

Annex I
Schedule of the United States

Sector: Energy

Sub-Sector: Atomic Energy

Industry Classification:

Type of Reservation: National Treatment (Article 1102)

Level of Government: Federal

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

Description: Investment

A license is required for any person in the United States to transfer, manufacture, produce, use or import any facilities that produce or use nuclear materials. 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, 2134). The issuance of a license is also prohibited for "production or utilization facilities" for such uses as medical therapy or research and development activities to any corporation or other entity owned, controlled or dominated by one of the foreign persons described above (42 U.S.C. § 2134(d)).

Phase-Out: None

Sector:	Business Services
Sub-Sector:	Export Intermediaries
Industry Classification:	SIC 7389 Business Services, Not Elsewhere Classified
Type of Reservation:	National Treatment (Article 1202) Local Presence (Article 1205)
Level of Government:	Federal
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 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."

Phase-Out:

None

Annex I - United States

Sector:	Business Services
Sub-Sector:	Export Intermediaries
Industry Classification:	SIC 7389 Business Services, Not Elsewhere Classified
Type of Reservation:	National Treatment (Article 1202) Local Presence (Article 1205)
Level of Government:	Federal
Measures:	<i>Export Administration Act of 1979</i> , Pub. L. 96-72, as amended <i>Export Administration Regulations</i> , 15 C.F.R. Parts 768 through 799
Description:	<u>Cross-Border Services</u> With some limited exceptions, the export from the United States of all commodities, and all technical data, requires either a general license or a validated license or other authorization granted by the Office of Export Licensing, U.S. Department of Commerce. A general license requires no application or documentation and is generally available for use by all persons. An application for a validated license may be made only by a person subject to the jurisdiction of the United States who is in fact the exporter, or by his duly authorized agent. An application may be made on behalf of a person not subject to the jurisdiction of the United States by an authorized agent in the United States, who then becomes the applicant.
Phase-Out:	None

Sector:	Communications
Sub-Sector:	Telecommunications (Enhanced or Value-Added Services)
Industry Classification:	CPC 7523 Data and Message Transmission Services CPC 75299 Other Telecommunications Services Not Elsewhere Classified (limited to enhanced or value-added services)
Type of Reservation:	National Treatment (Article 1102)
Level of Government:	Federal
Measures:	<i>F.C.C. Decision, <u>International Communications Policies Governing Designation of Recognized Private Operating Agencies</u>, 104 F.C.C. 2d 208, n. 123, n. 126 (1986)</i> 47 C.F.R. § 64.702 (definition of enhanced or value-added services)
Description:	<u>Investment</u> If a U.S.-based foreign-owned enhanced service provider obtains voluntary Recognized Private Operating Agency certification from the U.S. Department of State for purposes of negotiating operating agreements with governments other than the U.S. Government, it must submit copies of all operating agreements granted to it by foreign governments and evidence of any refusal of a foreign government to grant it an operating agreement. For purposes of this rule, a service provider is generally considered to be "foreign owned" if 20 percent or more of its stock is owned by persons who are not U.S. citizens.
Phase-Out:	None

Sector:	Manufacturing
Sub-Sector:	Agricultural Chemicals
Industry Classification:	SIC 2879 Pesticides and Agricultural Chemicals, Not Elsewhere Classified
Type of Reservation:	National Treatment (Article 1102)
Level of Government:	Federal
Measures:	<i>Federal Insecticide, Fungicide and Rodenticide Act</i> , 7 U.S.C. §§ 136 et seq.
Description:	<u>Investment</u> The Administrator of the Environmental Protection Agency may not knowingly disclose information submitted by an applicant or registrant under the <i>Federal Insecticide, Fungicide and Rodenticide Act</i> , without consent, to any foreign or multinational business or entity, or any employee or agent of such business or entity, engaged in the production, sale or distribution of pesticides in countries other than the United States or to any person who intends to deliver such data to that business, entity, employee or agent (7 U.S.C. § 136h(g)).
Phase-Out:	None

Sector:	Mining
Sub-Sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)
Level of Government:	Federal
Measures:	<i>Mineral Lands Leasing Act of 1920</i> , 30 U.S.C. Chapter 3A 43 C.F.R. § 3102 43 C.F.R. § 2882.2-1 10 U.S.C. § 7435

Description: Investment

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)).

Nationalization is not considered to be denial of similar or like privileges.

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).

Phase-Out: None

Sector:	Professional Services
Sub-Sector:	Patent Attorneys and Patent Agents and other Practice before the Patent and Trademark Office
Industry Classification:	SIC 7389 Business Services, Not Elsewhere Classified SIC 8111 Legal Services
Type of Reservation:	National Treatment (Article 1202) Most-Favored-Nation Treatment (Article 1203) Local Presence (Article 1205)
Level of Government:	Federal
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 Services</u> 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. § 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 (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 (37 C.F.R. § 10.14(a)-(c)).
Phase-Out:	Citizenship and permanent residency requirements are subject to removal within two years of the date of entry into force of this Agreement in accordance with Article 1210(3).

