

ATTACHMENT VI

ANNEX ON

TEMPORARY ENTRY

OF BUSINESS PERSONS

ANNEX ON TEMPORARY ENTRY OF BUSINESS PERSONS

ARTICLE I

Definitions

For the purposes of this Annex, the following terms shall mean:

Labour Certification: The procedure effected by the relevant administrative authority to determine whether a foreigner, coming from one Party who wishes to temporarily enter the territory of another Party will provide a service in the same area without displacing the local workforce in the same labour field or seriously threaten the working conditions in the host Party.

Temporary Entry: The entry of a business person from one Party to a territory of another Party, without the intention of residing permanently in that territory. The period granted for temporary entry will be in accordance with the legislation and relevant regulations of the Parties.

Immigration Policy: Any policy on immigration.

Business person: The national of one Party who trades in goods or offers his services, or invests.

Recurrent Practice: A practice repeatedly carried on by the immigration authorities of a Party during a specific representative period prior to and during the performance of the same.

Business Activity: Legitimate commercial activities created and operated with the aim of making a profit on the market. It excludes the possibility of obtaining employment, or salary or remuneration sourced from the Parties.

Validity: The nature of any obligations under the laws of the Parties at the time when the Agreement comes into force.

Work Permit: For the purposes of paragraph 1 of section A, the written permission granted by the relevant administrative authorities of one Party to a national of another Party in which authorization is granted to obtain paid employment in the territory of the authorizing Party.

Specialised Knowledge Essential for Business: For the purposes of paragraph 1 of section C, if an individual has specialised knowledge regarding the goods or services offered by the company, or if he has advanced knowledge regarding the processes and functioning of the company.

To be in the Process of Committing a Significant Amount of Capital: For the purposes of paragraph 1 of section B, when the funds are irreversibly committed for investment in the territory of another Party.

Supervisory Functions: For the purposes of paragraph 1 of section B those functions in which the individual has supervisory responsibilities over an important part of the operations of a company and does not relate to supervision of low level employees.

Executive Functions: For the purposes of paragraph 1 of section B and paragraph 1 of Section C, those functions assigned within an organisation, for which the individual has basically the following responsibilities:

- (i) managing the administration of the organisation or a part or relevant function of that administration;
- (ii) establishing the policies and objectives of the organisation, part or function of the same; and
- (iii) receiving supervision or general guidance only from highest level executives, the Board, or the Administrative Council of the organisation or shareholders of the organisation.

Management Functions: For the purposes of paragraph 1 of section C, those functions assigned within an organisation, for which the individual has the following responsibilities:

- (i) execute administrative duties within the organisation or one essential function within the organisation;
- (ii) supervise and control the work of other professional employees, supervisors or administrators;
- (iii) have the authority to employ and discharge workers, or recommend these actions, as well as make recommendations affecting the management of personnel which he supervises, and perform senior level duties within the hierarchy of the organisation or with respect to the responsibilities of his post;

- (iv) fulfill responsibilities regarding the daily operation of the task in which the individual has authority.

Functions which require Special Skills: For the purposes of paragraph 1 of section B, when an individual with specialised knowledge or skills which are essential for the effective operations of a company. The individual should be employed in a very responsible position, which requires independent judgement, creativity, training or supervision of other employees and should not be employed to carry out routine work which could be performed by qualified labour. He should have a high level of training and experience in the operation of the company.

ARTICLE II

General Principles

For the purpose of this Annex, the Parties are:

- (i) CARICOM Members States of Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago;
- (ii) Dominican Republic.

2. Any State not listed in paragraph 1(i) of this Article, upon becoming a CARICOM Member, shall not be subject to the provisions of this Annex. The Parties shall negotiate the terms of this Annex with the said State.

3. The provisions of this Annex reflect the preferential trade relationship between the Parties, the desirability of facilitating temporary entry of business persons and the need to establish transparent criteria and procedures for this effect. Similarly, they reflect the need to guarantee border security, protect domestic labour force and permanent employment in their respective territories.

ARTICLE III

General Obligations

Each Party shall apply the relevant measures of this Annex in accordance with Article II. In particular, they shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services, or conduct of investment activities covered in the Agreement.

