

ANNEX I

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 10.6 (Non-Conforming Measures) and 11.13 (Non-Conforming Measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:
 - (a) Article 10.2 (National Treatment) or 11.3 (National Treatment);
 - (b) Article 10.3 (Most-Favoured-Nation Treatment) or 11.4 (Most-Favoured-Nation Treatment);
 - (c) Article 10.4 (Market Access);
 - (d) Article 10.5 (Local Presence);
 - (e) Article 11.9 (Performance Requirements); or
 - (f) Article 11.10 (Senior Management and Boards of Directors).
2. Each Schedule entry sets out the following elements:
 - (a) **Sector** refers to the sector for which the entry is made;
 - (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 10.6.1(a) and 11.13.1(a), do not apply to the listed measure(s);
 - (c) **Level of Government** indicates the level of government maintaining the listed measure(s);
 - (d) For the United States, **Measures** identifies the laws, regulations, or other measures for which the entry is made. For Australia, **Source of Measure** means the laws, regulations, or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in the **Measures** or **Source of Measure** element:
 - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
 - (e) **Description**, for Australia, sets out the non-conforming measure for which the entry is made; and **Description**, for the United States, provides a general, nonbinding, description of the **Measures**.
3. In accordance with Article 10.6.1(a) and 11.13.1(a), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply, in the case of

Australia, to the non-conforming measure identified in the **Description** element of that entry or, in the case of the United States, to the law, regulation, or other measure identified in the **Measures** element of that entry. Local Presence and National Treatment are separate disciplines and a measure that is only inconsistent with Local Presence need not be reserved against National Treatment.

4. Where a Party maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the supply of a service in its territory, a Schedule entry for that measure taken with respect to Article 10.2, 10.3, or 10.5 shall operate as a Schedule entry with respect to Article 11.3, 11.4, or 11.9 to the extent of that measure.

ANNEX I
SCHEDULE OF AUSTRALIA

Sector:	All Sectors
Obligations Concerned:	National Treatment (Articles 10.2 and 11.3) Most-Favoured-Nation Treatment (Articles 10.3 and 11.4) Local Presence (Article 10.5) Performance Requirements (Article 11.9) Senior Management and Boards of Directors (Article 11.10)
Level of Government:	Regional
Source of Measure:	All existing non-conforming measures at the regional level of government.
Description:	<u>Cross-Border Trade in Services and Investment</u> All existing non-conforming measures at the regional level of government.

Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 11.3) Senior Management and Boards of Directors (Article 11.10)
Level of Government:	Central
Source of Measure:	Australia's Foreign Investment Policy, which comprises the <i>Foreign Acquisitions and Takeovers Act 1975</i> (FATA); Foreign Acquisitions and Takeovers Regulations 1989; <i>Financial Sector (Shareholdings) Act 1998</i> and Ministerial Statements on foreign investment policy including the Treasurer's Press Release No.28 of 9 April 1997.

Description: Investment

A. The following investments may be subject to objections by the Australian Government and may also require notification to the Government¹:

- (a) Investments by foreign persons² in existing³ Australian businesses in the media sector as follows:
 - (i) Direct (i.e., non-portfolio) investment irrespective of size; and
 - (ii) Portfolio investments of 5 per cent or more;
- (b) Investments by foreign persons in existing Australian

¹ *Foreign Acquisitions and Takeovers Act 1975* (FATA). **Investments** means activities covered by Part II of FATA or, where applicable, Ministerial statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

² A **foreign person** means, as defined in section 5 of the FATA,:

- (a) a natural person not ordinarily resident in Australia;
- (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- (c) a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- (e) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

³ For the purposes of this entry, **existing** means in existence at the time the investment is proposed or made.

businesses, or prescribed corporations,⁴ the value of whose total assets exceeds \$A50 million⁵ in the following sectors:

- (i) The telecommunications sector;
- (ii) The transport sector, including airports, port

⁴ For the purposes of this entry, **prescribed corporation** means:

