

Chapter Sixteen

Temporary Entry for Business Persons

Article 1601: General Principles

Further to Article 102 (Objectives), the provisions of this Chapter reflect the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 1602: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1601, and in particular, shall apply expeditiously such 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 endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 1603: Grant of Temporary Entry

1. Each Party shall grant, in accordance with this Chapter, including Annex 1603, temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security.
2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:
 - (a) the settlement of any labor 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 authorizing employment, it shall:
 - (a) inform in writing the business person of the reasons

for the refusal; and

(b) promptly notify in writing 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.

Article 1604: Provision of Information

1. Further to Article 1802 (Publication), each Party shall:

(a) provide to the other Parties such materials as will enable them to become acquainted with its measures relating to the provisions of this Chapter; and

(b) not later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territories of the other Parties, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as to enable business persons of the other Parties to become acquainted with them.

2. Subject to Annex 1604.2, each Party shall collect and maintain, and make available to the other Parties in accordance with its domestic 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 that specific to each occupation, profession or activity.

Article 1605: Working Group

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials.

2. The Working Group shall meet at least once a 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 Sections B, C, or D of Annex 1603; and

(d) proposed modifications of or additions to this Chapter.

Article 1606: Dispute Settlement

A Party may not initiate proceedings under Article 2007 regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 1602(1) unless:

- (a) the matter involves a pattern of practice; and
- (b) the business person has exhausted available administrative remedies regarding the particular matter, provided that such remedies 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 1607: Relation to Other Chapters

Except for Chapter One (Objectives), Chapter Two (General Definitions), Chapter Twenty (Institutional Arrangements and Dispute Settlement), Chapter Twenty-Two (Final Provisions) and Articles 1801 through 1804, no provision of any other Chapter shall impose any obligation upon a Party regarding its immigration measures.

Article 1608: Definitions

For purposes of this Chapter:

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

citizen means "citizen" as defined in Annex 1608;

existing means "existing" as defined in Annex 1608; 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.

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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 Schedule I, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, upon 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 such territory. A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. If the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Schedule I, without requiring that person to obtain an employment authorization, on a basis no less favorable than that provided under the existing provisions of the measure set out in Appendix 1603.A, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

4. No Party shall:

(a) as a condition for temporary entry under paragraphs 1 or 3, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraphs 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such 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, at the request of a Party whose business persons are subject to the requirement, consult with that Party 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 existing immigration 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 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 Part to obtain a visa or its equivalent prior to entry.

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 existing immigration measures applicable to temporary entry. A Party may require that such business person shall have been employed continuously by such 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 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 Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such 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, at the request of a Party whose business persons are subject to the requirement, consult with that Party 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 Schedule II, if the business person otherwise complies with existing immigration measures applicable to temporary entry, upon 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 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 Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such 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, upon the request of a Party whose business persons are subject to the requirement, consult with that Party with a view to its removal.

4. Notwithstanding paragraphs 1 and 2, a Party may establish an annual numerical limit, which shall be set out in Schedule III, regarding temporary entry of business persons of another Party seeking to engage in business activities at a professional level in a profession set out in Schedule II, if the Parties concerned have not agreed otherwise prior to the entry into force of this Agreement for such Parties. In establishing such a limit, such Party shall consult with the other Party concerned.

5. A Party establishing a numerical limit pursuant to paragraph 4, unless the Parties concerned agree otherwise:

(a) shall, for each year after the first year after the date of entry into force of this Agreement, consider increasing the numerical limit set out in Schedule III by an amount to be established in consultation with the other Party concerned, taking into account the demand for temporary entry under this Part;

(b) shall not apply its procedures established pursuant to paragraph 1 to the temporary entry of a business person subject to the numerical limit, but may require such business person to comply with its other procedures applicable to the temporary entry of professionals; and

(c) may, in consultation with the other Party concerned, grant temporary entry under paragraph 1 to a business person who practices in a profession where accreditation, licensing, and certification requirements are mutually recognized by such Parties.

6. Nothing in paragraphs 4 or 5 shall be construed so as to

limit the ability of a business person to seek temporary entry under a Party's applicable immigration measures relating to the entry of professionals other than those adopted or maintained pursuant to paragraph 1.

7. Three years after a Party establishes a numerical limit pursuant to paragraph 4, it shall consult with the other Party concerned with a view to determining a date after which the limit shall cease to apply.

ANNEX 1604.2

Provision of Information

The obligations under Article 1604(2) shall take effect with respect to Mexico one year after the date of entry into force of this Agreement.

ANNEX 1608

Country - Specific Definitions

For purposes of this Chapter:

citizen means, with respect to Mexico, a national or a citizen according to the existing provisions of Articles 30 and 34, respectively, of the Mexican Constitution; and

existing means, as between:

(a) Canada and Mexico, and the United States and Mexico, in effect upon the date of entry into force of this Agreement; and

(b) Canada and the United States, in effect on January 1, 1989.

Appendix 1603.A

Existing Immigration Measures

1. In the case of Canada, the Immigration Act, R.S.C. 1985 c.I-2, as amended, and subsection 19(1) of the Immigration Regulations, 1978, as amended.

2. In the case of the United States, Section 101(a)(15)(B) of the Immigration and Nationality Act, 1952, as amended.

3. In the case of Mexico, Chapter III of the Ley General de Poblacion, 1974, as amended.

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Schedule I

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 applicable 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 providing 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 to the territory of another Party, with no loading and delivery within the territory of the Party into which entry is sought of goods located in or passengers boarding in that territory.
- 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 consulting regarding the facilitation of the import or export of goods.

