

ANNEX I

SCHEDULE OF THE UNITED STATES

INTRODUCTORY NOTES

1. **Description** provides a general non-binding description of the measure for which the entry is made.
2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the **Measures** element of that entry.

Sector: Atomic Energy

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

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

Description: Investment

A licence 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 licence 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 licence 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 licence 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 10.3) Local Presence (Article 10.6)
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* authorises 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 10.3) Local Presence (Article 10.6)
Level of Government:	Central
Measures:	<i>Export Administration Act of 1979</i> , as amended, 50 U.S.C. App. 2401-2420 <i>International Emergency Economic Powers Act</i> , 50 U.S.C. 1701-1706 Export Administration Regulations, 15 C.F.R. Parts 730-774
Description:	<p><u>Cross-Border Trade in Services</u></p> <p>Certain exports and re-exports of commodities, software and technology subject to the Export Administration Regulations require a licence from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a licence from BIS. An application for a licence must be made by a person in the United States.</p> <p>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 authorisation from BIS as an export from the territory of the United States.</p>

Sector:	Mining
Obligations Concerned:	National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5)
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 <i>Mineral Lands Leasing Act of 1920</i>, 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 per cent 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>Nationalisation 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

Obligations Concerned: National Treatment (Article 9.4)
Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central

Measures: 22 U.S.C. 2194 and 2198(c)

Description: Investment

Overseas Private Investment Corporation (OPIC) programmes are not available to non-U.S. citizens as individuals. The availability of these programmes to foreign enterprises and foreign owned or controlled domestic enterprises depends upon the extent of U.S. ownership or other U.S. participation, as well as the form of business organisation.

OPIC insurance and loan guaranties are available only to eligible investors, which are: (i) United States citizens; (ii) corporations, partnerships or other associations, including non-profit associations, created under the laws of the United States, any state or territory thereof, or the District of Columbia, and substantially beneficially owned by United States citizens; and (iii) foreign partnerships or associations 100 per cent owned, or foreign corporations at least 95 per cent owned, by one or more such United States citizens, corporations, partnerships or associations.

OPIC may issue insurance to investors not otherwise eligible in connection with arrangements with foreign governments (including agencies, instrumentalities or political subdivisions thereof) or with multilateral organisations and institutions, such as the Multilateral Investment Guarantee Agency, for sharing liabilities assumed under such investment insurance, except that the maximum share of liabilities so assumed may not exceed the proportionate participation by eligible investors in the project.

Sector:	Air Transportation
Obligations Concerned:	National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Senior Management and Boards of Directors (Article 9.11)
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 supply 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; 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 75 per cent of the voting interest in the corporation is owned or controlled by U.S. citizens.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)
Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)
Senior Management and Boards of Directors (Article 9.11)

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

Authorisation from the Department of Transportation is required for the supply of specialty air services in the territory of the United States. A person of a Party will be able to obtain such an authorisation if the Party provides effective reciprocity by virtue of this Agreement.

Investment

Foreign civil aircraft require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant's nationality accords U.S. civil aircraft operators effective reciprocity. "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. 40102(a)(15), a "citizen of the United States" means an individual who is a U.S. citizen; 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 75 per cent of the voting interest in the corporation is owned or controlled by U.S. citizens.

Sector:	Land Transportation
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Local Presence (Article 10.6)
Level of Government:	Central
Measures:	49 U.S.C. 13902(c) ¹ 49 U.S.C. 13102 49 U.S.C. 13501 49 CFR Parts 365, 368, 385, 387, 393, 396 Sec. 350, PL 107-87, as amended Sec. 6901, PL 110-28, as amended
Description:	<p><u>Cross-Border Trade in Services</u></p> <p>Only persons of the United States, using U.S.-registered and either U.S.-built or duty-paid trucks or buses, may supply truck or bus services between points in the territory of the United States.</p> <p>Operating authority from the Department of Transportation is required to supply interstate or cross-border for hire bus or truck services in the territory of the United States. For persons of Mexico, grants of operating authority are subject to certain statutory and regulatory requirements.</p> <p><u>Investment</u></p> <p>Grants of authority for the supply of truck services by persons of Mexico between points in the United States for the transportation of goods other than international cargo is subject to reciprocity.</p>

¹ Without prejudice to the reservation in this entry with respect to 49 U.S.C. 13902(c), the United States acknowledges the relevant reservation and phase-out in its schedule to Annex I of the North American Free Trade Agreement, located at pages 18-20 of that schedule.

Sector: Transportation Services – Customs Brokers

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)
Local Presence (Article 10.6)

Level of Government: Central

Measures: 19 U.S.C. 1641(b)

Description: Investment and Cross-Border Trade in Services

A customs broker's licence is required to conduct customs business on behalf of another person. An individual may obtain such a licence only if that individual is a U.S. citizen. A corporation, association or partnership may receive a customs broker's licence only if it is established under the laws of any state and at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's licence.

Sector:	All
Obligations Concerned:	National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5)
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 <i>Securities Act of 1933</i> to register public offerings of securities or the small business registration forms under the <i>Securities Exchange Act of 1934</i> to register a class of securities or file annual reports.

