

CHAPTER 12

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 12.1: Definitions

For the purposes of this Chapter:

business person means:

- (a) a natural person who has the nationality of a Party according to Annex 1-A (Party-Specific Definitions); or
- (b) a permanent resident of a Party that, prior to the date of entry into force of this Agreement, has made a notification consistent with Article XXVIII(k)(ii)(2) of GATS that that Party accords substantially the same treatment to its permanent residents as it does to its nationals¹,

who is engaged in trade in goods, the supply of services or the conduct of investment activities;

immigration formality means a visa, permit, pass or other document or electronic authority granting temporary entry;

immigration measure means any measure affecting the entry and stay of foreign nationals; and

temporary entry means entry into the territory of a Party by a business person of another Party who does not intend to establish permanent residence.

Article 12.2: Scope

1. This Chapter shall apply to measures that affect the temporary entry of business persons of a Party into the territory of another Party.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.

¹ For the purposes of subparagraph (b), “nationals” has the meaning it bears in Article XXVIII(k)(ii)(2) of GATS.

第 12 章

商务人员临时入境

第 12.1 条 定义

就本章而言：

商务人员指从事货物贸易、服务提供或开展投资活动的：

- (a) 根据附件 1-A(特定缔约方定义)，拥有一缔约方国籍的自然人；或
- (b) 一缔约方的永久居民，该缔约方在本协定生效之日前已作出符合 GATS 第 28 条(k)款(ii)项(2)目的通知，声明该缔约方给予其永久居民的待遇与给予其国民¹的待遇实质相同，

移民手续指准予临时入境的签证、许可、通行证或其他文件或电子授权；

移民措施指影响外国国民入境和停留的任何措施；以及

临时入境指无意永久居留的另一缔约方的一商务人员进入一缔约方领土的行为。

第 12.2 条 范围

1. 本章应适用于影响一缔约方的商务人员临时进入另一缔约方领土的措施。
2. 本章不得适用于影响自然人寻求进入另一缔约方就业市场的措施，也不得适用于有关公民身份、国籍、在永久基础上居留或就业的措施。

¹ 就(b)项而言，“国民”与其在 GATS 第 28 条(k)款(ii)项(2)目中所具有的含义相同。

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of another 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 as to nullify or impair the benefits accruing to any Party under this Chapter.

4. The sole fact that a Party requires business persons of another Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to any Party under this Chapter.

Article 12.3: Application Procedures

1. As expeditiously as possible after receipt of a completed application for an immigration formality, each Party shall make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.

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

3. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality are reasonable, in that they do not unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement.

Article 12.4: Grant of Temporary Entry

1. Each Party shall set out in Annex 12-A the commitments it makes with regard to temporary entry of business persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of business persons specified by that Party.

2. A Party shall grant temporary entry or extension of temporary stay to business persons of another Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those business persons:

- (a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and
- (b) meet all relevant eligibility requirements for temporary entry or extension of temporary stay.

3. 本协定中任何条款不得阻碍一缔约方采取措施监管另一缔约方的自然人进入其领土或在其领土内临时停留，包括为保护其边境完整及为保证自然人有序跨境移动所采取的必要措施，只要这些措施未以使任何缔约方在本章下获得的利益丧失或减损的方式实施。

4. 一缔约方要求另一缔约方的商务人员办理移民手续这一惟一事实不得视为使任何缔约方本章项下应获的利益丧失或减损。

第 12.3 条 申请程序

1. 每一缔约方在收到完备移民手续申请后，应尽快对申请作出决定并将决定告知申请人，如批准，应通知其停留期限和其他条件。

2. 应一申请人请求，一缔约方在收到完备移民手续申请后，应努力迅速提供有关申请状态的信息。

3. 每一缔约方应保证其主管机关对办理移民手续申请收取合理费用，不得当减损或延误本协定项下的货物贸易、服务贸易或投资活动的开展。

第 12.4 条 准许临时入境

1. 每一缔约方应在附件 12-A 中列出其对商务人员临时入境所作承诺，其中应规定该缔约方所列每一类商务人员入境和临时停留的条件和限制，包括停留时间长度。

2. 一缔约方应在根据本条第 1 款所作承诺的规定限度内，准予另一缔约方的商务人员临时入境或临时停留延期，条件是这些商务人员：

(a) 遵循准予入境缔约方对相关移民手续所规定的申请程序；及

(b) 符合临时入境或临时停留延期所需的所有相关资格要求。

3. The sole fact that a Party grants temporary entry to a business person of another Party pursuant to this Chapter shall not be construed to 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.

4. A Party may refuse to issue an immigration formality to a business person of another Party if 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 natural person who is involved in such dispute.

5. When a Party refuses pursuant to paragraph 4 to issue an immigration formality, it shall inform the applicant accordingly.

Article 12.5: Business Travel

The Parties affirm their commitments to each other in the context of APEC to enhance the mobility of business persons, including through exploration and voluntary development of trusted traveller programmes, and their support for efforts to enhance the *APEC Business Travel Card* programme.

Article 12.6: Provision of Information

Further to Article 26.2 (Publication) and Article 26.5 (Provision of Information), each Party shall:

- (a) promptly publish online if possible or otherwise make publicly available, information on:
 - (i) current requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable interested persons of the other Parties to become acquainted with those requirements; and
 - (ii) the typical timeframe within which an application for an immigration formality is processed; and
- (b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter.