2. The Parties shall endeavour to develop and adopt common criteria, definitions and interpretations for the implementation of this Annex.

3. Each Party may modify its immigration policy, providing that these modifications are compatible with the commitments contracted in this Annex.

ARTICLE IV

Permit for Temporary Entry

In accordance with the provisions of this Annex, including those contained in the Appendix to this Annex, 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. Each Party may refuse to issue an immigration document which authorises a business person to work, when his temporary entry is deemed to adversely affect:

- (i) the settlement of any existing labour unrest that is in progress at the place or intended place of employment;
- (ii) the employment of anyone who becomes involved in this conflict;
- (iii) other matters of national interest.

3. When a Party refuses to deliver an immigration document which authorises employment, in accordance with paragraph 2, that Party:

- (i) shall normally inform the business person involved, in writing, of the reasons for the refusal; and
- (ii) shall do its best efforts to notify in writing the reasons for the refusal at the request of the Party whose national was refused entry, provided that this last Party considers that the refusal is a recurrent practice or an explanation in writing was not provided to the person involved.

4. Each Party shall, to the extent possible limit the amount of fees payable concerning the request for temporary entry to the approximate cost of the processing services required.

5. The temporary entry of business persons does not authorise the conduct of professional activities.

ARTICLE V

Availability of Information

Each Party:

- (i) shall provide the other Party with the information that will allow familiarity with measures relating to this Annex; and
- (ii) within twelve (12) months of the date on which the Agreement enters into force, shall prepare, publish and make available to the parties involved, both in its territory and that of the other Party, a comprehensive document which explains the requirements for temporary entry in accordance with this Annex, in order to make them known to the other Party's business community;
- (iii) each Party shall compile, maintain and make available to the other Party, in accordance with its legislation, information relative to the granting of temporary entry, in accordance with this Annex to persons of the other Party to whom the immigration documents had been issued.

ARTICLE VI

Committee on the temporary Entry of Business Persons

The Committee on Trade in Services shall be responsible for the administration of this Annex provided for in Article XIV of the Agreement.

ARTICLE VII

Dispute Settlement

The Parties may not initiate the proceedings set out in Article XV of the Free Trade Agreement on Settlement of Disputes, regarding a refusal to issue temporary entry permits, in accordance with this Annex, nor in any particular case included in the Article III unless—

- (i) the matter refers to a recurrent practice;
- (ii) the affected person has exhausted the available administrative remedies existing in the national legislation of the Party refusing entry to the national of the other Party with respect to that particular matter.

The remedies referred to in paragraph 1(b) shall be deemed exhausted if the relevant authority fails to achieve a definitive settlement up to twelve (12) months after the beginning of the administrative proceeding and the resolution has not been delayed by fault of the business man concerned.

ARTICLE VIII

Relationship with other Provisions

No provision of this Annex shall impose any obligation on the Parties in respect of their immigration policies.

TEMPORARY ENTRY OF BUSINESS PERSONS

Section A: Business Visitors:

Each Party shall grant temporary entry to business persons (who, subsequent to the request of a company or business association) seeking to engage in a business activity set out in the Appendix to this Section, without requiring that person to obtain an employment authorization provided that, the business person otherwise complies with existing immigration requirements applicable to temporary entry, on presentation of:

- (i) proof of citizenship of a Party;
- (ii) documentation supporting the prior request of the company established in the territory of a Party;
- (iii) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
- (iv) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the labour market.

2. Each Party shall provide that a businessman may satisfy the requirements set out in paragraph 1(iv), when he proves:

- (i) that the primary source of remuneration for the proposed business activity is located outside of the territory of the Party granting the temporary entry; and
- (ii) that the business person's principal place of business and the actual place of accrual of profits, predominantly remains outside such territory.

3. For the purposes of paragraph 2, each Party may accept an oral declaration as to principal place of business and actual place of accrual of profits. When a Party requires additional proof, a letter from the employer who is registered in the Bilateral Listing or a national equivalent should suffice.