Sector: Communications – Radiocommunications²

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: 47 U.S.C. 310 (a)-(b)
Foreign Participation Order 12 FCC Rcd 23891, paras. 97-118
(1997)

Description: Investment

The United States restricts ownership of radio licences in accordance with the above statutory and regulatory provisions, which provide that, *inter alia*:

- (a) no station licence may be granted to or held by a foreign government or representative thereof;
- (b) no broadcast or common carrier or aeronautical en route or aeronautical fixed station licence may be granted to or held by:
 - (i) an alien or its representative;
 - (ii) a corporation organised under the laws of a foreign government; or
 - (iii) a corporation of which more than one-fifth of the capital stock is owned of record or voted by an alien or its representative, a foreign government or its representative, or a corporation organised under the laws of a foreign country; and
- (c) absent a specific finding that that the public interest would be served by permitting foreign ownership of a broadcast licence, no broadcast station licence shall be granted to any corporation directly or indirectly controlled by another

² Radiocommunications consists of all communications by radio, including broadcasting.

corporation of which more than one-fourth of the capital stock is owned of record or voted by an alien or its representative, a foreign government or its representative, or a corporation organised under the laws of a foreign country.

Sector:	Professional Services – Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office
Obligations Concerned:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Local Presence (Article 10.6)
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 11 (representation of others before the U.S. Patent and Trademark Office)
Description:	<p><u>Cross-Border Trade in Services</u></p> <p>As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO):</p> <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. 11.6(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. 11.6(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. 11.14(a)-(c)).

Sector:	All
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)
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>Investment and Cross-Border Trade in Services</u> For purposes of transparency, Appendix I-A sets out an illustrative, non-binding list of non-conforming measures maintained at the regional level of government.

Appendix I-A: Illustrative list of U.S. regional non-conforming measures³

	Sectors in which regional measures are described	Sectors in which regional measures do not currently affect U.S. specific commitments under GATS
Business services		
Professional services		
Legal services	X	
Accounting, auditing and bookkeeping services	X	
Architectural services	X	
Engineering services	X	
Integrated engineering services	X	
Urban planning and landscape architectural services	X	
Computer and related services		X
Research and development services		X
Real estate services	X	
Rental/leasing services without operators		X
Other business services		
Advertising services		X
Market research and public opinion polling services		X
Management consulting service		X
Services related to management consulting		X
Technical testing and analysis services		X
Services incidental to agriculture, hunting and forestry		X
Services incidental to fishing		X
Services incidental to mining		X
Services incidental to energy distribution		X
Placement and supply services of personnel	X	
Investigation and security	X	
Related scientific and technical consulting services		X
Maintenance and repair of equipment		X
Building-cleaning services		X
Photographic services		X
Packaging services		X
Printing, publishing		X
Convention services		X
Other		X
Communication services		
Express delivery services		X
Other delivery services		X

³ This document is provided for transparency purposes only, and is neither exhaustive nor binding. The information contained in this document is drawn from U.S. commitments under GATS, the May 2005 Revised U.S. Services Offer under the Doha Development Agenda negotiations, and related documents.

Appendix I-A: Illustrative list of U.S. regional non-conforming measures³

	Sectors in which regional measures are described	Sectors in which regional measures do not currently affect U.S. specific commitments under GATS
Telecommunication services		X
Audiovisual services		X
Construction and related engineering services	X	
Distribution services		X
Educational services	X	
Environmental services		X
Health related and social services	X	
Tourism and travel related services		X
Recreational, cultural and sporting services (other than audiovisual services)		
Entertainment services (including theatre, live bands and circus services)		X
News agency services		X
Libraries, archives, museums and other cultural services		X
Sporting and other recreational services		X
Transport services		
Air Transport Services (Maintenance and repair of aircraft)		X
Rail Transport Services	X	
Road Transport Services		X
Pipeline Transport		X
Services auxiliary to all modes of transport		
Cargo-handling services		X
Storage and warehouse services		X
Freight transport agency services		X

Appendix I-A: Illustrative list of U.S. regional non-conforming measures⁴

Sector	Non-conforming measure by jurisdiction
Legal services (practice of U.S. law)	<p><u>Residency</u>: Iowa, Kansas, Massachusetts, Michigan, Minnesota (or maintain an office in Minnesota), Mississippi, Nebraska, New Jersey, New Hampshire, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia and Wyoming.</p> <p><u>In-state office</u>: District of Columbia, Indiana, Michigan, Minnesota (or maintain individual residency in Minnesota), Mississippi, New Jersey, Ohio, South Dakota and Tennessee.</p>
Legal services (foreign legal consulting)	<p><u>Residency</u>: Michigan and Texas.</p> <p><u>In-state office</u>: Arizona, District of Columbia, Indiana, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio and Utah.</p>
Accounting, auditing and bookkeeping services	<p><u>Residency</u>: Arizona, Arkansas, Connecticut, District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee and West Virginia.</p> <p><u>In-state office</u>: Arkansas, Connecticut, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Vermont and Wyoming.</p> <p><u>Citizenship</u>: North Carolina.</p>
Architectural services, urban planning and landscape architecture services	<p><u>Senior Managers and Boards of Directors</u>: Michigan.</p>
Engineering services and integrated engineering services	<p><u>Residency</u>: Idaho, Iowa, Kansas, Maine, Mississippi, Nevada, Oklahoma, South Carolina, South Dakota, Tennessee, Texas and West Virginia.</p>
Real estate services	<p><u>Residency</u>: South Dakota.</p> <p><u>Citizenship</u>: Mississippi and New York.</p>

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Appendix I-A: Illustrative list of U.S. regional non-conforming measures⁴

Sector	Non-conforming measure by jurisdiction
Placement and supply services of personnel	<u>Citizenship</u> : Arkansas.
Investigation and security	<u>Residency</u> : Maine, Michigan and New York.
Construction and related engineering services	<u>In-state office</u> : Michigan.
Educational services (Cosmetology schools)	<u>Limited number of licenses</u> : Kentucky.
Health and related social services	<u>Corporate form</u> : Michigan and New York.
Rail transport services	<u>Incorporation requirement</u> : Vermont.