

ANNEX II

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), the specific sectors, sub-sectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with 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 10.6.2 and Article 11.13.2, do not apply to the sectors, sub-sectors, or activities listed in the entry;
- (c) **Description** sets out the scope of the sector, sub-sector, or activities covered by the entry; and
- (d) **Existing Measures** identifies, for transparency purposes, existing measures that apply to the sector, sub-sector, or activities covered by the entry.

3. In accordance with Articles 10.6.2 and 11.13.2, the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, sub-sectors, and activities identified in the **Description** element of that entry.

ANNEX II
SCHEDULE OF AUSTRALIA

Sector:	All
Obligations Concerned:	National Treatment (Articles 10.2 and 11.3) Market Access (Article 10.4) Performance Requirements (Article 11.9) Local Presence (Article 10.5) Senior Management and Boards of Directors (Article 11.10)
Description:	<p><u>Cross-Border Trade in Services and Investment</u></p> <p>Australia reserves the right to adopt or maintain any measure according preferences to any indigenous person or organisation or providing for the favourable treatment of any indigenous person or organisation in relation to the acquisition, establishment, or operation of any commercial or industrial undertaking in the service sector.</p> <p>Australia reserves the right to adopt or maintain any measure with respect to investment that accords preferences to any indigenous person or organisation or provides for the favourable treatment of any indigenous person or organisation.</p> <p>For the purpose of this entry, “indigenous person” means a person of the Aboriginal race of Australia or a descendent of an indigenous inhabitant of the Torres Strait Islands.</p>
Existing Measures:	Legislation and ministerial statements at all levels of government including Australia’s foreign investment policy and the <i>Native Title Act 1993</i> .

Sector: All

Obligations Concerned: Market Access (Article 10.4)

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by a service supplier of the United States, through presence of natural persons of the United States in the territory of Australia, that is not inconsistent with Australia's obligations under Article XVI of the General Agreement on Trade in Services (GATS).

Australia reserves the right to adopt or maintain any measure at the regional level of government that is not inconsistent with Australia's obligations under Article XVI of the GATS.

Existing Measures:

Sector: All

Obligations Concerned: National Treatment (Article 11.3)
Performance Requirements (Article 11.9)

Description: Investment

Australia reserves the right to adopt or maintain any measure with respect to proposals by ‘foreign persons’ to invest in Australian urban land¹ (including interests that arise via leases, financing and profit sharing arrangements and the acquisition of interests in urban land corporations and trusts), other than developed non-residential commercial real estate.

Existing Measures: Australia’s foreign investment policy, which comprises the:

- *Foreign Acquisitions and Takeovers Act 1975* (FATA);
- Foreign Acquisitions and Takeovers Regulations 1989; and Ministerial statements.

¹ **Australian urban land** means land situated in Australia that is not used wholly or exclusively for carrying on a business of primary production.

Sector: Social Services

**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)
Market Access (Article 10.4)

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

**Existing
Measures:**

Sector: Broadcasting and Audiovisual Services
Advertising Services
Live Performance²

Obligations Concerned: National Treatment (Articles 10.2 and 11.3)
Market Access (Article 10.4)
Most-Favoured-Nation Treatment³ (Articles 10.3 and 11.4)
Performance Requirements (Article 11.9)
Local Presence (Article 10.5)⁴

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain:

(a) Multichannelled free-to-air commercial television broadcasting services

- Transmission quotas for local content, where more than one channel of programming is made available by a provider of free-to-air commercial television broadcasting services. Such quotas may not exceed 55 per cent of the programming on an individual channel of a service provider transmitted annually between 6:00a.m. and midnight and may not be imposed on more than two channels or 20 per cent of the total number of channels (whichever is greater) made available by that provider. No such transmission quotas shall be applied to more than three channels of an individual service provider. Subquotas for particular program formats (e.g. drama, documentary, children's) may be applied within the transmission quotas in a manner consistent with existing standards.
- Transmission quotas for local content in relation to advertising, where more than one channel of programming on a particular service is made available by a service provider of free-to-air commercial television broadcasting services. Such quotas may not exceed 80 per cent of the advertising time on an individual channel

² Applies only in respect of item (g).

³ Applies only to the treatment as local content of New Zealand programs or productions.

⁴ Applies only in respect of item (f)

of a service provider transmitted annually between 6:00a.m. and midnight and may not be imposed on more than three channels made available by that provider.

(b) Free-to-air commercial television broadcasting services

- Requirements that, where a free-to-air commercial television channel subject to a transmission quota is rebroadcast over another transmission platform, the quota may be applied to the rebroadcast channel.
- Requirements that, where a free-to-air commercial television broadcasting service provider moves a channel subject to a transmission quota to another transmission platform, the quota may be applied to that channel.

