

Chapter 21: Temporary Entry for Business Persons – Text of the 2023 Canada – Ukraine Free Trade Agreement

Article 21.1: Definitions

For the purposes of this Chapter:

business person means a natural person who is a citizen or permanent resident of a Party engaged in the trade of goods, the supply of services, or the conduct of investment activities.

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 21.2: Scope

1. This Chapter shall apply to measures affecting the temporary entry of business persons of a Party into the territory of the other Party under the categories set out in Annex 21-A.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the other Party, nor shall

it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of the other 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 that nullifies or impairs the benefits accruing to the other Party under this Chapter.

Article 21.3: Grant of Temporary Entry

1. Each Party shall grant temporary entry to a business person of the other Party, who is otherwise qualified for entry under its immigration measures, including measures relating to public health and safety and national security, in accordance with this Chapter.

2. A Party may refuse to grant temporary entry or issue a work permit, in accordance with its domestic laws and regulations, to a business person of the other Party if the temporary entry of that business person might adversely affect:

- (a) the settlement of any labour dispute that is in progress at the intended place of employment; or*

- (b) the employment of any natural person who is involved in that dispute.

3. If a Party refuses to grant temporary entry or issue a work permit, pursuant to paragraph 2, it shall provide written notice to the applicant of the reasons for the refusal.

4. A Party may require a business person seeking temporary entry under this Chapter to obtain an entry visa or an equivalent requirement prior to entry in accordance with its immigration measures. The sole fact that a Party requires business persons of the other Party to obtain a visa or an equivalent requirement prior to entry shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter.

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 practise a profession, or otherwise engage in business activities.

Article 21.4: Application Procedures

1. Each Party shall, as expeditiously as possible following receipt of a complete application for a work permit, issue its decision to the

applicant. If approved, the decision must specify the period of stay and other conditions.

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

3. Each Party shall endeavor to accept and process applications in electronic format.

4. Each Party shall limit its respective fees for processing applications for temporary entry of a business person to the approximate cost of services rendered.

5. This Chapter does not impair the ability of a business person to apply for temporary entry through other mechanisms available through a Party's domestic laws and regulations relating to the entry of foreign nationals.

Article 21.5: Provision of Information

1. Further to Article 15.2 (Publication), each Party shall, no later than six months after the date of entry into force of this Agreement:

- (a) make publicly available, in electronic format, online explanatory material on its measures relating to this Chapter; and
- (b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter.

2. If a Party collects and maintains data relating to temporary entry by category of business persons under this Chapter, the Party shall make this data available to the other Party on request, in accordance with its law related to privacy and data protection.

Article 21.6: Contact Points

1. The Parties designate the following Contact Points:

- (a) for Canada:

Director

Temporary Workers Policy and Program Division

Social and Temporary Migration Branch

Citizenship and Immigration Canada

- (b) for Ukraine:

Director

Department of Labor and Employment, or a successor

Ministry of Economy of Ukraine

Director

Legal Department, or a successor

State Employment Service of Ukraine

2. The Contact Points shall meet as required to exchange information as described in Article 21.5 and to consider matters pertaining to this Chapter, such as:

- (a) the implementation and administration of this Chapter;
- (b) the development and adoption of common criteria and interpretations for the implementation of this Chapter;
- (c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
- (d) proposed modifications to this Chapter; and
- (e) consider any other matter arising under this Chapter.

Article 21.7: Dispute Settlement

1. A Party may not have recourse to dispute settlement under Chapter 28 (Dispute Settlement) regarding a refusal to grant temporary entry to business persons under this Chapter unless:

- (a) the matter involves a pattern of practice;
- (b) the business person who has been refused temporary entry has exhausted the applicable administrative remedies; and
- (c) the Contact Points have been unable to resolve the issue.

2. The remedies referred to in subparagraph (1)(b) shall be deemed to have been 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 21.8: Relation to Other Chapters

1. This Agreement shall not impose an obligation on a Party regarding its immigration measures, except as specifically provided in this Chapter or Chapter 15 (Transparency, Anti-Corruption and Responsible Business Conduct).

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

Article 21.9: Review of commitments

1. Within 5 years following the entry into force of this Agreement, the Parties shall consider updating their respective commitments under Annex 21-A to this Chapter.

Annex 21-A: Temporary Entry for Business Persons

Definitions

Intra-corporate transferee means a business person employed by an enterprise who seeks to render services to that enterprise or its subsidiary or affiliate as an executive, manager, or specialist;

executive means a business person within an enterprise who:

- (a) primarily directs the management of the enterprise or a major component or function of the enterprise;
- (b) establishes the goals and policies of the enterprise, or of a component or function of the enterprise; and

- (c) exercises wide latitude in decision-making and receives only general supervision or direction from higher-level executives, the board of directors, or shareholders of the enterprise;

manager means a business person within an enterprise who:

- (a) primarily directs the enterprise or a department or sub-division of the enterprise;
- (b) supervises and controls the work of other supervisory, professional, or managerial employees;
- (c) has the authority to hire and terminate employees or take other personnel actions, such as promotion or leave authorization; and
- (d) exercises discretionary authority over day-to-day operations;

specialist means a business person within an enterprise possessing specialized knowledge of the enterprise's products or services and their application in international markets, knowledge of the enterprise's process and procedures, and an advanced level of expertise gained through significant and recent experience with the organization;

occupation means, with respect to Canada, an occupation listed in its National Occupational Classification (NOC), and with respect to

Ukraine, an occupation listed in its National Classifier of Ukraine "Occupation Classifier"^{Footnote 1};

professional means a business person seeking to engage in an occupation set out in Appendix 21-2 and has:

- (a) a post-secondary degree of at least three years of study from an institution recognized or accepted by the Party granting entry, as well as any other requirements for entry and to practice an occupation; and
- (b) two years of paid work experience in the sector of activity of the contract.

