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ANNEX I

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 11.13 (Investment Non-Conforming Measures) and 10.6 (Services Non-Conforming Measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:
 - (a) Article 11.3 or 10.2 (Investment and Services National Treatment);
 - (b) Article 11.4 or 10.3 (Investment and Services Most-Favored-Nation Treatment);
 - (c) Article 10.5 (Services Local Presence);
 - (d) Article 11.9 (Investment Performance Requirements);
 - (e) Article 11.10 (Investment Senior Management and Boards of Directors); or
 - (f) Article 10.4 (Services Market Access).
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 11.13.1(a) (Investment Non-Conforming Measures) and 10.6.1(a) (Services Non-Conforming Measures), 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 11.13.1(a) (Investment Non-Conforming Measures) and 10.6.1(a) (Services Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply,

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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 provider 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 (Services National Treatment), 10.3 (Services Most-Favored-Nation Treatment), or 10.5 (Services Local Presence) shall operate as a Schedule entry with respect to Article 11.3 (Investment National Treatment), 11.4 (Investment Most-Favored-Nation Treatment), or 11.9 (Investment Performance Requirements) to the extent of that measure.

ANNEX I

Sector:	All sectors
Obligations Concerned:	National Treatment Most Favoured Nation Treatment Local Presence Performance Requirements Senior Management and Boards of Directors
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.

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Sector:	All sectors
Obligations Concerned:	National Treatment Senior Management and Boards of Directors
Level of Government:	Central
Source of Measure:	Australia's Foreign Investment Policy, which comprises the: <i>Foreign Acquisitions and Takeovers Act 1975 (FATA)</i> ; Foreign Acquisitions and Takeovers Regulations; and Ministerial Statements as set out at www.firb.gov.au
Description:	<u>Investment</u>

The following investments require notification to the Australian Government and/or may be subject to government objections¹:

- Investments by foreign persons² in existing Australian businesses in the media sector as follows:
 - (i) Direct (ie non-portfolio) investment irrespective of size; and
 - (ii) Portfolio investments of 5 per cent or more;
- Investments by foreign persons in existing Australian businesses with total assets of \$A50 million³ or more in the following sectors:
 - (i) The telecommunications sector;
 - (ii) The transport sector, including airports, port facilities, rail infrastructure, international and

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' is defined as:

- a natural person not ordinarily resident in Australia;
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- 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;
- 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
- 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.

*A 'substantial interest' refers to a type of investment covered by Part II of the *Foreign Acquisitions and Takeovers Act 1975*.

³ To be indexed on 1 July each year to the GDP deflator in the Australian National Accounts for the previous calendar year.

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domestic aviation and shipping services provided either within, or to and from, Australia;

- (iii) The manufacture or supply of training, human resources or 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 where rights to extract are held) uranium or plutonium, or the operation of nuclear facilities;
- Investments by foreign persons in existing Australian businesses in all other sectors, excluding financial sector companies⁴, with total assets of \$A800 million⁵ or more;
 - Acquisitions by foreign persons of developed non-residential commercial real estate valued at \$A800 million⁶ or more;
 - The take over by foreign persons of offshore companies whose Australian subsidiaries or assets are valued at \$A800 million⁷ or more, or account for more than 50 per cent of the target company's global assets; and
 - Direct investments 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.

Proposed investments, excluding those in financial sector companies, may be refused, or approved subject to the parties meeting certain conditions. Investments for which no notification is received may be subject to orders under Sections 18, 19, 20

⁴ A 'financial sector company' means: (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).

⁵ To be indexed on 1 July each year to the GDP deflator in the Australian National Accounts for the previous calendar year.

⁶ To be indexed on 1 July each year to the GDP deflator in the Australian National Accounts for the previous calendar year.

⁷ To be indexed on 1 July each year to the GDP deflator in the Australian National Accounts for the previous calendar year.

⁸ 'Unacceptable shareholding situation' and 'practical control' as defined in the *Financial Sector (Shareholdings) Act 1998*.

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

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and 21 of the *FATA*.

Acquisition of interests in shares in Australian companies held by foreign custodians on behalf of Australian investors are exempt from the application of the *FATA*.

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 control⁸ of an existing financial sector company, may be refused, or be subject to certain conditions⁹.

In addition to the measures identified in this entry, Australia maintains specific limits on, or requirements relating to, foreign investment in the following areas covered by other entries in Annex I or Annex II:

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

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Sector: Professional Services

**Obligations
Concerned:** Local Presence

**Level of
Government:** Central

**Source of
Measure:** *Patents Act 1990*

Description: Cross-Border Trade in Services

In order to register to practice in Australia, patent attorneys must:
(a) be ordinarily resident in Australia¹⁰; and
(b) attend a place of business in Australia.

