

## CHAPTER 12

### TEMPORARY ENTRY FOR BUSINESS PERSONS

#### Article 12.1: Definitions

For the purposes of this Chapter:

**business person** means:

- (a) a natural person who has the nationality of a Party according to Annex 1-A (Party-Specific Definitions); or
- (b) a permanent resident of a Party that, prior to the date of entry into force of this Agreement, has made a notification consistent with Article XXVIII(k)(ii)(2) of GATS that that Party accords substantially the same treatment to its permanent residents as it does to its nationals<sup>1</sup>,

who is engaged in trade in goods, the supply of services or the conduct of investment activities;

**immigration formality** means a visa, permit, pass or other document or electronic authority granting temporary entry;

**immigration measure** means any measure affecting the entry and stay of foreign nationals; and

**temporary entry** means entry into the territory of a Party by a business person of another Party who does not intend to establish permanent residence.

#### Article 12.2: Scope

1. This Chapter shall apply to measures that affect the temporary entry of business persons of a Party into the territory of another Party.

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

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<sup>1</sup> For the purposes of subparagraph (b), “nationals” has the meaning it bears in Article XXVIII(k)(ii)(2) of GATS.

3. Nothing in this Agreement shall prevent 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.

4. The sole fact that a Party requires business persons of another Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to any Party under this Chapter.

### **Article 12.3: Application Procedures**

1. As expeditiously as possible after receipt of a completed application for an immigration formality, each Party shall make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.

2. At the request of an applicant, a Party that has received a completed application for an immigration formality shall endeavour to promptly provide information concerning the status of the application.

3. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality are reasonable, in that they do not unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement.

### **Article 12.4: Grant of Temporary Entry**

1. Each Party shall set out in Annex 12-A the commitments it makes with regard to temporary entry of business persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of business persons specified by that Party.

2. A Party shall grant temporary entry or extension of temporary stay to business persons of another Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those business persons:

- (a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and
- (b) meet all relevant eligibility requirements for temporary entry or extension of temporary stay.

3. The sole fact that a Party grants temporary entry to a business person of another Party pursuant to this Chapter shall not be construed to exempt that business person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

4. A Party may refuse to issue an immigration formality to a business person of another Party if 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 natural person who is involved in such dispute.

5. When a Party refuses pursuant to paragraph 4 to issue an immigration formality, it shall inform the applicant accordingly.

#### **Article 12.5: Business Travel**

The Parties affirm their commitments to each other in the context of APEC to enhance the mobility of business persons, including through exploration and voluntary development of trusted traveller programmes, and their support for efforts to enhance the *APEC Business Travel Card* programme.

#### **Article 12.6: Provision of Information**

Further to Article 26.2 (Publication) and Article 26.5 (Provision of Information), each Party shall:

- (a) promptly publish online if possible or otherwise make publicly available, information on:
  - (i) current requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable interested persons of the other Parties to become acquainted with those requirements; and
  - (ii) the typical timeframe within which an application for an immigration formality is processed; and
- (b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter.

### **Article 12.7: Committee on Temporary Entry for Business Persons**

1. The Parties hereby establish a Committee on Temporary Entry for Business Persons (Committee), composed of government representatives of each Party.
2. The Committee shall meet once every three years, unless otherwise agreed by the Parties, to:
  - (a) review the implementation and operation of this Chapter;
  - (b) consider opportunities for the Parties to further facilitate temporary entry of business persons, including through the development of activities undertaken pursuant to Article 12.8 (Cooperation); and
  - (c) consider any other matter arising under this Chapter.
3. A Party may request discussions with one or more other Parties with a view to advancing the objectives set out in paragraph 2. Those discussions may take place at a time and location agreed by the Parties involved in those discussions.

### **Article 12.8: Cooperation**

Recognising that the Parties can benefit from sharing their diverse experience in developing and applying procedures related to visa processing and border security, the Parties shall consider undertaking mutually agreed cooperation activities, subject to available resources, including by:

- (a) providing advice on the development and implementation of electronic processing systems for visas;
- (b) sharing experiences with regulations, and the implementation of programmes and technology related to:
  - (i) border security, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programmes and security in travel documents; and
  - (ii) the expediting of certain categories of applicants in order to reduce facility and workload constraints; and

- (c) cooperating in multilateral fora to promote processing enhancements, such as those listed in subparagraphs (a) and (b).

#### **Article 12.9: Relation to Other Chapters**

1. Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 27 (Administrative and Institutional Provisions), Chapter 28 (Dispute Settlement), Chapter 30 (Final Provisions), Article 26.2 (Publication) and Article 26.5 (Provision of Information), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

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

#### **Article 12.10: Dispute Settlement**

1. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

- (a) the matter involves a pattern of practice; and
- (b) the business persons affected have exhausted all available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the other Party within a reasonable period of time after the date of the institution of proceedings for the remedy, including any proceedings for review or appeal, and the failure to issue such a determination is not attributable to delays caused by the business persons concerned.