

Overview of Chapter 16 (Temporary Entry) of the US-Mexico-Canada Agreement

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On September 30, 2018, the United States, Canada and Mexico reached a deal to replace the North American Free Trade Agreement (NAFTA) with a new trade accord, the US-Mexico-Canada Agreement (USMCA). Chapter 16 of the USMCA, “Temporary Entry for Business Persons,” contains very few changes to the current NAFTA Chapter 16 of the same title. By contrast, USMCA Chapter 16’s structure and language differ significantly from the text of the Trans-Pacific Partnership (TPP), which contained an abbreviated chapter followed by country-specific annexes. This report summarizes the USMCA chapter and its implications.

Overview of NAFTA Chapter 16

As noted above, the USMCA generally mirrors the original NAFTA Chapter 16, which contains the following key provisions:

- **NAFTA Art. 1603 (USMCA Art. 1604): Grant of Temporary Entry.** With certain exceptions, each Party is required to grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security.
 - **NAFTA Annex 1603 (USMCA Annex 1603): Temporary Entry for Business Persons.** Requirements for temporary entry of business persons are broken into different categories, including business visitors (Section A), traders and investors (Section B), intra-company transferees (Section C) and professionals (Section D).
 - **NAFTA App. 1603.A.1 (USMCA Appendix 1603.A.1): Business Visitors.** Business activities for which business visitors are required to be given temporary entry, ranging from research and design to general service, are set out in this section.
 - **NAFTA App. 1603.D.1 (USMCA Appendix 1603.D.1): Professionals.** Minimum education requirements and alternative credentials required for different types of professionals are set out in this section.
- **NAFTA Art. 1604 (USMCA Art. 1605): Provision of Information.** Each Party is required to provide to the other Parties materials that allow them to become acquainted with its measures relating to this Chapter. Furthermore, each Party is required to prepare, publish and make available explanatory material in a consolidated document regarding the requirements for temporary entry to allow business persons to become acquainted with them.

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- **NAFTA Art. 1605 (USMCA Art. 1606): Working Group.** The Parties establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials. The Working Group meets annually to consider the implementation and administration of this Chapter, develop measures to further facilitate temporary entry of business persons on a reciprocal basis, waiving of particular requirements for spouses of certain types of business persons, and proposed modifications or additions to this Chapter.
 - **NAFTA Art. 1606 (USMCA Art. 1607): Dispute Settlement.** Allows for the initiation of proceedings under Article 2007 (Commission Good Offices, Conciliation and Mediation) regarding a refusal to grant temporary entry only if the matter involves a pattern of practice and the business person has exhausted the available administrative remedies regarding the particular matter.

Changes in USMCA Chapter 16

The changes in the USMCA are mainly related to non-substantive rewording, rearrangement of certain sections, and a few updates tied to previously negotiated revisions and additions. The most important modifications are as follows:

- **USMCA Art. 1606.2(e): A Technology Mandate for the Working Group.** The NAFTA established a Working Group, and the USMCA introduces the following point to consider at its annual meeting: “issues of common interest related to temporary entry of business persons, such as the use of technologies related to processing of applications, that can be further explored among the Parties in other fora.”
- **USMCA Annex 1603 §B(3): Temporary Entry for Traders and Investors.** NAFTA Annex 1603 Section B, which addresses temporary entry for traders and investors, states in its third paragraph that a Party may require a business person seeking temporary entry to obtain a visa or its equivalent prior to entry. The USMCA contains additional language: “Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.” This text tracks the same language already provided for in sections A (business visitors), C (intra-company transferees), and D (professionals) requiring Party consultation if a visa requirement is imposed for this category of business persons.
- **USMCA Annex 1603 §D: Numerical Limits on Professionals.** NAFTA Annex 1603 Section D(4) – (7), in conjunction with Appendix 1603.D.4, permits Parties to establish numerical limits on professionals that may qualify for unrestricted entry. For example, the NAFTA provided for an annual numerical cap of 5,500 visas for Mexican business persons seeking entry into the United States. The USMCA removes the provisions related to numerical limits, on the basis of previous modifications that went into effect on January 1, 2004.
- **USMCA App. 1603.A.1: New Categories for Business Visitors.** NAFTA Appendix 1603.A.1 addresses different categories of business visitors. The following professions, previously classified under General Service, now have their own categories under the USMCA: commercial transactions, public relations and advertising, tourism, tour bus operation and translation.
- **Removed: Existing Immigration Measures.** NAFTA’s Appendix 1603.A.3, titled “Existing Immigration Measures,” is removed from USMCA Chapter 16. This provided a citation for the regulations of each country’s immigration law.

Outlook

That the USMCA contains only modest changes to NAFTA Chapter 16 has been characterized as a concession for the United States, which reportedly sought new restrictions on the temporary entry of businesspersons into the United States, if not the elimination of the Chapter entirely. That said, Canada did not achieve its objective of significantly expanding and modernizing the professionals list. This objective was supported by North American business groups, which had hoped for new visa categories for technology occupations that did not exist when the NAFTA was first announced. Overall, however, the lack of changes has been mostly applauded by these business groups, which had worried about significant disruptions caused by new visa restrictions and uncertainty surrounding the renegotiation of the NAFTA.

Please let us know if you have any questions.

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