3. 一缔约方根据本章准予另一缔约方的商务人员临时入境这一惟一事实不得解释为免除该商务人员从事一专业或以其他方式从事商业活动所需满足的任何适用的许可或其他要求，包括任何强制性行为准则。
4. 一缔约方可拒绝向另一缔约方商务人员签发移民手续，如该人员的临时入境可能对下列方面造成不利影响：
 - (a) 在其雇佣地或预定雇佣地正在进行的任何劳动争议的解决；或
 - (b) 对该争议所涉及的任何自然人的雇佣。
5. 如一缔约方根据本条第 4 款拒绝签发移民手续，则应按此通知申请人。

第 12.5 条 商务旅行

缔约方确认其在 APEC 范围内相互作出的增强商务人员流动性的承诺，包括通过探索和自愿开展可信旅行者计划，并确认其对推进 APEC 商务旅行卡计划所作努力的支持。

第 12.6 条 信息的提供

在第 26.2 条(公布)和第 26.5 条(信息的提供)基础上，每一缔约方应：

- (a) 在可能的情况下迅速在线公布下列信息或以其他方式使下列信息可公开获得：
 - (i) 本章下关于临时入境的现行要求，包括能使其他缔约方的利害关系人知晓这些要求的说明材料、相关表格和文件；及
 - (ii) 处理移民手续申请的标准时间；以及
- (b) 建立或设立适当机制，对利害关系人就本章所涵盖的临时入境措施的询问作出答复。

Article 12.7: Committee on Temporary Entry for Business Persons

1. The Parties hereby establish a Committee on Temporary Entry for Business Persons (Committee), composed of government representatives of each Party.
2. The Committee shall meet once every three years, unless otherwise agreed by the Parties, to:
 - (a) review the implementation and operation of this Chapter;
 - (b) consider opportunities for the Parties to further facilitate temporary entry of business persons, including through the development of activities undertaken pursuant to Article 12.8 (Cooperation); and
 - (c) consider any other matter arising under this Chapter.
3. A Party may request discussions with one or more other Parties with a view to advancing the objectives set out in paragraph 2. Those discussions may take place at a time and location agreed by the Parties involved in those discussions.

Article 12.8: Cooperation

Recognising that the Parties can benefit from sharing their diverse experience in developing and applying procedures related to visa processing and border security, the Parties shall consider undertaking mutually agreed cooperation activities, subject to available resources, including by:

- (a) providing advice on the development and implementation of electronic processing systems for visas;
- (b) sharing experiences with regulations, and the implementation of programmes and technology related to:
 - (i) border security, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programmes and security in travel documents; and
 - (ii) the expediting of certain categories of applicants in order to reduce facility and workload constraints; and

第 12.7 条 商务人员临时入境委员会

1. 缔约方特此设立商务人员临时入境委员会(委员会)，由每一缔约方的政府代表组成。
2. 委员会应每 3 年召开一次会议以开展下列工作，除非缔约方另有议定：
 - (a) 审议本章的实施和运用情况；
 - (b) 考虑缔约方进一步便利商务人员临时入境的机会，包括通过开展根据第 12.8 条(合作)进行的活动；以及
 - (c) 审议本章下产生的任何其他事项。
3. 一缔约方可请求与另一个或多个缔约方进行讨论，以期推进第 2 款中所列目标的实现。这些讨论可在讨论涉及的缔约方议定的时间和地点进行。

第 12.8 条 合作

认识到缔约方可受益于分享在制定和适用与签证办理和边境安全相关的程序方面的不同经验，缔约方应根据可获得的资源，考虑开展双方同意的合作活动，包括通过：

- (a) 提供关于签证电子处理系统开发和实施的建议；
- (b) 分享与下列事项相关的法规、项目实施和技术方面的经验：
 - (i) 边境安全，包括与生物识别技术使用、先进旅客信息系统、常旅客计划及旅行文件安全相关的边境安全措施；及
 - (ii) 为特定类别申请人加快办理，以减少设施和工作量压力；以及

- (c) cooperating in multilateral fora to promote processing enhancements, such as those listed in subparagraphs (a) and (b).

Article 12.9: Relation to Other Chapters

1. Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 27 (Administrative and Institutional Provisions), Chapter 28 (Dispute Settlement), Chapter 30 (Final Provisions), Article 26.2 (Publication) and Article 26.5 (Provision of Information), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

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

Article 12.10: Dispute Settlement

1. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

- (a) the matter involves a pattern of practice; and
- (b) the business persons affected have exhausted all available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the other Party within a reasonable period of time after the date of the institution of proceedings for the remedy, including any proceedings for review or appeal, and the failure to issue such a determination is not attributable to delays caused by the business persons concerned.

- (c) 在多边场合开展合作以提升办理水平，例如(a)项和(b)项中所列事项。

第 12.9 条 与其他章的关系

1. 除本章、第 1 章(初始条款和一般定义)、第 27 章(管理和机构条款)、第 28 章(争端解决)、第 30 章(最后条款)、第 26.2 条(公布)和第 26.5 条(信息的提供)外，本协定中任何条款不得就移民措施对一缔约方施加任何义务。
2. 本章中任何内容不得解释为对本协定其他章施加义务或承诺。

第 12.10 条 争端解决

1. 任何缔约方不得就拒绝准予临时入境援用第 28 章(争端解决)下的争端解决，除非：
 - (a) 该事项涉及一行为模式；及
 - (b) 受影响的商务人员对特定事项已穷尽所有可获得的行政救济措施。
2. 如另一缔约方在启动救济程序、包括任何复议或上诉程序之日后的一合理期限内未能就该事项作出最终裁定，且未能作出一裁定不能归因于有关商务人员的迟延，则第 1 款(b)项中所指的救济措施应视为已穷尽。