- (a) a trading corporation;
- (b) a financial corporation;
- (c) a corporation incorporated in a Territory under the law in force in that Territory relating to companies;
- (d) a foreign corporation that, on its last accounting date, held assets the sum of the values of which exceeded A\$50 million (for item (b) of the entry) or A\$800 million (for item (c) of the entry), being assets consisting of all or any of the following:
 - (i) land situated in Australia (including legal and equitable interests in such land);
 - (ii) mineral rights;
 - (iii) shares in a corporation incorporated in Australia;
- (e) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of the Australian corporation or Australian corporations exceeded A\$50 million (for item b) of the entry) or A\$800 million (for item c) of the entry);
- (f) a corporation that was, on its last accounting date, a holding corporation of an foreign corporation referred to in (d) or (e) of this footnote;
- (g) a foreign corporation that, on its last accounting date, held assets of a kind or kinds referred to in paragraph (d) of this footnote, where the sum of the values on that date of those assets was not less than one-half of the sum of the values on that date of the assets of that corporation and of all the subsidiaries of that corporation; or
- (h) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of that Australian corporation or those Australian corporations was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation.

⁵ To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year.

⁶ A **financial sector company** means, as defined in section 3 of the *Financial Sector (Shareholdings) Act 1998*,

- (a) an authorised deposit-taking institution; or
- (b) an authorised insurance company; or
- (c) a holding company of a company covered by (a) or (b) of this footnote..

⁷ To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year.

⁸ To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year.

⁹ A **foreign custodian company** means, as defined in the Foreign Acquisitions and Takeovers Regulations 1989, a corporation that:

- (i) is a foreign person; and
- (ii) is the holder of an Australian financial services licence under Chapter 7 of the *Corporations Act 2001*; and
- (iii) is in the business of providing custodian services to other persons in relation to the ownership of shares

¹⁰ As provided in the Foreign Acquisitions and Takeovers Regulations 1989.

¹¹ 'Unacceptable shareholding situation' and 'practical control' as defined in the *Financial Sector (Shareholdings) Act 1998*.

¹² Ministerial statements on foreign investment policy including the Treasurer's Press Release No. 28 of 9 April 1997.

facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia;

- (iii) The supply of training or human resources, or the manufacture or supply of military goods, equipment or technology, to the Australian or other defence forces;
 - (iv) The manufacture or supply of goods, equipment or technologies able to be used for a military purpose;
 - (v) The development, manufacture or supply of, or provision of services relating to, encryption and security technologies and communication systems; and
 - (vi) The extraction of (or rights to extract) uranium or plutonium, or the operation of nuclear facilities;
- (c) Investments by foreign persons in existing Australian businesses, or prescribed corporations, in all other sectors, excluding financial sector companies⁶, the value of whose total assets exceeds \$A800 million⁷;
- (d) Acquisitions by foreign persons of developed non-residential commercial real estate valued at more than \$A800 million⁸; and
- (e) Direct (i.e., non-portfolio) investment by foreign governments or their agencies, or companies with greater than a 15 per cent direct or indirect holding by a foreign government or agency or otherwise regarded as controlled by a foreign government, irrespective of size.

Notified investments may be refused, subject to interim orders, and/or approved subject to compliance with certain conditions. Investments referred to in (a) through (e) for which no notification is required or received may be subject to orders under Sections 18, 19, 20, 21 and 21A of the FATA.

B. The acquisition of an interest in shares in an Australian corporation by a foreign custodian company⁹ is exempt from the application of the FATA where the company is granted a certificate of exemption in respect of that interest¹⁰.

C. The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control¹¹ of an existing financial sector company, may be refused, or be subject to certain conditions¹².

D. In addition to the measures identified in this entry, other entries in Annex I or Annex II set out additional non-conforming measures imposing specific limits on, or requirements relating to, foreign investment in the following areas:

- Newspapers;
- Broadcasting;
- Telstra;
- CSL;
- Qantas Airways Ltd;
- Australian international airlines, other than Qantas;
- Urban land;
- Federal leased airports; and
- Shipping.

Sector:	Professional Services
Obligations Concerned:	Local Presence (Article 10.5)
Level of Government:	Central
Source of Measure:	<i>Patents Act 1990</i>
Description:	<u>Cross-Border Trade in Services</u>

In order to register to practice in Australia, patent attorneys must:

- (a) be ordinarily resident in Australia;¹³ and
- (b) attend a place of business in Australia.

