

CHAPTER 13

TEMPORARY ENTRY OF BUSINESS PERSONS

ARTICLE 13.1: DEFINITIONS

For the purposes of this Chapter :

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

business visitors means nationals of either Party who are:

- (a) service sellers;
- (b) short-term service suppliers;
- (c) investors of a Party or employees of an investor who are managers, executives or specialists as defined in relation to intra-corporate transferees in a Party's Schedule of Specific Commitments to GATS seeking temporary entry to establish an investment; or
- (d) seeking temporary entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sales to the general public;

service seller means a national of a Party 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 a representative will not be engaged in making direct sales to the general public or in supplying services directly;

short-term service suppliers means persons who:

- (a) are employees of a service supplier or an enterprise of a Party not having a commercial presence or investment in the other Party, which has concluded a service contract with a service supplier or an enterprise engaged in substantive business operations in the other Party;
- (b) have been employees of the service supplier or enterprise for a time period of not less than one year immediately preceding an application for admission for temporary entry;

- (c) are managers, executives or specialists as defined in relation to intra-corporate transferees in a Party's Schedule of Specific Commitments to GATS;
- (d) are seeking temporary entry to the other Party for the purpose of providing a service as a professional in the following service sectors on behalf of the service supplier or enterprise which employs them:
 - (i) professional services;
 - (ii) computer and related services;
 - (iii) telecommunication services;
 - (iv) financial services; or
 - (v) tour guides and translators; and
- (e) satisfy any other requirements under the domestic laws and regulations of the other Party to provide such services in the territory of that Party; and

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.

ARTICLE 13.2: GENERAL PRINCIPLES

1. Further to Article 1.2, this Chapter reflects the preferential trading relationship between the Parties, the Parties' mutual desire to facilitate temporary entry on a comparable basis and 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.

2. This Chapter shall not apply to measures regarding nationality or citizenship, residence on a permanent basis or employment on a permanent basis.

ARTICLE 13.3: GENERAL OBLIGATIONS

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 13.2 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavour to develop and adopt common definitions and interpretations for the implementation of this Chapter.

3. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of business persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of its borders, and to ensure the orderly movement of business persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the commitments made by a Party. The mere requirement of a visa or other document authorising employment shall not be regarded as nullifying or impairing the commitments made by a Party under this Agreement.

ARTICLE 13.4: GRANT OF TEMPORARY ENTRY

1. In accordance with this Chapter and subject to the provisions of Annex 13A and Appendix 13A.1, each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health, safety and national security.

2. A Party may refuse to issue an immigration document authorising employment 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. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorising employment, it shall:

- (a) take measures to allow the business person to be informed in writing of the reasons for the refusal; and
- (b) promptly notify the other Party in writing of the reasons for the refusal.

4. Each Party may set any fees for processing applications for temporary entry of business persons in a manner that is consistent with its obligations which are set out in this Chapter.

ARTICLE 13.5: PROVISION OF INFORMATION

Further to Article 19.2, each Party shall:

- (a) provide to the other Party such materials as will enable the other Party to become acquainted with its own measures relating to this Chapter; and
- (b) no later than six (6) months after the date of entry into force of this Agreement, publish or otherwise make available in its own territory, and in the territory of the other Party, 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 them.

ARTICLE 13.6: DISPUTE SETTLEMENT

1. A Party may not initiate proceedings under Article 20.6 regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 13.2 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) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within six (6) months 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 13.7: RELATION TO OTHER CHAPTERS

Except for this Chapter, Chapters 1(General Provisions), 2(General Definitions), 20(Dispute Settlement) and 22(Administration and Final Provisions), and Articles 19.2, 19.3 and 19.4, nothing in this Agreement shall impose any obligation on a Party regarding its immigration measures.