4. Each Party shall grant temporary entry to a business person seeking to engage in any business activity other than those indicated in the Appendix to this Annex, on a basis no less favourable than those provided under the existing provisions of the measures relating to immigration, foreign affairs and related matters, provided that that business person complies with existing immigration requirements applicable to temporary entry.

5. No Party may:

- (i) as a condition to granting an entry permit in accordance with paragraph 1, require prior approval procedures, requests, labour certification tests for work certificates or other like procedures; and
- (ii) impose nor maintain any restrictions on the number of persons relating to temporary entry in accordance with paragraph 1 or 4.

6. Notwithstanding the provisions of paragraph 5, a Party may require a business person seeking temporary entry in accordance with this section, to obtain prior to entry, a visa or its equivalent. The Parties shall consult among themselves in order to avoid and/or eliminate the requirements of a visa or its equivalent.

Section B: Investors:

- (i) Each Party shall grant a temporary entry permit and issue the corresponding documentation to the business person seeking to establish, develop, administer or provide key advisory or technical services in a capacity that is supervisory or executive or providing skills essential to the administration of investments to which the business person or the business person's company have committed, or are in the process of committing a significant amount of capital provided that the business person otherwise complies with existing immigration requirements applicable to temporary entry.

- (ii) No Party may require labour certification tests or other like procedures, as a condition for temporary entry as set out in paragraph 1; nor impose or maintain any restrictions on the number of persons relating to temporary entry in accordance with paragraph 1.
- (iii) Notwithstanding the provisions of paragraph 2, a Party may examine expeditiously, the investment proposal of a business person to verify whether the business person complies with the legal provisions which are applicable.
- (iv) Notwithstanding the provisions of paragraph 2, a Party may require that a business person who is seeking temporary entry in accordance with this Section, to obtain a visa or its equivalent prior to entry.

Section C: Intra-Company Transferees:

Each Party shall grant a temporary entry permit and shall expedite the necessary documents confirming that a business person is employed by a company established in its territory, who seeks to perform managerial or executive functions or functions which involve specialised knowledge, in that company or in one of its subsidiaries or affiliates, provided that that business person and company otherwise comply with existing immigration measures applicable to temporary entry. A Party may require that the business person has been continuously employed by the company for at least one year, within the three-year period immediately preceding the date of application for admission.

2. No Party may:

- (i) require labour certification tests or other like procedures, as a condition for temporary entry as set out in paragraph 1;
- (ii) impose or maintain restrictions on the number of persons relating to temporary entry in accordance with paragraph 1.

3. Notwithstanding the provisions of paragraph 2, a Party may require that a business person who applies for a work permit in accordance with this Section, obtain a visa or its equivalent prior to entry. The Parties shall confer with each other in order to avoid and/or remove the requirements of a visa or its equivalent.

APPENDIX

Activities of visitors on Business

Research and Design: Technical, scientific and statistical researchers whether independent or on behalf of a company located in the territory of the other Party.

Agriculture, Manufacturing and Production: Personnel involved in purchasing and production, at the managerial level who is conducting commercial operations for a company located in the territory of the other Party.

Marketing: Personnel conducting research or analysis, including market research, whether independently or on behalf of a company established 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 a company located in the territory of another Party, but not delivering goods nor providing services.

Buyers purchasing for a company located in the territory of the other Party.

Distribution: Custom brokers providing consulting services regarding the facilitation of the import or export of goods.

After Sales Service: Personnel who install, repair, maintain, supervise and have specialised technical knowledge necessary to complete the contractual obligations of the seller and who offers services or trains workers to provide these services, in conformity with a warranty or other service contract connected to the sale of equipment or commercial or industrial machinery, including computer programmes purchased from a company located outside of the territory of the Party in which a temporary entry permit is sought, during the life of the warranty or service contract.

General Services: Management and supervisory personnel engaging in a commercial transaction for a company 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.

Translators or interpreters who provide services as employees of a firm located in the territory of the other Party.

**Passed in the House of Representatives this 7th
day of September, 2001.**

Clerk of the House

Passed in the Senate this 11th day of September, 2001.

Clerk of the Senate