Sector:	Public Administration
Sub-Sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)
Level of Government:	Federal
Measures:	22 U.S.C. §§ 2194(a) and (b) 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.
Phase-Out:	None

Sector:	Transportation
Sub-Sector:	Air Transportation
Industry Classification:	SIC 3721 Aircraft Repair and Rebuilding on a Factory Basis SIC 4581 Aircraft Repair (Except on a Factory Basis)
Type of Reservation:	Most-Favored-Nation Treatment (Article 1203)
Level of Government:	Federal
Measures:	49 App. U.S.C. §§ 1354, 1421-1430 14 C.F.R. §§ 43 and 145 <i>Agreement Concerning Airworthiness Certification, Exchange of Letters between the United States and Canada dated August 31, 1984, TIAS 11023, as amended</i>
Description:	<u>Cross-Border Services</u> For aircraft repair, overhaul or maintenance activities performed outside the territory of the United States, during which an aircraft is withdrawn from service, U.S. measures require that, in order to perform work on U.S.-registered aircraft, foreign air repair stations must be certified by the Federal Aviation Administration with continuing oversight provided by the Federal Aviation Administration. Pursuant to an airworthiness agreement between the United States and Canada, the United States recognizes the certifications and oversight provided by Canada for all repair and maintenance facilities and individuals performing the work located in Canada.
Phase-Out:	None

Sector: Transportation

Sub-Sector:	Air Transportation
Industry Classification:	SIC 4512 Air Transportation Scheduled SIC 4513 Air Courier Services SIC 4522 Air Transportation Non-scheduled
Type of Reservation:	National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103) Senior Management and Boards of Directors (Article 1107)
Level of Government:	Federal
Measures:	<i>Federal Aviation Act of 1958</i> , 49 App. U.S.C. Ch. 20
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 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 the *Federal Aviation Act of 1958*, a "citizen of the United States" means:

- (a) an individual who is a U.S. citizen;
- (b) a partnership in which each member is a U.S. citizen; or
- (c) 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, and at least 75 percent of the voting interest in the corporation is owned or controlled by U.S. citizens (49 App. U.S.C. § 1301(16)).

In addition, this statutory requirement has historically been interpreted

Annex I - United States

by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a case-by-case basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control. See Department of Transportation Order 91-1-41, January 23, 1991.

Phase-Out:

None

Sector:	Transportation
Sub-Sector:	Air Transportation
Industry Classification:	SIC 0721 Crop Planting, Cultivating, and Protecting (limited to aerial dusting and spraying, dusting crops, with or without fertilizing, spraying crops, with or without fertilizing) SIC 0851 Forestry Services (limited to aerial fire fighting) SIC 4522 Air Transportation, Nonscheduled (limited to air taxi services, sightseeing airplane services) SIC 7319 Advertising, Not Elsewhere Classified (limited to aerial advertising, sky writing) SIC 7335 Commercial Photography (limited to aerial photographic service, except mapmaking) SIC 7389 Business Services, Not Elsewhere Classified (limited to mapmaking, including aerial; pipeline and powerline inspection services; and firefighting service, other than forestry) SIC 7997 Membership Sports & Recreation Clubs (limited to aviation clubs, membership) SIC 8299 Schools & Education Services, Not Elsewhere Classified (limited to flying instruction) SIC 8713 Surveying Services (limited to aerial surveying)
Type of Reservation:	National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Senior Management and Boards of Directors (Article 1107)
Level of Government:	Federal
Measures:	<i>Federal Aviation Act of 1958</i> , 49 App. U.S.C. Ch. 20 14 C.F.R. § 375 As qualified by paragraph 2 of the Description element

Description:

Cross-Border Services

1. Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States. A person of Canada or Mexico that provides aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance and aerial spraying services may not be authorized to provide those services if there is inadequate reciprocity on the part of the country of the applicant, or if approval would otherwise not be in the public interest.
2. A person of Mexico or Canada may obtain such authorization to provide, subject to compliance by that person with U.S. safety regulations, aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing and parachute jumping.

Investment

3. "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 the *Federal Aviation Act of 1958*, a "citizen of the United States" means:
 - (a) an individual who is a U.S. citizen;
 - (b) a partnership in which each member is a U.S. citizen; or
 - (c) 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, and at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens (49 App. U.S.C. § 1301(16)).

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a case-by-case basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control.

See Department of Transportation Order 91-1-41, January 23, 1991.