In determining whether a professional meets the criteria and qualifications described in the definition above, a Party may take into account whether the salary paid by the employer is commensurate with other similarly qualified professionals.

Section A – Business Visitors

1. Each Party shall grant temporary entry for a period of up to 180 days within a 12-month period, with extensions possible, to a business person seeking to engage in a business activity set out under Appendix 21-1, without requiring that business person to obtain a work permit, provided that the business person otherwise complies with

immigration measures applicable to temporary entry and upon presentation of evidence demonstrating that the proposed business activity as set out in Appendix 21-1 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 paragraph 1 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.*

3. 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 should consider a letter from the employer attesting to these matters as sufficient proof.

4. A Party shall not:

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

- (b) impose or maintain any numerical restriction relating to temporary entry and the issuance of a work permit, under paragraph 1 or 2.

Section B – Investors

1. Each Party shall grant temporary entry and, upon request, a work permit for a period of up to one year to a business person seeking to establish, develop, or administer an investment in a capacity that is supervisory, executive, or involves essential skills, provided that the business person otherwise complies with immigration measures applicable to temporary entry and the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital in the territory of the Party granting temporary entry.

2. Provided that the spouse of a business person admitted pursuant to paragraph 1 of this Section B complies with immigration measures applicable to temporary entry, each Party shall grant temporary entry and, upon request, a work permit, to that spouse. If a work permit is required, it may be granted either at the time the spouse is granted temporary entry or after the spouse enters the territory of that Party. The duration of temporary entry must coincide with that of the business person the spouse is accompanying.

3. A Party shall not:

- (a) as a condition for temporary entry and the issuance of a work permit under paragraph 1 or 2, require labour market tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry and the issuance of a work permit, under paragraph 1 or 2.

Section C – Intra-Company Transferees

1. Each Party shall grant temporary entry and a work permit for a period of up to three years, with extensions possible, to an intra-corporate transferee, provided that the intra-corporate transferee otherwise complies with immigration measures applicable to temporary entry. A Party may also require the intra-corporate transferee to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for temporary entry.

2. Provided that the spouse of a business person admitted pursuant to paragraph 1 of this Section C complies with immigration measures applicable to temporary entry, each Party shall grant temporary entry and, upon request, a work permit to that spouse. If a work

permit is required, it may be granted either at the time the spouse is granted temporary entry or after the spouse enters the territory of that Party. The duration of temporary entry must coincide with that of the business person the spouse is accompanying.

3. A Party shall not:

- (a) as a condition for temporary entry and the issuance of a work permit under paragraph 1 or 2, require labour market tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry and the issuance of a work permit under paragraph 1 or 2.

Section D – Professionals

1. Each Party shall grant temporary entry and a work permit for a period of up to one year^{[Footnote 2](#)}, with extensions possible, to a professional who otherwise complies with immigration measures applicable to temporary entry and upon presentation of documentation demonstrating that the professional is seeking to enter the territory of the other Party to provide services which have been contracted prior to entry and in the field for which the professional has the appropriate qualifications.

2. Provided that the spouse of a business person admitted pursuant to paragraph 1 of this Section D complies with immigration measures applicable to temporary entry, each Party shall grant temporary entry and, upon request, a work permit to that spouse. If a work permit is required, it may be granted either at the time the spouse is granted temporary entry or after the spouse enters the territory of that Party. The duration of temporary entry must coincide with that of the business person the spouse is accompanying.

3. A Party shall not:

- (a) as a condition for temporary entry and the issuance of a work permit under paragraph 1 or 2, require labour market tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry and the issuance of a work permit under paragraph 1 or 2.

Appendix 21-1: Activities for Business

Visitors

Meetings and Consultations

Business persons attending meetings, seminars, or conferences; or engaged in consultations with business associates.

Research and Design

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

Growth, Manufacture and Production

Purchasing or production management personnel, conducting commercial transactions for an enterprise located in the territory of the other Party.

Marketing

Market researchers or analysts conducting research or analysis independently or for an enterprise located in the territory of the other Party.

Trade-fair or promotional personnel attending a trade convention.

Sales

Sales representatives or 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

Transportation operators transporting goods or passengers to the territory of a Party from the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

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

After-Sales or After-Lease Service

Installers, repair or maintenance personnel, or 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 or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased 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

Individuals engaged in a non-remunerated business activity associated to an occupation set out in Appendix 21-2.

Management or supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

Financial services personnel, including insurers, bankers, or investment brokers, engaging in commercial transactions for an enterprise located in the territory of the other Party.

Tourism personnel, including 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 21-2: Professionals

The following occupations are covered under this Chapter:

all occupations listed, with respect to Canada's commitments to Ukraine, in NOC TEER 0 and NOC TEER 1, and with respect to Ukraine's commitments to Canada, in Section 1 (Subsections 12, 13, 14), Section 2 and Section 3 of National Classifier of Ukraine "Occupation Classifier", except for:

- all health, education, and social services occupations and related occupations;*
- all professional occupations related to Cultural Industries;*
- Recreation, Sports, and Fitness Program and Service Directors;*
- Managers in Telecommunications Carriers;*
- Managers in Postal and Courier Services; and*
- Judges, Lawyers, and Notaries except for Foreign Legal Consultants.*

Footnotes

Footnote 1

The National Classifier of Ukraine "Occupation Classifier" is created according to the methodological principles of ISCO-88 (ISCO 88: International Standard Classification of Occupations/ILO, Geneva).

[Return to footnote¹](#)^{referrer}

Footnote 2

For greater certainty, a Party may issue a work permit for a professional with a duration of stay that is longer than one year.