

## CHAPTER 16

### TEMPORARY ENTRY FOR BUSINESS PERSONS

#### Article 16.1: Definitions

For the purposes of this Chapter:

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

**citizen** means, with respect to Mexico, a national or a citizen according to the provisions of Articles 30 and 34, respectively, of the Mexico's Constitution (*Constitución Política de los Estados Unidos Mexicanos*); and

**temporary entry** means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.

#### Article 16.2: Scope

1. This Chapter applies to measures affecting the temporary entry of business persons of a Party into the territory of another Party.
2. This Chapter does not apply to measures affecting natural persons seeking access to the employment market of another Party, nor does it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.
3. Nothing in this Agreement prevents a Party from applying measures to regulate the entry of natural persons of another Party 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 those measures are not applied in a manner as to nullify or impair the benefits accruing to any Party under this Chapter.

#### Article 16.3: General Obligations

1. Each Party shall apply its measures relating to this Chapter expeditiously so as to avoid unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement.
2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

#### **Article 16.4: Grant of Temporary Entry**

1. Each Party shall grant temporary entry to a business person who is otherwise qualified for entry under its measures relating to public health and safety and national security, in accordance with this Chapter, including Annex 16-A (Temporary Entry for Business Persons).
2. A Party may refuse to grant temporary entry or issue an immigration document authorizing employment to a business person where the temporary entry of that person might adversely affect:
  - (a) the settlement of a labor dispute that is in progress at the place or intended place of employment; or
  - (b) the employment of a person who is involved in that dispute.
3. If a Party refuses pursuant to paragraph 2 to grant temporary entry or issue an immigration document authorizing employment, it shall:
  - (a) provide written notice to the business person of the reasons for the refusal; and
  - (b) promptly provide written notice to the Party whose business person has been refused entry of the reasons for the refusal.
4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.
5. The sole fact that a Party grants temporary entry to a business person of another Party pursuant to this Chapter does not exempt that business person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practice a profession or otherwise engage in business activities.

#### **Article 16.5: Provision of Information**

1. Further to Article 29.2 (Publication), each Party shall publish online or otherwise make publicly available explanatory material regarding the requirements for temporary entry under this Chapter that will enable a business person of another Party to become acquainted with them.
2. Each Party shall collect and maintain, and make available to the other Parties in accordance with its law, data respecting the granting of temporary entry under this Chapter to business persons of the other Parties who have been issued immigration documentation, including, if practicable, data specific to each occupation, profession, or activity.

### **Article 16.6: Temporary Entry Working Group**

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including representatives of immigration authorities.
2. The Working Group shall meet at least once each year to consider:
  - (a) the implementation and administration of this Chapter;
  - (b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
  - (c) the waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Section B, C or D of Annex 16-A (Temporary Entry for Business Persons);
  - (d) proposed modifications of or additions to this Chapter; and
  - (e) issues of common interest related to the temporary entry of business persons, such as the use of technologies related to processing of applications, that can be further explored among the Parties in other fora.

### **Article 16.7: Dispute Settlement**

1. A Party may not initiate proceedings under Article 31.5 (Commission Good Offices, Conciliation, and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 16.3(1) 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 paragraph (1)(b) will 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 16.8: Relation to Other Chapters**

Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 30 (Administrative and Institutional Provisions), Chapter 31 (Dispute Settlement), Chapter 34 (Final Provisions), Article 29.2 (Publication), and Article 29.3 (Administrative Proceedings), this Agreement does not impose an obligation on a Party regarding its immigration measures.

## ANNEX 16-A

### 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 1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with the Party's measures applicable to temporary entry, on presentation of:

- (a) proof of citizenship of a Party;
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor 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 that Party's territory.

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 attesting to these matters as sufficient proof.

3. Paragraph 1 does not limit the ability of a business person seeking to engage in a business activity other than those set out in Appendix 1 to seek temporary entry under a Party's measures relating to the entry of business persons.

4. No Party shall:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

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

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult, on request, with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

### **Section B: Traders and Investors**

1. Each Party shall grant temporary entry and provide confirming documentation 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 citizen 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 the Party's measures applicable to temporary entry.