¹³ For the purposes of this entry, a person is taken to be “ordinarily resident” in Australia if: (a) the person has his or her home in Australia; or (b) Australia is the country of his or her permanent abode even though he or she is temporarily absent from Australia. However, the person is taken not to be ordinarily resident in Australia if he or she resides in Australia for a special or temporary purpose only.

Sector:	Professional Services
Obligations Concerned:	National Treatment (Article 10.2) Most-Favoured-Nation Treatment (Article 10.3)
Level of Government:	Central
Source of Measure:	<i>Migration Act 1958</i>
Description:	<u>Cross-Border Trade in Services</u> To practise as a migration agent in Australia a person must be an Australian citizen or permanent resident or a citizen of New Zealand with a special category visa.

Sector:	Information and Communications Technology
Obligations Concerned:	Performance Requirements (Article 11.9)
Level of Government:	Central
Source of Measure:	Government announcement of <i>Whole-of-Government Information Technology Infrastructure Consolidation and Outsourcing Initiative</i> in 1997.
Description:	<u>Investment</u> Existing contracts, including any extensions, under the Government IT Outsourcing Program requiring specified levels of exports.

Sector:	Professional Services
Obligations Concerned:	Local Presence (Article 10.5)
Level of Government:	Central
Source of Measure:	<i>Corporations Act 2001</i>
Description:	<u>Cross-Border Trade in Services</u>

A person who is not ordinarily resident in Australia may be refused registration as a company auditor. At least one partner in a firm providing auditing services must be a registered company auditor who is ordinarily resident in Australia.

Sector:	Fishing
Obligations Concerned:	National Treatment (Articles 10.2 and 11.3)
Level of Government:	Central
Source of Measure:	<i>Fisheries Management Act 1991</i> <i>Foreign Fishing Licenses Levy Act 1991</i>
Description:	<u>Cross-Border Trade in Services and Investment</u> Foreign fishing vessels ¹⁴ seeking to undertake fishing activity in the Australian Fishing Zone must be authorised. Where foreign fishing vessels are authorised they may then be subject to a levy ¹⁵ .

¹⁴ For the purposes of this entry, a foreign vessel is one that does not meet the definition of an Australian boat, that is, a boat based in Australia which is owned by an Australian resident or corporation.

¹⁵ The levy charged will be in accordance with the *Foreign Fishing Licenses Levy Act 1991* or any amendments thereto.

Sector	Distribution Services
Obligations concerned	National Treatment (Articles 10.2 and 11.3) Market Access (Article 10.4)
Source of Measure	<i>Wheat Marketing Act (1989)</i>
Description	<p><u>Cross-Border Trade in Services and Investment</u></p> <p>A person, other than AWB (International) Ltd. (AWBI), may not export wheat unless the Wheat Export Authority (WEA) has given its written consent. The WEA must consult AWBI before giving such consent and must not give consent to bulk exports of wheat without the prior approval in writing of AWBI.</p>

Sector:	Professional Services
Obligations Concerned:	Local Presence (Article 10.5)
Level of Government:	Central
Source of Measure:	<i>Customs Act 1901</i>
Description:	<u>Cross-Border Trade in Services</u> To act as a customs broker in Australia, service suppliers must supply the service in and from Australia.

Sector:	Telecommunications
Obligations Concerned:	National Treatment (Article 11.3) Senior Management and Boards of Directors (Article 11.10)
Level of Government:	Central
Source of Measure:	<i>Telstra Corporation Act 1991</i>
Description:	<p><u>Investment</u></p> <p>The maximum aggregate foreign ownership allowed in Telstra is 35 per cent of the Telstra shares that are not Commonwealth held. The maximum individual foreign ownership allowed in Telstra is 5 per cent of the Telstra shares that are not Commonwealth held.</p> <p>The Chairperson and a majority of directors of Telstra must be Australian citizens, and Telstra is required to maintain its head office, main base of operations, and place of incorporation in Australia.</p>

