

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 12.2)
Local Presence (Article 12.5)

Level of Government: Central

Measures: *Export Trading Company Act of 1982*, 15 U.S.C. §§ 4011-4021
15 C.F.R. Part 325

Description: Cross-Border Services

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 12.2)
Local Presence (Article 12.5)

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 - 774

Description: Cross-Border Services

With some limited exceptions, exports and re-exports 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 and Pipeline Transportation
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. §§ 181 and 185(a) 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: Investment

The Overseas Private Investment Corporation (OPIC) insurance and loan guarantees are not available to certain aliens, foreign enterprises, or foreign-controlled domestic enterprises.

The United States recognizes that, as of the date of entry into force of this Agreement, OPIC may make arrangements with the Korea Export Insurance Corporation or the Multilateral Investment Guarantee Agency for sharing liabilities assumed under investment insurance, as provided in 22 U.S.C. § 2194, and that Korea is therefore eligible for Most-Favored-Nation treatment under this entry.

Sector:	Air Transportation
Obligations Concerned:	National Treatment (Article 11.3) Most-Favored-Nation Treatment (Article 11.4) Senior Management and Boards of Directors (Article 11.9)
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; 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:	Specialty Air Services
Obligations Concerned:	National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Senior Management and Boards of Directors (Article 11.9)
Level of Government:	Central
Measures:	49 U.S.C., Subtitle VII, <i>Aviation Programs</i> 49 U.S.C. § 41703 14 C.F.R. Part 375
Description:	<u>Cross-Border Services and Investment</u> “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 considers, 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 seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens. *A person of Korea will be able to obtain such an authorization if Korea accepts the definition of specialty air services in Chapter 12 and provides effective reciprocity by virtue of this Agreement.

Sector: Transportation Services - Customs Brokers

Obligations Concerned: National Treatment (Articles 11.3 and 12.2)
Local Presence (Article 12.5)

Level of Government: Central

Measures: 19 U.S.C. § 1641(b)

Description: Cross-Border 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 (a)-(b) Foreign Participation Order 12 FCC Rcd 23891, paras. 97-118 (1997)
Description:	<p><u>Investment</u></p> <p>The United States reserves the right to restrict ownership of radio licenses in accordance with the above statutory and regulatory provisions, which provide that, <i>inter alia</i>:</p> <ul style="list-style-type: none"> (a) no station license 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 license may be granted to or held by: <ul style="list-style-type: none"> (i) an alien or its representative; (ii) a corporation organized 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 organized under the laws of a foreign country; and (c) absent a specific finding that the public interest would be served by permitting foreign ownership of a broadcast licenses, no broadcast station license shall be granted to any corporation directly or indirectly controlled by another 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 organized under the laws of a foreign country.

*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 12.2)
Most-Favored-Nation Treatment (Article 12.3)
Local Presence (Article 12.5)

Level of Government: Central

Measures: 35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office)

37 C.F.R. Parts 10 and 11 (representation of others before the U.S. Patent and Trademark Office)

Description: Cross-Border Services

As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO):

- (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. § 10.14(a)-(c)).

Sector:	All Sectors
Obligations Concerned:	National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Local Presence (Article 12.5) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9)
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 Services and Investment</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 measures¹

	Sectors in which regional measures are described	Sectors in which regional measures do not currently affect US specific commitments under the 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 man. 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
Telecommunication services		X
Audiovisual services		X
Construction and related engineering services	X	
Distribution services		X

¹ 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 the General Agreement on Trade in Services, 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 measures¹

	Sectors in which regional measures are described	Sectors in which regional measures do not currently affect US specific commitments under the GATS
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 measures²

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, 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, Texas.</p> <p><u>In-state office:</u> Arizona, District of Columbia, Indiana, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, 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, West Virginia</p> <p><u>In-state office:</u> Arkansas, Connecticut, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Vermont, Wyoming</p>
Architectural services, urban planning and landscape architecture services	<p><u>Citizenship:</u> North Carolina</p> <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, West Virginia</p>
Real estate services	<p><u>Residency:</u> South Dakota</p> <p><u>Citizenship:</u> Mississippi, New York</p>
Placement and supply services of personnel	<p><u>Citizenship:</u> Arkansas</p>
Investigation and security	<p><u>Residency:</u> Maine, Michigan, New York</p>

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Appendix I-A: Illustrative list of U.S. regional non-conforming measures²

Sector	Non-conforming measure by jurisdiction
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, New York
Rail transport services	<u>Incorporation requirement</u> : Vermont