2. No Party shall:

- (a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or
- (b) impose or maintain a 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 its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

### **Section C: Intra-Company Transferees**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialized knowledge, provided that the business person otherwise complies with the Party's measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. No Party shall:

- (a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or
- (b) impose or maintain a 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 its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

### **Section D: Professionals**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity at a professional level in a profession set out in Appendix 2, if the business person otherwise complies with the Party's measures applicable to temporary entry, on presentation of:

- (a) proof of citizenship of a Party; and
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry.

2. No Party shall:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or
- (b) impose or maintain a 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 its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

## **APPENDIX 1**

### **BUSINESS VISITORS**

#### **Section A: Definitions**

For the purposes of this Appendix:

**territory of another Party** means the territory of a Party other than the territory of the Party into which temporary entry is sought;

**tour bus operator** means a natural person, including relief personnel accompanying or following to join, necessary for the operation of a tour bus for the duration of a trip; and

**transportation operator** means a natural person, other than a tour bus operator, including relief personnel accompanying or following to join, necessary for the operation of a vehicle for the duration of a trip.

#### **Section B: Business Activities**

##### **Research and Design**

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

##### **Growth, Manufacture, and Production**

- Harvester owner supervising a harvesting crew admitted under a Party's law.
- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another Party.

##### **Marketing**

- Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of another 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 another Party but not delivering goods or supplying services.

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

### **Distribution**

- Transportation operators transporting goods or passengers to the territory of a Party from the territory of another Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of another Party.
- With respect to temporary entry into the territory of the United States, Canadian customs brokers performing brokerage duties relating to the export of goods from the territory of the United States to or through the territory of Canada.
- With respect to temporary entry into the territory of Canada, United States customs brokers performing brokerage duties relating to the export of goods from the territory of Canada to or through the territory of the United States.
- Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

### **After Sales Services**

- 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 of commercial or industrial equipment or machinery, including computer software, purchased 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 engaging in a business activity at a professional level in a profession set out in Appendix 2

### **Commercial Transactions**

- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of another Party.
- Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party.

### **Public Relations and Advertising**

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

## **Tourism**

- 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 another Party.

## **Tour Bus Operation**

- Tour bus operators entering the territory of a Party:
  - (a) with a group of passengers on a bus tour that has begun in, and will return to, the territory of another Party;
  - (b) to meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party; or
  - (c) with a group of passengers on a bus tour to be unloaded in the territory of the Party into which temporary entry is sought, and returning with no passengers or reloading with the group for transportation to the territory of another Party.

## **Translation**

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

## APPENDIX 2

### PROFESSIONALS

| <b>PROFESSION<sup>1</sup></b>   | <b>MINIMUM EDUCATION<br/>REQUIREMENTS AND ALTERNATIVE<br/>CREDENTIALS</b>   |
|---|---|
| <b>General</b>  |   |
| Accountant  | Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or C.M.A.   |
| Architect   | Baccalaureate or Licenciatura Degree; or state/provincial license <sup>2</sup>  |
| Computer Systems Analyst  | Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma <sup>3</sup> or Post-Secondary Certificate, <sup>4</sup> and three years experience   |
| Disaster Relief Insurance Claims Adjuster (claims Adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster) | Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims |
| Economist   | Baccalaureate or Licenciatura Degree  |

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<sup>1</sup> A business person seeking temporary entry under this Appendix may also perform training functions relating to the profession, including conducting seminars.

<sup>2</sup> “State/provincial license” and “state/provincial/federal license” mean a document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

<sup>3</sup> “Post-Secondary Diploma” means a credential issued, on completion of two or more years of postsecondary education, by an accredited academic institution in Canada or the United States.

<sup>4</sup> “Post-Secondary Certificate” means a certificate issued, on completion of two or more years of postsecondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

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| Engineer  | Baccalaureate or Licenciatura Degree; or state/provincial license  |
| Forester  | Baccalaureate or Licenciatura Degree; or state/provincial license  |
| Graphic Designer                                    | Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience  |
| Hotel Manager                                       | Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management     |
| Industrial Designer                                 | Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience  |
| Interior Designer                                   | Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience  |
| Land Surveyor                                       | Baccalaureate or Licenciatura Degree; or state/provincial/federal license  |
| Landscape Architect                                 | Baccalaureate or Licenciatura Degree   |
| Lawyer (including Notary in the Province of Quebec) | LL.B., J.D., LL.L., B.C.L. or Licenciatura Degree (five years); or membership in a state/provincial bar  |
| Librarian   | M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)   |
| Management Consultant                               | Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience |

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|  | in a field of specialty related to the consulting agreement   |
| Mathematician (including Statistician) <sup>5</sup>                      | Baccalaureate or Licenciatura Degree  |
| Range Manager/Range Conservationist                                      | Baccalaureate or Licenciatura Degree  |
| Research Assistant (working in a post-secondary educational institution) | Baccalaureate or Licenciatura Degree  |
| Scientific Technician/Technologist <sup>6</sup>                          | Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research |
| Social Worker  | Baccalaureate or Licenciatura Degree  |
| Sylviculturist (including Forestry Specialist)                           | Baccalaureate or Licenciatura Degree  |
| Technical Publications Writer  | Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience   |
| Urban Planner (including Geographer)                                     | Baccalaureate or Licenciatura Degree  |
| Vocational Counsellor  | Baccalaureate or Licenciatura Degree  |
| <b>Medical/Allied Professional</b>                                       |   |
| Dentist  | D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental; or state/provincial license  |

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<sup>5</sup> In accordance with the NAFTA 1994 Commission decision of October 7, 2003, the term “Mathematician” includes the profession of Actuary.

<sup>6</sup> A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.

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| Dietitian   | Baccalaureate or Licenciatura Degree; or state/provincial license   |
| Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States) <sup>7</sup> | Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience |
| Nutritionist  | Baccalaureate or Licenciatura Degree  |
| Occupational Therapist  | Baccalaureate or Licenciatura Degree; or state/provincial license   |
| Pharmacist  | Baccalaureate or Licenciatura Degree; or state/provincial license   |
| Physician (teaching or research only)   | M.D. or Doctor en Medicina; or state/provincial license   |
| Physiotherapist/Physical Therapist  | Baccalaureate or Licenciatura Degree; or state/provincial license   |
| Psychologist  | State/provincial license; or Licenciatura Degree  |
| Recreational Therapist  | Baccalaureate or Licenciatura Degree  |
| Registered Nurse  | State/provincial license; or Licenciatura Degree  |
| Veterinarian  | D.V.M., D.M.V. or Doctor en Veterinaria; or state/provincial license  |
| <b>Scientist</b>  |   |
| Agriculturist (including Agronomist)  | Baccalaureate or Licenciatura Degree  |
| Animal Breeder  | Baccalaureate or Licenciatura Degree  |
| Animal Scientist  | Baccalaureate or Licenciatura Degree  |

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<sup>7</sup> A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic, or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.

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| Apiculturist   | Baccalaureate or Licenciatura Degree |
| Astronomer   | Baccalaureate or Licenciatura Degree |
| Biochemist   | Baccalaureate or Licenciatura Degree |
| Biologist <sup>8</sup>   | Baccalaureate or Licenciatura Degree |
| Chemist  | Baccalaureate or Licenciatura Degree |
| Dairy Scientist  | Baccalaureate or Licenciatura Degree |
| Entomologist   | Baccalaureate or Licenciatura Degree |
| Epidemiologist   | Baccalaureate or Licenciatura Degree |
| Geneticist   | Baccalaureate or Licenciatura Degree |
| Geologist  | Baccalaureate or Licenciatura Degree |
| Geochemist   | Baccalaureate or Licenciatura Degree |
| Geophysicist (including Oceanographer in Mexico and the United States) | Baccalaureate or Licenciatura Degree |
| Horticulturist   | Baccalaureate or Licenciatura Degree |
| Meteorologist  | Baccalaureate or Licenciatura Degree |
| Pharmacologist   | Baccalaureate or Licenciatura Degree |
| Physicist (including Oceanographer in Canada)                          | Baccalaureate or Licenciatura Degree |
| Plant Breeder  | Baccalaureate or Licenciatura Degree |
| Poultry Scientist  | Baccalaureate or Licenciatura Degree |

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<sup>8</sup> In accordance with the NAFTA 1994 Commission decision of October 7, 2003, the term “Biologist” includes the profession of Plant Pathologist.

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| Soil Scientist | Baccalaureate or Licenciatura Degree |
| Zoologist      | Baccalaureate or Licenciatura Degree |
| <b>Teacher</b> |                                      |
| College        | Baccalaureate or Licenciatura Degree |
| Seminary       | Baccalaureate or Licenciatura Degree |
| University     | Baccalaureate or Licenciatura Degree |