Sector:	Broadcasting and Audiovisual Services Advertising Services
Obligations Concerned:	National Treatment (Articles 10.2 and 11.3) Most-Favoured-Nation Treatment ¹⁶ (Articles 10.3 and 11.4) Performance Requirements (Article 11.9)
Source of Measure:	<i>Broadcasting Services Act 1992</i>
Level of Government:	Central
Description:	<u>Cross-Border Trade in Services and Investment</u>
	(a) Transmission quotas for local content imposed on free-to-air commercial analogue and digital (other than multichannelling) television broadcasting services shall not exceed 55 percent of programming transmitted annually between 6:00a.m. and midnight. Subquotas for particular program formats (eg drama, documentary) may be applied within the 55 percent quota.
	(b) Transmission quotas for local content imposed on advertising broadcast by providers of free-to-air commercial analogue and digital (other than multichannelling) television broadcasting services shall not exceed 80 percent of advertising time transmitted annually between 6:00a.m. and midnight.

¹⁶ Applies only to the equal treatment as local content of New Zealand programs or production.

Sector	Broadcasting
Obligations Concerned	National Treatment (Article 11.3) Senior Management and Boards of Directors (Article 11.10)
Level of Government	Central
Source of Measure	<i>Broadcasting Services Act 1992 (BSA)</i>
Description of Reservation	<p><u>Investment</u></p> <p>A foreign person must not be in a position to exercise control of a commercial television broadcasting licence.</p> <p>Two or more foreign persons must not have company interests in a commercial television broadcasting licensee that exceed 20 per cent.</p> <p>No more than 20 per cent of the directors of each commercial television broadcasting licensee may be foreign persons.</p> <p>A foreign person must not have company interests in a subscription television broadcasting licence:</p> <ul style="list-style-type: none"> (a) of more than 20 per cent; or (b) that, when added to the company interests in that licence held by other foreign persons, exceed 35 per cent. <p>The terms “foreign person”, “in a position to exercise control”, “commercial television broadcasting licence”, “subscription television broadcasting licence” and “company interests” have the meanings they have in the BSA (sections 6, 7 and 8 and Schedule 1).</p>

Sector	Newspapers
Obligations Concerned	National Treatment (Article 11.3)
Level of Government	Central
Source of Measure	<i>Foreign Acquisitions and Takeovers Act 1975</i> ; Foreign Acquisitions and Takeovers Regulations; and Ministerial Statements.
Description of Reservation	<p><u>Investment</u></p> <p>The maximum permitted aggregate foreign interest direct (non-portfolio) investment/involvement in national and metropolitan newspapers is 30 per cent with any single foreign shareholder limited to a maximum interest of 25 per cent.</p> <p>The maximum permitted aggregate foreign interest direct (non-portfolio) investment/involvement in provincial and suburban newspapers is less than 50 per cent.</p>

Sector:	Health
Obligations Concerned:	National Treatment (Article 11.3) Senior Management and Boards of Directors (Article 11.10)
Level of Government:	Central
Source of Measure:	<i>Commonwealth Serum Laboratories Act 1961</i>
Description:	<u>Investment</u> The votes attaching to significant foreign shareholdings ¹⁷ may not be counted in respect of the appointment, replacement or removal of more than one-third of the directors of CSL who hold office at a particular time. The head office and principal facilities must remain in Australia. Two-thirds of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

¹⁷ For the purposes of this entry, **significant foreign shareholding** means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least 5 per cent of the voting shares in CSL.

Sector:	Transport services
Obligations Concerned:	National Treatment (Articles 10.2 and 11.3) Local Presence (Article 10.5)
Level of Government:	Central
Source of Measure:	<i>Trade Practices Act 1974</i>
Description:	<p><u>Cross-Border Trade in Services and Investment</u></p> <p>Every ocean carrier who provides international liner cargo shipping services to or from Australia must, at all times, be represented by a natural person who is resident in Australia.</p> <p>Only Australian flag operators may apply to the Australian Competition and Consumer Commission to examine whether conference members, and non-conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable.</p>

Sector:	Transport
Obligations Concerned:	National Treatment (Article 11.3) Senior Management and Boards of Directors (Article 11.10)
Level of Government:	Central
Source of Measure:	<i>Air Navigation Act 1920</i> Ministerial Statement
Description:	<p><u>Investment</u></p> <p>Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent.</p> <p>Furthermore:</p> <ul style="list-style-type: none"> • at least two-thirds of the Board members must be Australian citizens; • the Chairperson of the Board must be an Australian citizen; • the airline's head office must be in Australia; and • the airline's operational base must be in Australia.