(c) Subscription television broadcasting services

- Expenditure requirements for Australian production not exceeding 10 per cent of total program expenditure. Such requirements may be imposed on service providers making available services in the following program formats: the arts, children's, documentary, drama, and educational.⁵

Upon a finding by the Government of Australia that the expenditure requirement for the production of Australian drama is insufficient to meet its stated goal for such expenditure, this expenditure requirement may be increased up to a maximum level of 20 per cent. Such a finding shall be made through a transparent process that includes consultations with any affected parties including the United States. Any increase imposed shall be non-discriminatory and no more burdensome than necessary.

(d) Free-to-air radio broadcasting services

Transmission quotas for local content not exceeding 25 per cent of the programming (e.g. of musical items) on individual stations of a service provider transmitted annually between 6.00a.m. and midnight.

(e) Interactive audio and/or video services

Measures to ensure that, upon a finding by the Government of

⁵ No one channel will be subject to an expenditure requirement for more than a single program format.

Australia that Australian audiovisual content or genres thereof is not readily available to Australian consumers, access to such programming on interactive audio and/or video services is not unreasonably denied to Australian consumers. Any measures addressing such a situation will be implemented through a transparent process permitting participation by any affected parties, be based on objective criteria, be the minimum necessary, be no more trade restrictive than necessary, not be unreasonably burdensome, and be applied only to a service provided by an enterprise that carries on business activities in Australia in relation to the supply of that service.

(f) Spectrum and licensing

Measures inconsistent with Articles 10.4 with respect to spectrum management and licensing of broadcasting services as currently defined in the Broadcasting Services Act 1992, i.e., commercial broadcasting services, community broadcasting services, narrowcasting services and subscription broadcasting services.

Measures, as currently specified in the Broadcasting Services Act 1992, that restrict the eligibility for broadcasting services licenses to enterprises that are a specific legal type and/or are established in Australia or in an external territory.

(g) Subsidies or grants

Subsidies or grants for investment in Australian cultural activity where eligibility for the subsidy or grant is subject to local content or production requirements.

This entry does not apply to foreign investment restrictions in the broadcasting and audiovisual services sector.

**Existing
Measures:**

Broadcasting Services Act 1992
Radiocommunications Act 1992
Income Tax Assessment Act 1936
Income Tax Assessment Act 1997
Australian Film Commission Act 1975
Broadcasting Services (Australian Content) Standard 1999
Television Program Standard 23 – Australian Content in Advertising
Commercial Radio Codes of Practice and Guidelines
Community Broadcasting Codes of Practice

Sector:	Broadcasting and Audiovisual Services
Obligations Concerned:	Most-Favoured-Nation Treatment (Article 10.3 and 11.4) Performance Requirements (Article 11.9)
Description:	<u>Cross-Border Trade in Services and Investment</u> Australia reserves the right to adopt or maintain, under the International Co-production Program, preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co-production arrangements, confers national treatment on works covered by these arrangements.
Existing Measures:	International Co-production Program

Sector: Distribution Services

Obligations Concerned: Market Access (Article 10.4)

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to wholesale and retail trade services of tobacco products, alcoholic beverages, or firearms.

Existing Measures:

Sector:	Education Services
Obligations Concerned:	National Treatment (Articles 10.2 and 11.3) Market Access (Article 10.4) Local Presence (Article 10.5) Senior Management and Boards of Directors (Article 11.10) Performance Requirements (Article 11.9)
Description:	<u>Cross-Border Trade in Services and Investment</u> Australia reserves the right to adopt or maintain any measure with respect to primary education.
Existing Measures:	

Sector: Maritime

**Obligations
Concerned:** National Treatment (Article 11.3)

Description: Investment

Australia reserves the right to adopt or maintain any measure with respect to the registration of vessels in Australia.

**Existing
Measures:**

Sector: Maritime Transport

**Obligations
Concerned:** National Treatment (Articles 10.2 and 11.3)
Local Presence (Article 10.5)
Market Access (Article 10.4)
Performance Requirements (Article 11.9)
Senior Management and Boards of Directors (Article 11.10)

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage services and offshore transport services.⁶

**Existing
Measures:**

⁶ For the purposes of this entry, **cabotage** means the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia.

Offshore transport means shipping services involving the transportation of passengers or goods between a port located in Australia and any location associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of Australia, the seabed of the Australian coastal sea, and the subsoil of that seabed.

Sector: Transport

Obligations Concerned: National Treatment (Article 11.3)
Senior Management and Boards of Directors (Article 11.10)

Description: Investment

Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports.

Existing Measures: *Airports Act 1996*
Airports (Ownership-Interests in Shares) Regulations 1996
Airports Regulations 1997

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Article 10.3 and 11.4)

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the service suppliers or investors of non-Parties under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the service suppliers or investors of non-Parties under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters, including salvage.

Existing Measures:

ANNEX II
SCHEDULE OF UNITED STATES

Sector: Communications

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.3 and 11.4)

Description: Cross-Border Trade in Services and Investment

The United States reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

Sector: Communications - Cable Television

Obligations Concerned: National Treatment (Article 11.3)
Most-Favored-Nation Treatment (Article 11.4)
Senior Management and Boards of Directors (Article 11.10)

Description: Investment

The United States reserves the right to adopt or maintain any measure that accords equivalent treatment to persons of any country that limits ownership by persons of the United States in an enterprise engaged in the operation of a cable television system in that country.

