

CHAPTER 13

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 13.1: Definitions

For purposes of this Chapter:

business person means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities; 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 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 labour force and permanent employment in their respective territories.

2. The Parties reconfirm their voluntary commitments established in the APEC Business Travel Card “Operating Framework”. This recognition shall be understood to be under the APEC general principles.

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 criteria, definitions and interpretations for the implementation of this Chapter.

Article 13.4: Grant of Temporary Entry

1. In accordance with this Chapter and subject to the provisions of Annex 13.4 and Annex 13.4.1, each Party shall grant 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 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 authorizing employment, it shall:
 - (a) inform in writing the business person of the reasons for the refusal; and
 - (b) promptly notify the other Party in writing 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 13.5: Provision of Information

- 1. Further to Article 17.3, each Party shall:
 - (a) provide to the other Party such materials as will enable the latter Party to become acquainted with its own measures relating to this Chapter; and
 - (b) no later than six months after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document 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.
- 2. Each Party shall collect and maintain, and make available to the other Party in accordance with its domestic law, data regarding the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each occupation, profession or activity.

Article 13.6: Working Group

The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials, to consider the implementation and administration of this Chapter and any measures of mutual interest.

Article 13.7: Dispute Settlement

- 1. A Party may not initiate proceedings under Article 19.6 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 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 six 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 13.8: Relation to Other Chapters

Except for this Chapter, Chapters 1, 2, 18, 19 and 21 and Articles 17.2, 17.3, 17.4 and 17.6, no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

Annex 13.4
Temporary Entry for Business Persons

Section I - Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 13.4.I.1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration 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 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 subparagraph 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 a territory.
3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 13.4.I.1, without requiring that person to obtain an employment authorization, on a basis no less favourable than that provided under the existing provisions of the measures set out in Appendix 13.4.I.3, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.
4. Neither Party may:
 - (a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labour certification tests or other procedures of similar effect; or
 - (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.
5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent in accordance with its domestic immigration law prior to entry. Before imposing the visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, upon request, with the other Party with a view to its removal.

Section II - 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 other 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 or executive, or involves essential skills, provided that the business person otherwise complies with existing 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 its equivalent in accordance with its domestic immigration law prior to entry. Before imposing the visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, upon request, with the other Party with a view to its removal.

Section III - 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 of a Party or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialised knowledge, provided that the business person otherwise complies with existing immigration 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. 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 its equivalent in accordance with its domestic immigration law prior to entry. Before imposing visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an

existing visa requirement, a Party shall consult, upon request, with the other Party with a view to its removal.

Annex 13.4.1

In the case of Chile:

1. Business persons who enter Chile under any of the categories set out in Annex 13.4 shall be deemed to be engaged in activities which are in the country's interest.
2. Business persons who enter Chile under any of the categories set out in Annex 13.4 are issued with a temporary resident visa for a period up to one year. Such a temporary visa may be extended for subsequent periods, provided the conditions on which it is based remain in effect, without requiring that person to apply for permanent residence.
3. Business persons who enter Chile may also obtain an identity card for foreigners.
4. Business persons who enter Chile under any of the categories set out in Annex 13.4 may freely enter and leave Chile without re-entry permission during the validity of their visas on the basis of reciprocity.

In the case of Korea:

1. Business visitors who enter Korea under Section I of Annex 13.4 are issued with a short-term business visa (C-2) for a period of up to six months. A change of visa status to that of an intra-company transferee visa (D-7), investment visa (D-8) or trade management visa (D-9), may be permitted, if the activities of the business visitors satisfy the conditions under Sections II and III of Annex 13.4.
2. Investors and traders who enter Korea under Section II of Annex 13.4 are issued with an investment visa (D-8) or a trade and management visa (D-9), respectively, for a period of up to one year. These visas may be extended for subsequent periods provided the conditions on which they are based remain in effect.
3. Intra-company transferees who enter Korea under Section III of Annex 13.4 are issued with an intra-company transferee visa (D-7) for a period of up to one year. This visa may be extended for subsequent periods provided the conditions on which it is based remain in effect.
4. Business persons who enter Korea under any of the categories set out in Annex 13.4 may freely enter and leave Korea without re-entry permission during the validity of their visa on the basis of the reciprocity.
5. Business persons who intend to stay over 90 days in Korea shall register the aliens registration at the competent immigration office.

Appendix 13.4.I.1 Business Visitors

1. For purposes of this Appendix, “**territory of the other Party**” means the territory of the Party other than the territory of the Party into which temporary entry is sought.
2. Business activities referred to in Section I.1 of Annex 13.4 are:

Research and Design

- Technical, scientific and statistical researchers conducting 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.

Marketing

- Market researchers and analysts conducting analysis or research 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

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

After-Sales Service

- Installers, repair and maintenance personnel, and supervisors, possessing specialised 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

- Consultants engaging in a business activity at the cross-border services provision level.
- 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.
- Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

Appendix 13.4.I.3

Existing Immigration Measures

1. In the case of Chile, Title I, paragraph 6 of Decree Law 1094, Official Gazette, July 19, 1975, Immigration Law (“Decreto Ley 1094, Diario Oficial, julio 19, 1975, Ley de Extranjería”), and Title III of Immigration Regulation (“Decreto Supremo 597 del Ministerio del Interior, Diario Oficial noviembre 24, 1984, Reglamento de Extranjería”).
2. In the case of Korea, Immigration Law Article 7 and Article 8 (amended February 5, 1999), Immigration Law Enforcement Ordinance Article 7, Article 11 and Article 12 (amended November 27, 1999), Immigration Law Enforcement Regulations Article 8, Article 9, Article 10, Article 13, Article 18, Article 71 and Article 76 (amended December 2, 1999), Visa Issuance Procedure for Short-Term Business (C-2), Short-Term Visitors (C-3).