¹⁰ 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.

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Sector: Professional Services

Obligations Concerned: National Treatment
Most Favoured-Nation Treatment

Level of Government: Central

Source of Measure: *Migration Act 1958*

Description: Cross-Border Trade in Services

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.

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Sector: Information and communications technology

Obligations Concerned: Performance Requirements

Level of Government: Central

Source of Measure: Government announcement of *Whole-of-Government Information Technology Infrastructure Consolidation and Outsourcing Initiative* in 1997.

Description: Investment
Existing contracts, including any extensions, under the Government IT Outsourcing Program requiring specified levels of exports.

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Sector:	Professional Services
Obligations Concerned:	Local Presence
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.

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Sector:	Fishing
Obligations Concerned:	National Treatment
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 ¹¹ 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 ¹² .

¹¹ 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.

¹² The levy charged will be in accordance with the *Foreign Fishing Licenses Levy Act 1991* or any amendments thereto.

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Sector Distribution services

Obligations
concerned National Treatment
 Market Access

Source of
Measure *Wheat Marketing Act (1989)*

Description Cross-Border Trade in Services and Investment

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.

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Sector: Professional Services

Obligations Concerned: Local Presence

Level of Government: Central

Source of Measure: *Customs Act 1901*

Description: Cross-Border Trade in Services

To act as a customs broker in Australia, service providers must provide the service in and from Australia.

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Sector:	Telecommunications
Obligations Concerned:	National Treatment Senior Management and Boards of Directors
Level of Government:	Central
Source of Measure:	<i>Telstra Corporation Act 1991</i>
Description:	<u>Investment</u>

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.

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.

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Sector:	Broadcasting and Audiovisual Services Advertising Services
Obligations Concerned:	National Treatment Most-favoured Nation Treatment ¹³ Performance Requirements
Source of Measure:	<i>Broadcasting Services Act 1992</i> <i>Radiocommunications 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 content transmitted annually between 6.00 am and midnight. Subquotas for particular program formats (eg drama, documentary) may be applied within the 55% quota. (b) Transmission quotas for local content imposed on advertising broadcast on free-to-air commercial analogue and digital (other than multichannelling) television services shall not exceed 80 percent of content transmitted annually between 6:00a.m. and midnight.

¹³ Applies only to the equal treatment of New Zealand programmes with Australian programmes for the purposes of local content requirements.

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Sector	Broadcasting
Obligations Concerned	National Treatment Senior Management and Boards of Directors Performance Requirements
Level of Government	Central
Source of Measure	<i>Broadcasting Services Act 1992 (BSA)</i>
Description of Reservation	<u>Investment</u> A foreign person is prohibited from being in a position to exercise control ¹⁴ of a commercial television broadcasting licence. Company interests of two or more foreign persons in a commercial television broadcasting licensee are limited to 20 per cent. No more than 20 per cent of the directors of each commercial television broadcasting licensee may be foreign persons. For each subscription television broadcasting licence, foreign interests are limited to a 20 per cent company interest for an individual and a 35 per cent company interest in aggregate.

¹⁴ As outlined in the BSA.

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Sector	Newspapers
Obligations Concerned	National Treatment
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	<u>Investment</u> 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. Aggregate foreign interest direct involvement in provincial and suburban newspapers is limited to less than 50 per cent for non-portfolio shareholdings.

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Sector: Health

Obligations Concerned: National Treatment
Senior Management and Boards of Directors

Level of Government: Central

Source of Measure: *Commonwealth Serum Laboratories Act 1961*

Description: Investment

The votes attaching to significant foreign shareholdings¹⁵ may not be counted in respect to 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.

¹⁵ 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% of the voting shares in CSL.

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Sector: Transport services

Obligations Concerned: National Treatment
Local Presence

Level of Government: Central

Source of Measure: *Trade Practices Act 1974*

Description: Cross-Border Trade in Services and Investment

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.

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.

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Sector:	Transport
Obligations Concerned:	National Treatment Senior Management and Boards of Directors
Level of Government:	Central
Source of Measure:	<i>Air Navigation Act 1920</i> Ministerial Statement
Description:	<u>Investment</u>

Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent.

Furthermore:

- 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.

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Sector:	Transport
Obligations Concerned:	National Treatment Senior Management and Boards of Directors
Source of Measure:	<i>Qantas Sale Act 1992</i>
Description:	<u>Investment</u>

Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate holdings by foreign airlines to 35 per cent. In addition:

- 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.

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