Sector: Social Services

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)

Description: Cross-Border Trade in Services and Investment

The United States reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Sector:	Minority Affairs
Obligations Concerned:	National Treatment (Articles 10.2 and 11.3) Local Presence (Article 10.5) Performance Requirements (Article 11.9) Senior Management and Boards of Directors (Article 11.10)
Description:	<u>Cross-Border Trade in Services and Investment</u> The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the <i>Alaska Native Claims Settlement Act</i> .
Existing Measures:	<i>Alaska Native Claims Settlement Act</i> , 43 U.S.C. §§ 1601 <u>et seq.</u>

Sector: Transportation

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)

Description: Cross-Border Trade in Services and Investment

The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:

- (a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways;
- (b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;
- (c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;
- (d) requirements related to documenting a vessel under the U.S. flag;
- (e) promotional programs, including tax benefits, available for shipowners, operators, and vessels meeting certain requirements;
- (f) certification, licensing, and citizenship requirements for crew members on U.S.-flagged vessels;
- (g) manning requirements for U.S.-flagged vessels;

- (h) all matters under the jurisdiction of the Federal Maritime Commission;
- (i) negotiation and implementation of bilateral and other international maritime agreements and understandings;
- (j) limitations on longshore work performed by crew members;
- (k) tonnage duties and light money assessments for entering U.S. waters; and
- (l) certification, licensing, and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation. However, the treatment in (b) is conditional upon obtaining comparable market access in these sectors from Australia:

- (a) vessel construction and repair; and
- (b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines, and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap; and ship classification societies.

Existing Measures:

Merchant Marine Act of 1920, §§ 19 and 27, 46 App.

U.S.C. § 876 and § 883 et seq.

Jones Act Waiver Statute, 64 Stat 1120, 46 U.S.C. App., note preceding Section 1

Shipping Act of 1916, 46 U.S.C. App. §§ 802 and 808

Merchant Marine Act of 1936, 46 U.S.C. App. §§ 1151 et seq., 1160-61, 1171 et seq., 1241(b), 1241-1, 1244, and 1271 et seq.

Merchant Ship Sales Act of 1946, 50 U.S.C. App. § 1738

46 App. U.S.C. §§ 121, 292, and 316

46 U.S.C. §§ 12101 et seq. and 31301 et seq.

46 U.S.C. §§ 8904 and 31328(2)

Passenger Vessel Act, 46 App. U.S.C. § 289

42 U.S.C. §§ 9601 et seq.; 33 U.S.C. §§ 2701 et seq.; 33 U.S.C. §§ 1251 et seq.
46 U.S.C. §§ 3301 et seq., 3701 et seq., 8103, and 12107(b)
Shipping Act of 1984, 46 App. U.S.C. §§ 1708 and 1712
The Foreign Shipping Practices Act of 1988, 46 App. U.S.C. § 1710a
Merchant Marine Act, 1920, 46 App. U.S.C. §§ 861 et seq.
Shipping Act of 1984, 46 App. U.S.C. §§ 1701 et seq.
Alaska North Slope, 104 Pub. L. 58; 109 Stat. 557
Longshore restrictions and reciprocity, 8 U.S.C. §§ 1101 et seq.
Vessel escort provisions, Section 1119 of Pub. L. 106-554, as amended
Nicholson Act, 46 App. U.S.C. § 251
Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, 46 U.S.C. § 2101 and 46 U.S.C. § 12108
43 U.S.C. § 1841
22 U.S.C. § 1980
Intercoastal Shipping Act, 46 U.S.C. App. § 843
46 U.S.C. § 9302, 46 U.S.C. § 8502; Agreement Governing the Operation of Pilotage on the Great Lakes, Exchange of Notes at Ottawa, August 23, 1978, and March 29, 1979, TIAS 9445
Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq.
19 U.S.C. § 1466
North Pacific Anadromous Stocks Convention Act of 1972, P.L. 102-587; *Oceans Act of 1992, Title VII*
Tuna Convention Act, 16 U.S.C. §§ 951 et seq.
South Pacific Tuna Act of 1988, 16 U.S.C. §§ 973 et seq.
Northern Pacific Halibut Act of 1982, 16 U.S.C. §§ 773 et seq.
Atlantic Tunas Convention Act, 16 U.S.C. §§ 971 et seq.
Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. §§ 2431 et seq.
Pacific Salmon Treaty Act of 1985, 16 U.S.C. §§ 3631 et seq.
American Fisheries Act, 46 U.S.C. § 12102(c) and 46 U.S.C. § 31322(a)

Sector: All

Obligations Concerned: Market Access (Article 10.4)

Description: Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services.

Sector:	All
Obligations Concerned:	Most-Favored-Nation Treatment (Articles 10.3 and 11.4)
Description:	<p><u>Cross-Border Trade in Services and Investment</u></p> <p>The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none">(a) aviation;(b) fisheries; or(c) maritime matters, including salvage.