

CHAPTER 10

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 10.1: Objectives

The objective of this Chapter, which reflects the preferential trading relationship between the Parties and their mutual desire to facilitate temporary entry of natural persons, is to establish transparent criteria and streamlined procedures for temporary entry, while recognizing the need to ensure border security and to protect the domestic labour force in the territories of the Parties.

Article 10.2: Scope

1. This Chapter applies to measures under this Agreement affecting the temporary entry of business persons of a Party into the territory of the other Party.
2. Nothing in this Chapter, Chapter 8 (Cross-Border Trade in Services) or Chapter 11 (Investment) shall apply to measures pertaining to citizenship, nationality, residence or employment on a permanent basis.
3. Nothing contained in this Chapter, Chapter 8 (Cross-Border Trade in Services) or Chapter 11 (Investment) shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in a manner so as to nullify or impair the benefits accruing to the other Party under this Agreement.²³

Article 10.3: Expeditious Application Procedures

1. Each Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof, so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement. Each Party shall notify applicants for temporary entry, either directly or through their

²³ The sole fact of requiring a visa for natural persons of a Party and not for those of non-Parties shall not be regarded as nullifying or impairing trade in goods or services or conduct of investment activities under this Agreement.

authorized representative or their prospective employer, of the outcome of their applications, including the period of stay and other conditions.

2. Each Party shall, within 10 working 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, or advise the applicant when a decision will be made. At the request of the applicant, the Party shall provide, without undue delay, information concerning the status of the application. The contact point for each Party for such queries is set out in Article 10.6.

3. Any fees imposed in respect of the processing of an immigration formality shall be limited to the approximate cost of services rendered.

Article 10.4: Grant of Temporary Entry

1. The Parties make commitments in respect of temporary entry of natural persons. Such commitments and the conditions governing are inscribed in Annex 10.

2. Where a Party makes a commitment under paragraph 1, that Party shall grant temporary entry to the extent provided for in that commitment, provided that such natural persons are otherwise qualified under all applicable immigration rules and measures.

3. In respect of the commitments on temporary entry in Annex 10, unless otherwise specified therein, neither Party may:

(a) require labour certification tests, or other procedures of similar effect;

(b) impose or maintain any numerical restriction relating to temporary entry; or

(c) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.

4. Any fees imposed by a Party in respect of the processing of an immigration formality shall be reasonable in that they do not, in themselves, represent an unjustifiable impediment to the movement of natural persons of another Party under this Chapter.

5. The temporary entry granted by virtue of this Chapter does not replace the requirements needed to carry out a profession or activity according to the specific

laws and regulations in force in the territory of the Party authorizing the temporary entry.

Article 10.5: Transparency

Each Party shall:

- (a) publish or otherwise make publicly available explanatory material on relevant immigration formalities which pertain to or affect the operation of this Chapter;
- (b) publish or otherwise make publicly available in its territory and to the other Parties, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable natural persons of the other Parties to become acquainted with those requirements;
- (c) upon modifying or amending immigration measure that affects temporary entry of natural persons of another Party, ensure that the information published or otherwise made publicly available pursuant to subparagraph (b) is updated as soon as possible; and
- (d) maintain mechanisms to respond to enquiries from interested persons regarding its laws and regulations affecting the temporary entry and temporary stay of natural persons.

Article 10.6: Contact Points

Each Party shall designate a contact point to facilitate communication and the effective implementation of this Chapter, and respond to inquiries from the other Party regarding regulations affecting the temporary entry of business persons between the Parties or on any matter covered by this Chapter, and shall provide details of this contact point to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact point. The contact point should identify and recommend areas for and ways of furthering cooperation between the Parties.

Article 10.7: Committee on Temporary Entry of Business Persons

1. The Parties hereby establish a Committee on Temporary Entry of Business

Persons that shall meet on the request of either Party or the FTA Joint Commission to consider any matter arising under this Chapter.

2. The Committee's functions shall include:

- (a) reviewing the implementation and operation of this Chapter;
- (b) identification and recommendation of measures to facilitate the temporary entry of business persons between the Parties; and
- (c) considering other issues with respect to temporary entry of business persons of interest to a Party and improving the commitments undertaken by the Parties under this Chapter on a mutually advantageous basis.

Article 10.8: Cooperation

Taking into account the principles set out in Article 10.1, the Parties shall:

- (a) exchange 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 of travel documents;
- (b) endeavour to coordinate actively in multilateral fora, in order to promote the facilitation of temporary entry of business persons;
- (c) encourage capacity building and promote technical assistance among migratory authorities; and
- (d) endeavour to take measures to facilitate the temporary entry of business persons of the other Party in accordance with its domestic laws and regulations.