Sector:	Transport
Obligations Concerned:	National Treatment(Article 11.3) Senior Management and Boards of Directors (Article 11.10)
Source of Measure:	<i>Qantas Sale Act 1992</i>
Description:	<p><u>Investment</u></p> <p>Total foreign ownership of Qantas Airways Ltd. is restricted to a maximum of 49 per cent in aggregate, with individual foreign holdings limited to 25 per cent and aggregate holdings by foreign airlines to 35 per cent. In addition:</p> <ul style="list-style-type: none"> • the head office of Qantas must always be located in Australia; • the majority of Qantas' operational facilities must be located in Australia; • at all times, at least two thirds of the directors of Qantas must be Australian citizens; • at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and • Qantas is prohibited from taking any action to become incorporated outside Australia.

ANNEX I
SCHEDULE OF THE UNITED STATES

Sector: Atomic Energy

Obligations Concerned: National Treatment (Article 11.3)

Level of Government: Central

Measures: *Atomic Energy Act of 1954*, 42 U.S.C. §§ 2011 et seq.

Description: Investment

A license issued by the United States Nuclear Regulatory Commission is required for any person in the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import, or export any nuclear “utilization or production facilities” for commercial or industrial purposes. Such a license may not be issued to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (42 U.S.C. § 2133(d)). A license issued by the United States Nuclear Regulatory Commission is also required for nuclear “utilization and production facilities,” for use in medical therapy, or for research and development activities. The issuance of such a license to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government is also prohibited (42 U.S.C. § 2134(d)).

Sector:	Business Services
Obligations Concerned:	National Treatment (Article 10.2) Local Presence (Article 10.5)
Level of Government:	Central
Measures:	<i>Export Trading Company Act of 1982</i> , 15 U.S.C. §§ 4011-4021 15 C.F.R. Part 325
Description:	<u>Cross-Border Trade in Services</u>

Title III of the *Export Trading Company Act of 1982* authorizes the Secretary of Commerce to issue “certificates of review” with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified.

Only a “person” as defined by the Act can apply for a certificate of review. “Person” means “an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons.”

A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a “member” of a qualified applicant. The regulations define “member” to mean “an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement.”

Sector: Business Services

Obligations Concerned: National Treatment (Article 10.2)
Local Presence (Article 10.5)

Level of Government: Central

Measures: *Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401-2420.*

International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706.

Export Administration Regulations, 15 C.F.R. Parts 730 through 774.

Description: Cross-Border Trade in Services

With some limited exceptions, exports and reexports of commodities, software, and technology subject to the Export Administration Regulations require a license from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a license from BIS. An application for a license must be made by a person in the United States.

In addition, release of controlled technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national and requires the same written authorization from BIS as an export from the territory of the United States.

Sector:	Mining
Obligations Concerned:	National Treatment (Article 11.3) Most-Favored-Nation Treatment (Article 11.4)
Level of Government:	Central
Measures:	<i>Mineral Lands Leasing Act of 1920</i> , 30 U.S.C. Chapter 3A 10 U.S.C. § 7435
Description:	<p><u>Investment</u></p> <p>Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across on-shore federal lands or acquire leases or interests in certain minerals on on-shore federal lands, such as coal or oil. Non-U.S. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. §§ 181, 185(a)).</p> <p>Nationalization is not considered to be denial of similar or like privileges.</p> <p>Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs, or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States (10 U.S.C. § 7435).</p>

Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 11.3) Most-Favored-Nation Treatment (Article 11.4)
Level of Government:	Central
Measures:	22 U.S.C. §§ 2194 and 2198(c)
Description:	<u>Investment</u> The Overseas Private Investment Corporation insurance and loan guarantees are not available to certain aliens, foreign enterprises, or foreign-controlled domestic enterprises.

