

## **Chapter XX**

### **Temporary Entry for Business Persons**

#### **Article X-01 General Principles**

Further to Article X-02 General Obligations, this Chapter reflects the preferential trading relationship between the Parties, the mutual objective to facilitate temporary entry for business persons on a reciprocal basis and in accordance with Annex XX Commitments for Temporary Entry for Business Persons, the need to establish 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 X-02 General Obligations**

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article X-01 General Principles and, in particular, shall expeditiously apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. Nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of natural persons 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 such measures are not applied in such a manner as to unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement.

#### **Article X-03 Grant of Temporary Entry**

1. Each Party shall grant temporary entry to business persons who comply with existing immigration measures applicable to temporary entry such as those relating to public health and safety and national security, in accordance with this Chapter and the terms and conditions of Annex XX Commitments for Temporary Entry for Business Persons.

2. Each Party shall limit any fees for processing applications for temporary entry of business persons so as to not unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

#### **Article X-04 Provision of Information**

1. Further to Article XX Institutional Matters - Transparency, and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:

- (a) provide to the other Party relevant materials that will enable it to become acquainted with its measures relating to this Chapter; and

- (b) no later than six months after the date of entry into force of this Agreement, make available explanatory material regarding the requirements for temporary entry under this Chapter in such a manner that will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect and maintain, and, on request, make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation.

### **Article X-05 Working Group**

1. The Parties hereby establish a Working Group of Temporary Entry for Business Persons, which shall meet at least once every three years or on request of the FTA Joint Commission to consider any matter arising under this Chapter.

2. The Working Group's functions shall include:

- (a) to review the implementation and operation of this Chapter;
- (b) considering the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
- (c) the identification of measures that affect the temporary entry of business persons under this Chapter; and
- (d) the observance of the issues established under Article X-06 Cooperation.

### **Article X-06 Cooperation**

Taking into account the principles set out in article X-01 General Principles, the Parties shall:

- (a) share information and experiences on regulations and implementation of programs and technology in the framework of migratory issues, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programs and security in travel documents; and
- (b) endeavor to coordinate actively in multilateral forums, in order to promote the facilitation of temporary entry of business persons.

### **Article X-07 Dispute Settlement**

1. A Party may not initiate proceedings under the general dispute settlement provisions of this Agreement regarding a refusal to grant temporary entry under this Chapter 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 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 X-08 Relation to Other Chapters**

1. No provision of this Agreement shall be interpreted to impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter and Chapters XX Initial Provisions and XX to XX Transparency, Administration of the Agreement, Dispute Settlement, Exceptions and Final Provisions, Trade in Services.

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

### **Article X-09 Transparency**

1. Further to Chapter XX Transparency, each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding laws and regulations relating to the temporary entry of business persons.

2. Each Party shall endeavor to, within a reasonable period that should not exceed 30 days after an application requesting temporary entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application.

### **Article X-10 Definitions**

For the purposes of this Chapter:

**business person** means a national of a Party who is engaged in trade in goods, trade in services or 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.

**business visitor** means a natural person of either Party who is:

- i) a service seller being a natural person 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 representative will not be engaged in making direct sales to the general public or in supplying services directly;
- ii) an investor of a Party or a duly authorized representative of an investor of a Party, who is seeking temporary entry into the territory of the other Party to establish, develop, administer, expand, monitor, or dispose an investment of that investor; or
- iii) a goods seller, being a natural person who is seeking temporary entry to the territory of the other Party to negotiate for the sale of goods where such negotiations do not involve direct sales to the general public;

**intra-corporate transferee** means a manager, an executive, or a specialist, who is an senior employee of a service supplier of a Party with a commercial presence, as defined in the Services chapter, in the territory of the other Party;

**executive** means a natural person within an organization who primarily directs the management of the organization, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment;

**immigration measure** means any law, regulation or procedure affecting the entry and sojourn of foreign nationals;

**manager** means a natural person within an organization who primarily directs the organization or a department or sub-division of the organization, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization), and exercises discretionary authority over day-to-day operations;

**specialist** means an employee within an organization who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organization's service, research equipment, techniques or management.

## ANNEX XX

### Commitments for Temporary Entry for Business Persons

1. The following sets out both Parties' specific commitments with respect to temporary entry, including the presence of natural persons made for the supply of services, with respect to the services sectors set out in Annex XX.
  
2. All the commitments in respect of the presence of natural persons made in the Schedule of Specific Commitments in Annex XX of a Party, including any requirements, regulations and additional commitments apply to the services suppliers of the other Party.

For China:

Entry in the following categories only	Conditions (including duration of stay)
Business Visitors	Periods of stay up to a maximum of six months.
Intra-corporate transferees	Managers, executives and specialists defined as senior employees of a corporation of Peru that has established a representative office, branch or subsidiary in the territory of China, temporarily moving as intra-corporate transferees, shall be permitted entry for an initial stay of up to 3 years.

For Peru:

Category	Migratory Condition	Length of Stay
Business Visitors	Negocios (business)	Up to 180 days.
Intra-corporate transferees	Trabajador (Worker)	Up to 1 year, renewable for consecutive periods, the number of times that it is requested, to the extent that the conditions which motivated its granting are maintained.