Article 10.9: Definitions

For the purposes of this Chapter:

accompanying spouse, parent or dependent child means a spouse, parent or

dependent child of a natural person of either Party who has been granted the right of entry and temporary stay under this Chapter for a period of longer than 12 months;

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

- (a) a service seller being a natural person who is a sales representative of a service supplier of that Party and is seeking temporary entry into 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;
- (b) an investor of a Party, as defined in Chapter 11 (Investment), or a duly authorized representative of an investor of a Party, seeking temporary entry into the territory of the other Party to establish, expand, monitor, or dispose of an investment of that investor; or
- (c) a goods seller, being a natural person who is seeking temporary entry into 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;

contractual service supplier means a natural person of a Party who:

- (a) is an employee of a service supplier or an enterprise of a Party, whether a company, partnership or firm, who enters the territory of the other Party temporarily in order to perform a service pursuant to a contract(s) between his or her employer and a service consumer(s) in the territory of the other Party;
- (b) is employed by a company, partnership or firm of the Party, which has no commercial presence in the territory of the other Party where the service is to be provided;
- (c) receives his or her remuneration from that employer;
- (d) has appropriate educational and professional qualifications relevant to the service to be provided;

intra-corporate transferee means a manager, an executive, or a specialist, who is an employee of a service supplier or investor of a Party with a commercial presence, as defined in Chapter 8 (Cross-Border Trade in Services), 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;

manager means a natural person within an organization who primarily directs the organization or a department or subdivision 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;

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

immigration formality means a visa, permit, pass, or other document or electronic authority granting a natural person of one Party the right to enter, reside or work in the territory of the other Party;

installer or servicer means a natural person who is an installer or servicer of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract;

natural person or **natural person of a Party** means a natural person of a Party as defined in Chapter 8 (Cross-Border Trade in Services);

specialist means a natural person 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;

temporary entry means entry by a business visitor, an intra-corporate transferee, an independent professional, a contractual service supplier, or an installer or servicer, as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or enterprise which employs that visitor in the visitor's home country.

ANNEX 10

SCHEDULE OF SPECIFIC COMMITMENTS ON TEMPORARY ENTRY OF BUSINESS PERSONS

Section A: China's Commitments

The following Schedule sets out China's specific commitments in accordance with Chapter 10 in respect of the temporary entry of natural persons.

Temporary entry in the following categories	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 Nicaragua, being engaged in the foreign invested enterprises in the territory of China for conducting business, temporarily moving as intra-corporate transferees, shall be granted a long-term stay permit as stipulated in the terms of contracts concerned or an initial stay of up to three years, whichever is shorter.
Contractual Service Suppliers	Temporary entry and temporary stay for a Contractual Service Suppliers is subject to the duration of contract, but shall not exceed one year. The services provided by Contractual Service Suppliers are only limited to the specific sectors as follows: (1) Accounting Services (2) Medical and dental services (3) Architectural services (4) Engineering services (5) Urban planning services (except general urban planning) (6) Computer and related services (7) Construction and Related Engineering Services

	<p>(8) Education Services: Contractual Service Suppliers shall acquire a bachelor's degree or above, receive appropriate professional titles or certificates, and have at least two-year professional work experience. The Chinese party involved in the contract shall be a juridical person which has the function of providing education service</p> <p>(9) Tourism Services</p>
Installers/Serviceers	Temporary entry and temporary stay for such natural persons is subject to the duration of contract, but shall not exceed six months.
Accompanying Spouse, Parent or Dependent Child	<p>Accompanying Spouse, Parent or Dependent Child of Nicaragua entrants defined in Intra-corporate Transferees or Contractual Service Suppliers are accorded the same period of stay as for the entrants, provided that the stay in China of those entrants is greater than 12 months.</p> <p>The working rights of the qualified accompanying spouses in China are subject to relevant laws, regulations, and rules of China.</p>

Section B: Nicaragua's Commitments

The following Schedule sets out Nicaragua's specific commitments in accordance with Chapter 10 in respect of the temporary entry of natural persons.

Temporary entry in the following categories	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 China, being engaged in the foreign invested enterprises in the territory of Nicaragua for conducting business, temporarily moving as intra-corporate transferees, shall be granted a long-term stay permit as stipulated in the terms of contracts concerned or an

	initial stay of up to three years, whichever is shorter.
Contractual Service Suppliers	Temporary entry and temporary stay for a Contractual Service Suppliers is subject to the duration of contract, but shall not exceed one year.
Installers/Serviceers	Temporary entry and temporary stay for such natural persons is subject to the duration of contract, but shall not exceed six months.
Accompanying Spouse, Parent or Dependent Child	<p>Accompanying Spouse, Parent or Dependent Child of China entrants defined in Intra-corporate Transferees or Contractual Service Suppliers are accorded the same period of stay as for the entrants, provided that the stay in Nicaragua of those entrants is greater than 12 months.</p> <p>The working rights of the qualified accompanying spouses in Nicaragua are subject to relevant laws, regulations, and rules of Nicaragua</p>