Sector:	Air Transportation
Obligations Concerned:	National Treatment (Article 11.3) Most-Favored-Nation Treatment (Article 11.4) Senior Management and Boards of Directors (Article 11.10)
Level of Government:	Central
Measures:	49 U.S.C. Subtitle VII, <i>Aviation Programs</i> 14 C.F. R. Part 297 (foreign freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators)
Description:	<u>Investment</u>

Only air carriers that are “citizens of the United States” may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air service as U.S. air carriers.

U.S. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-U.S. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so.

Under 49 U.S.C. § 40102(a)(15), a citizen of the United States” means: an individual who is a U.S. citizen; or a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

Sector: Air Transportation

Obligations Concerned: National Treatment (Articles 10.2 and 11.3)
Most-Favored-Nation Treatment (Article 10.3 and 11.4)
Local Presence (Article 10.5.)
Senior Management and Boards of Directors (Article 11.10)

Level of Government: Central

Measures: 49 U.S.C., Subtitle VII, Aviation Programs
49 U.S.C. § 41703

14 C.F.R. Part 375

Description: Cross-Border Trade in Services

1. Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States.*

Investment

2. “Foreign civil aircraft” require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. “Foreign civil aircraft” are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled, or operated by persons who are not citizens or permanent residents of the United States (14 C.F.R. § 375.1). Under 49 U.S.C. a citizen of the United States means an individual who is a U.S. citizen or a partnership in which each member is a U.S. citizen or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

*A person of Australia will be able to obtain such an authorization given the application of Chapter Ten (Cross-Border Trade in Services) to specialty air services.

Sector: Transportation Services - Customs Brokers

Obligations Concerned: National Treatment (Articles 10.2 and 11.3)
Local Presence (Article 10.5)

Level of Government: Central

Measures: 19 U.S.C. § 1641(b)

Description: Cross-Border Trade in Services and Investment

A customs broker's license is required to conduct customs business on behalf of another person. Only U.S. citizens may obtain such a license. A corporation, association, or partnership established under the law of any state may receive a customs broker's license if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license.

Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 11.3) Most-Favored-Nation Treatment (Article 11.4)
Level of Government:	Central
Measures:	<i>Securities Act of 1933</i> , 15 U.S.C. §§ 77C(b), 77f, 77g, 77h, 77j, and 77s(a) 17 C.F.R. §§ 230.251 and 230.405 <i>Securities Exchange Act of 1934</i> , 15 U.S.C. §§ 78l, 78m, 78o(d), and 78w(a) 17 C.F.R. § 240.12b-2
Description:	<u>Investment</u> Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.

Sector: Communications – Radiocommunications

Obligations Concerned: National Treatment (Article 11.3)

Level of Government: Central

Measures: 47 U.S.C. § 310
Foreign Participation Order 12 FCC Red 23841 (1997)

Description: Investment

The United States reserves the right to restrict ownership of radio licenses in accordance with the above statutory and regulatory provisions. Radiocommunications consists of all communications by radio, including broadcasting.

Sector:	Professional Services - Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office
Obligations Concerned:	National Treatment (Article 10.2) Most-Favored-Nation Treatment (Article 10.3) Local Presence (Article 10.5)
Level of Government:	Central
Measures:	35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office) 37 C.F.R. Part 10 (representation of others before the U.S. Patent and Trademark Office)
Description:	<u>Cross-Border Trade in Services</u> As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO): <ul style="list-style-type: none"> (a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. § 10.6(a)); (b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States, or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications of applicants located in the country in which he or she resides (37 C.F.R. §10.6(c)); and (c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a “grandfathered” agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country; the latter two are permitted to practice for the limited purpose of representing parties located in the country in which he or she resides (37 C.F.R. § 10.14(a)-(c)).

Sector:	All Sectors
Obligations Concerned:	National Treatment (Articles 10.2 and 11.3) Most-Favored-Nation Treatment (Articles 10.3 and 11.4) Local Presence (Article 10.5) Performance Requirements (Article 11.9) Senior Management and Boards of Directors (Article 11.10)
Level of Government:	Regional
Measures:	All existing non-conforming measures of all states of the United States, the District of Columbia, and Puerto Rico
Description:	<u>Cross-Border Trade in Services and Investment</u>