Phase-Out:

Cross-Border Services

A person of Canada or Mexico will be permitted to obtain, subject to compliance with U.S. safety requirements, authorization to provide the following specialty air services in the territory of the United States:

- (a) two years after the date of entry into force of this Agreement, aerial construction and heli-logging;
- (b) three years after the date of entry into force of this Agreement, aerial sightseeing, flight training and aerial inspection and surveillance services; and
- (c) six years after the date of entry into force of this Agreement, aerial spraying services.

Investment

None

Sector:	Transportation
Sub-Sector:	Land Transportation
Industry Classification:	SIC 4213 Trucking, Except Local SIC 4215 Courier Services, Except by Air SIC 4131 Intercity and Rural Bus Transportation SIC 4142 Bus Charter Service, Except Local SIC 4151 School Buses (limited to interstate transportation not related to school activity)
Type of Reservation:	National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205)
Level of Government:	Federal
Measures:	49 U.S.C. § 10922(d)(1) and (2) 49 U.S.C. § 10530(3) 49 U.S.C. §§ 10329, 10330 and 11705 19 U.S.C. § 1202 49 C.F.R. § 1044 Memorandum of Understanding Between the United States of America and the United Mexican States on Facilitation of Charter/Tour Bus Service, December 3, 1990 As qualified by paragraph 2 of the Description element

Description:

Cross-Border Services

1. Operating authority from the Interstate Commerce Commission (ICC) is required to provide interstate or cross-border for hire bus or truck services in the territory of the United States. A moratorium remains in place on new grants of operating authority for persons of Mexico.
2. The moratorium does not apply to the provision of cross-border charter or tour bus services.
3. Under the moratorium, persons of Mexico without operating authority may operate only within ICC Border Commercial Zones, for which ICC operating authority is not required. Persons of Mexico providing truck services, including for hire, private, and exempt services, without operating authority are required to obtain a certificate of registration from the ICC to enter the United States and operate to or from the ICC Border Commercial Zones. Persons of Mexico providing bus services are not required to obtain an ICC certificate of registration to provide these services to or from the ICC Border Commercial Zones.
4. Only persons of the United States, using U.S.-registered and either U.S.-built or duty-paid trucks or buses, may provide truck or bus service between points in the territory of the United States.

Investment

5. The moratorium has the effect of being an investment restriction because enterprises of the United States providing bus or truck services that are owned or controlled by persons of Mexico may not obtain ICC operating authority.

Phase-Out:

Cross-Border Services

A person of Mexico will be permitted to obtain operating authority to provide:

- (a) three years after the date of signature of this Agreement, cross-border truck services to or from border states (California, Arizona, New Mexico and Texas), and such persons will be permitted to enter and depart the territory of United States through different ports of entry;
- (b) three years after the date of entry into force of this Agreement, cross-border scheduled bus services; and
- (c) six years after the date of entry into force of this Agreement, cross-border truck services.

Investment

A person of Mexico will be permitted to establish an enterprise in the United States to provide:

- (a) three years after the date of signature of this Agreement, truck services for the transportation of international cargo between points in the United States; and
- (b) seven years after the date of entry into force of this Agreement, bus services between points in the United States.

The moratorium will remain in place on grants of authority for the provision of truck services by persons of Mexico between points in the United States for the transportation of goods other than international cargo.

Sector:	Transportation Services
Sub-Sector:	Customs Brokers
Industry Classification:	SIC 4731 Arrangement of Transportation of Freight and Cargo
Type of Reservation:	National Treatment (Articles 1102, 1202) Local Presence (Article 1205)
Level of Government:	Federal
Measures:	19 U.S.C. § 1641(b)
Description:	<u>Cross-Border Services and Investment</u> 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.
Phase-Out:	None. Subject to discussion by the Parties five years after the date of entry into force.

Sector:	All Sectors
Sub-Sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Article 1102) Most-Favored-Nation Treatment (Article 1103)
Level of Government:	Federal
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 securities that the firms issue or qualify to use the less costly standards under the rules.
Phase-Out:	None

Sector: Waste Management

Sub-Sector:

Industry Classification: SIC 4952 Sewerage System

Type of Reservation: Performance Requirements (Article 1106)

Level of Government: Federal

Measures: *Clean Water Act*, 33 U.S.C. §§ 1251 et seq.

Description: Investment

The *Clean Water Act* authorizes grants for the construction of treatment plants for municipal sewage or industrial waste. Grant recipients may be privately-owned enterprises. The Act provides that grants shall be made for treatment works only if such articles, materials and supplies as have been manufactured, mined or produced in the United States will be used in the treatment works. The Administrator of the Environmental Protection Agency has authority not to apply this provision, for example, if the cost of the articles in question is unreasonable (33 U.S.C. § 1295).

Phase-Out: None