

CHAPTER TWELVE

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 1201: General Principles

Further to Article 1202, 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 1203, and the need to establish transparent criteria and procedures for temporary entry and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

Article 1202: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1201 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 the conduct of investment activities under this Agreement.

Article 1203: Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who comply with its immigration measures applicable to temporary entry such as those relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 1203.

2. Subject to each Party's labour legislation, a Party may refuse to issue a work permit or authorization to a business person where the temporary entry of that person might affect adversely:

- (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or
- (b) the employment of any person who is involved in such dispute.

3. 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 1204: Provision of Information

1. Further to Article 1901 (Transparency - Publication), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:

- (a) provide to the other Party relevant materials as will enable the other Party to become acquainted with its measures relating to this Chapter; and
- (b) no later than six 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 as will enable business persons of the other Party to become acquainted with those requirements.

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 1205: Contact Points

1. The Parties hereby establish the following Contact Points:

(a) in the case of Canada:

Director
Temporary Resident Policy
Immigration Branch
Citizenship and Immigration Canada

(b) in the case of Colombia:

*Coordinador
Coordinación de Visas e Inmigración
Ministerio de Relaciones Exteriores*

or their respective successors.

2. The Contact Points shall exchange information as described in Article 1204 and shall meet as required to consider matters pertaining to this Chapter, such as:

- (a) the implementation and administration of this Chapter;
- (b) the development and adoption of common criteria and interpretations for the implementation of this Chapter;
- (c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
- (d) proposed modifications to this Chapter; and
- (e) measures that affect the temporary entry of business persons under this Chapter;

Article 1206: Dispute Settlement

1. A Party may not initiate proceedings under Chapter Twenty-One (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

- (a) the matter involves a pattern of practice;
- (b) the business person has exhausted the available administrative remedies regarding the particular matter; and
- (c) the Contact Points have been unable to resolve the issue.

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 1207: Relation to Other Chapters

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 One (Initial Provisions and General Definitions), Twenty-One (Dispute Settlement), Nineteen (Transparency), Twenty (Administration of the Agreement), and Twenty-Three (Final Provisions).

Article 1208: Transparency and Processing of Applications

1. Further to Chapter Nineteen (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding applications and procedures 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. At the request of the applicant, the Party shall endeavor to provide, without undue delay, information concerning the status of the application

Article 1209: Definitions

For purposes of this Chapter:

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

immigration measures applicable to temporary entry means:

- (a) with respect to Canada, the *Immigration and Refugee Protection Act, S.C. 2001, c.27*, as amended and the associated *Immigration and Refugee Protection Regulations, SOR/2002-227* as amended; and
- (b) with respect to Colombia, *El Decreto 4000 de 2004*, publicado en el Diario Oficial de Colombia el 1 de diciembre de 2004, y las *Resoluciones 0255 y 0273 de enero de 2005*, as amended.

immigration measure means any measure affecting the entry or sojourn of a foreign national;

labour dispute means a conflict or controversy between a union and employer relating to terms or conditions of employment;

management trainee on professional development means an employee with a post-secondary degree who is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company in preparation for a senior leadership position within the company;

professional means a national of a Party who is engaged in a specialty occupation¹ requiring:

- (a) theoretical and practical application of a body of specialized knowledge and the appropriate certification/license to practice; and
- (b) attainment of a post-secondary degree in the specialty requiring four or more years of study, as a minimum for entry into the occupation² ;

technician means a national of a Party who is engaged in a specialty occupation³ requiring :

- (a) theoretical and practical application of a body of specialized knowledge and the appropriate certification/license to practice; and
- (b) attainment of a post-secondary or technical degree requiring two or more years of study as a minimum for entry into the occupation⁴;

specialist means an employee who possesses specialized knowledge of the company's products or services and its application in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures;

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.

¹ In the case of Canada, a professional specialty occupation is an occupation which falls within the National Occupation Classification (NOC) levels O and A.

² In the case of Canada, these requirements are defined in the NOC. In the case of Colombia, the requirements are stated in the specific laws for regulated professions, which will be provided in accordance with Article 1204.

³ In the case of Canada, a technical specialty occupation is an occupation which falls within the National Occupation Classification (NOC) level B.

⁴ In the case of Canada, these requirements are defined in the NOC. In the case of Colombia, the requirements are stated in the specific laws for regulated professions, which Colombia shall provide in accordance with Article 1204.

Annex 1203

Temporary Entry For Business Persons

Section A - Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 1203.A, without requiring that person to obtain a work permit or an employment authorization, provided that the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality, citizenship or permanent residency status of a Party;
- (b) documentation demonstrating that the business person will be engaged in a business activity set out in Appendix 1203.A and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

- (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside the territory of the Party granting temporary entry.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer or the representing organization, attesting to these matters as sufficient proof.

3. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

4. Notwithstanding paragraph 3, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section B - Traders and Investors

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the Party into which entry is sought, or
- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with its immigration measures applicable to temporary entry.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section C - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof as an executive or manager, a specialist, or a management trainee on professional development, provided that the business person otherwise complies with the immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for six months within the three-year period immediately preceding the date of the application for admission.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section D – Professionals and Technicians

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to engage in an occupation at a professional or technical level in accordance with Appendix 1203.D, if the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality, citizenship or permanent residency status of a Party;
and
- (b) documentation demonstrating that the business person is seeking to enter the other Party to provide pre-arranged professional services in the field for which the business person has the appropriate qualifications.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section E – Spouses

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a spouse of a business person qualifying for temporary entry under Section B (Traders and Investors), Section C (Intra-Company Transferees), or Section D (Professionals and Technicians), if the spouse otherwise complies with its immigration measures applicable to temporary entry.

2. Neither Party may:
 - (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or

 - (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a spouse of a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Appendix 1203.A

Business Visitors

Meetings and Consultations

Business persons attending meetings, seminars or conferences; or engaged in consultations with business associates.

Research and Design

Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.

Growth, Manufacture and Production

Purchasing and production management personnel, conducting commercial transactions for an enterprise located in the territory of the other Party.

Harvester owners supervising a harvesting crew.

Marketing

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.

Trade-fair and promotional personnel attending a trade convention.

Sales

Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.

Buyers purchasing for an enterprise located in the territory of the other Party.

Distribution

Transportation operators transporting goods or passengers to the territory of a Party from the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

After-Sales or After-Lease Service

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Service

Professionals and technicians engaging in a business activity at a professional or technician level as set out in Appendix 1203.D

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

Cook personnel (cookers and assistants) attending or participating in gastronomic events or exhibitions, or consulting with business associates.

Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

Information and communication technology service providers attending meetings, seminars, or conferences, or engaged in consultations with business associates

Franchise traders and developers who seek to offer their services in the territory of the other Party.

Appendix 1203.D

Professionals and Technicians

Professionals:

The professionals listed below are not covered under this Chapter:

1. All Health, Education, and Social Services occupations and related occupations, including:
 - (a) Managers in Health/Education/Social & Community Services
 - (b) Physicians/Dentists/Optometrists/Chiropractors/Other Health Professions
 - (c) Pharmacists, Dieticians & Nutritionists
 - (d) Therapy & Assessment Professionals
 - (e) Nurse Supervisors & Registered Nurses
 - (f) Psychologists/Social Workers
 - (g) University Professors & Assistants
 - (h) College & Other Vocational Instructors
 - (i) Secondary/Elementary School Teachers & Counsellors

2. All professional occupations related to cultural industries as defined in Article 2208 (Exceptions – Definitions), including:
 - (a) Managers in Libraries, Archives, Museums and Art Galleries
 - (b) Managers – Publishing, Motion Pictures, Broadcasting and Performing Arts
 - (c) Creative & Performing Artists
3. Recreation, Sports and Fitness Program and Service Directors
4. Managers in Telecommunication Carriers
5. Managers in Postal and Courier Services
6. Managers in Manufacturing
7. Managers in Utilities
8. Managers in Construction and Transportation
9. Judges, Lawyers and Notaries except foreign legal consultants

Technicians

The technicians listed below are covered under this chapter:

1. Civil Engineering Technologists and Technicians
2. Mechanical Engineering Technologists and Technicians
3. Industrial Engineering and Manufacturing Technologists and Technicians
4. Construction Inspectors and Estimators
5. Engineering Inspectors, Testers and Regulatory Officers

6. Supervisors in the following: Machinists and Related Occupations, Printing and Related Occupations, Mining and Quarrying, Oil and Gas Drilling and Service, Mineral and Metal Processing, Petroleum, Gas and Chemical Processing and Utilities, Food, Beverage and Tobacco Processing, Plastic and Rubber Products Manufacturing, Forest Products Processing, Textile Processing
7. Contractors and Supervisors in the following: Electrical Trades and Telecommunications Occupations, Pipefitting Trades, Metal Forming, Shaping and Erecting Trades, Carpentry Trades, Mechanic Trades, Heavy Construction Equipment Crews, Other Construction Trades, Installers, Repairers and Servicers
8. Electrical and Electronics Engineering Technologists and Technicians⁵
9. Electricians⁶
10. Plumbers
11. Industrial Instrument Technicians and Mechanics
12. Aircraft Instrument, Electrical and Avionics Mechanics, Technicians and Inspectors
13. Underground Production and Development Miners
14. Oil and Gas Well Drillers, Servicers and Testers
15. Graphic Designers and Illustrators
16. Interior Designers

⁵ Including electronic service technicians.

⁶ Including industrial electricians.

17. Chefs
18. Computer and Information System Technicians
19. International Purchasing and Selling Agents