond to inquiries from the other Party regarding regulations affecting the movement of business persons between the Parties or any matters covered in this Chapter, and shall provide details of this contact point to the other Party.
2. The Parties shall notify each other promptly of any amendments to the details of their contact points.