After-Sales 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 such 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 Schedule II.
- 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 personnel consulting with business associates, and 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 another Party.
- 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 such group for transportation to the territory of another Party.
- Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

Definitions

For purposes of this Schedule:

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.

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Schedule II

Accountant

Architect

Computer Systems Analyst

MINIMUM EDUCATION REQUIREMENTS
AND ALTERNATIVE CREDENTIALS

Baccalaureate or Licenciatura
Degree; or C.P.A., C.A.,
C.G.A., C.M.A.

Baccalaureate or Licenciatura
Degree; or state/provincial
license

Baccalaureate or Licenciatura
Degree; or Post-Secondary
Diploma or Post-Secondary
Certificate, 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)

Economist

Engineer

Forester

Graphic Designer

Hotel Manager

Industrial Designer

Interior Designer

Land Surveyor

Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years of experience in claims adjustment, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims

Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree; or state/provincial license

Baccalaureate or Licenciatura Degree; or state/provincial license

Baccalaureate or Licenciatura Degree; or Post-Secondary

Diploma or Post-Secondary
Certificate, and three years
experience

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

Baccalaureate or Licenciatura
Degree; or Post-Secondary
Diploma or Post-Secondary
Certificate, and three years
experience

Landscape Architect

Lawyer (including Notary in
the Province of Quebec)

Librarian

Management Consultant

Mathematician
(including Statistician)

MEDICAL/ALLIED PROFESSIONAL

Dentist

Dietitian

Baccalaureate or Licenciatura Degree

LL.B., J.D., LL.L., B.C.L., or Licenciatura Degree (five years); or membership in a state/provincial bar

M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)

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 in a field of specialty related to the consulting agreement

Baccalaureate or Licenciatura Degree

D.D.S., D.M.D., Doctor en Odontologia, or Doctor en Cirugia Dental; or state/provincial license

Baccalaureate or Licenciatura Degree; or state/provincial license

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Medical Laboratory Technologist (Canada)/Medical Technologist (United States and Mexico)

Nutritionist

Occupational Therapist

Pharmacist

Physician (teaching or
research only)

Physiotherapist/Physical
Therapist

Psychologist

Recreational Therapist

Registered Nurse

Veterinarian

Research Assistant
(Working in a post-secondary

Baccalaureate or Licenciatura
Degree; or Post-Secondary
Diploma or Post-Secondary
Certificate, and three years
experience

Baccalaureate or Licenciatura
Degree

Baccalaureate or Licenciatura
Degree; or state/provincial
license

Baccalaureate or Licenciatura
Degree; or state/provincial
license

M.D. or Doctor en Medicina; or

state/provincial license

Baccalaureate or Licenciatura
Degree; or state/provincial
license

State/provincial license or
Licenciatura Degree

Baccalaureate or Licenciatura
Degree

State/provincial license or
Licenciatura Degree

D.V.M., D.M.V., or Doctor en
Veterinaria; or
state/provincial license

Range Manager/
Range Conservationist

Research Assistant
(Working in a post-secondary
educational institution)

Scientific
Technician/Technologist

SCIENTIST

Agriculturist (including
Agronomist)

Animal Breeder

Animal Scientist

Apiculturist

Baccalaureate or Licenciatura
Degree

Baccalaureate or Licenciatura
Degree

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
such disciplines, or the
ability to apply principles of
any of such disciplines to
basic or applied research

Baccalaureate or Licenciatura
Degree

Baccalaureate or Licenciatura
Degree

Baccalaureate or Licenciatura
Degree

Astronomer

Biochemist

Biologist

Chemist

Dairy Scientist

Entomologist

Epidemiologist

Geneticist

Geologist

Geochemist

Geophysicist (including
Oceanographer in Mexico and
the United States)

Horticulturist

Meteorologist

Pharmacologist
Baccalaureate or Licenciatura
Degree

Baccalaureate or Licenciatura
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Baccalaureate or Licenciatura
Degree

Pharmacologist

Physicist (including
Oceanographer in Canada)

Plant Breeder

Poultry Scientist

Soil Scientist

Zoologist

Social Worker

Sylviculturist
(including Forestry
Specialist)

TEACHER

College

Seminary

University

Baccalaureate or Licenciatura
Degree

Baccalaureate or Licenciatura
Degree

Baccalaureate or Licenciatura
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Baccalaureate or Licenciatura
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Baccalaureate or Licenciatura
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Baccalaureate or Licenciatura
Degree

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Technical Publications Writer

Urban Planner
(including Geographer)

Vocational Counsellor

Baccalaureate or Licenciatura
Degree; or Post-Secondary
Diploma or Post-Secondary
Certificate, and three years
experience

Baccalaureate or Licenciatura
Degree

Baccalaureate or Licenciatura
Degree

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Schedule III

United States of America

1. Commencing on the date of entry into force of this Agreement as between the United States and Mexico, the United States shall annually approve as many as 5,500 initial petitions of business persons of Mexico seeking temporary entry under Section D of Annex 1603 to engage in a business activity at a professional level in a profession set out in Schedule II.

2. For purposes of paragraph 1, the United States shall not take into account:

(a) the renewal of a period of temporary entry;

(b) the entry of a spouse or children accompanying or following to join the principal business person;

(c) an admission under Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 1952, as amended, including the worldwide numerical limit established by Section 214(g)(1)(A) of such Act; or

(d) an admission under any other provision of Section 101(a)(15) of such Act relating to the entry of professionals.

3. Paragraphs 4 and 5 of Section D of Annex 1603 shall apply as between the United States and Mexico for no longer than:

(a) the period that such paragraphs or similar provisions may apply as between the United States and any other Party or non-Party; or

(b) 10 years after the date of entry into force of this Agreement as between such Parties,

whichever period is shorter.