

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 (Non-Conforming Measures) and Article 11.13.2 (Non-Conforming Measures), 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 (Non-Conforming Measures) and 11.13.2 (Non-Conforming Measures), 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.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

Sector:	All
Obligations Concerned:	National Treatment Market Access Performance Requirements Local Presence Senior management and board of directors
Description:	<u>Cross-Border Trade in Services and Investment</u> 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 acquisition, establishment or operation of any commercial or industrial undertaking in the service sector. 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. For the purpose of this entry, an indigenous person means a person of the Aboriginal race of Australia or a descendent of an indigenous inhabitant of the Torres Strait Islands.
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> .

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Sector: All

**Obligations
Concerned:** Market Access

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:**

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Sector: All

Obligations Concerned: National Treatment
Performance Requirements

Description: Investment

Australia reserves the right to adopt or maintain any measure with respect to proposals by 'foreign persons' to invest in Australian urban land (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; and Ministerial statements.

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Sector: Social services

Obligations Concerned: National Treatment
Most-Favoured Nation Treatment
Local Presence
Performance requirements
Senior management and Boards of Directors
Market Access

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: -

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Sector: Broadcasting and Audiovisual Services
Advertising Services

**Obligations
Concerned:** National Treatment
Market Access
Most-favoured Nation Treatment¹
Performance requirements

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 on a particular service is made available by a service provider. Such quotas may not exceed 55% of the programming on individual channels of a service provider transmitted annually between 6.00 am and midnight and may not be imposed on more than two channels or 20% of the total number of channels (whichever is greater) made available by that provider. No local content requirement shall be applied to more than three channels of an individual service provider. Subquotas for particular program formats (eg drama, documentary) may be applied within the 55% quota 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. Such quotas may not exceed 80% of the programming on individual channels of a service provider transmitted annually between 6.00 am and midnight and may not be imposed on more than three channels made available by that provider.

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

(c) 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.

¹ Applies only to the equal treatment of New Zealand programmes with Australian programmes for the purposes of local content requirements.

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(d) Subscription television broadcasting services

Expenditure quotas for local content not exceeding 10% of program expenditure. Such quotas may be imposed on service providers making available services in the following program formats: the arts, children's, documentary, drama, and educational.²

Upon a finding by the Government of Australia that the expenditure quota for the production of Australian drama is insufficient to meet its stated goal for such expenditure, this expenditure quota may be increased up to a maximum level of 20%. 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.

(e) Free-to-air commercial radio broadcasting services

Transmission quotas for local content not exceeding 25% of the programming on individual stations of a service provider.

(f) Interactive audio and/or video services

Measures to ensure that, upon a finding by the Government of 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 a company that carries on a business in Australia in relation to the supply of that service.

(g) Measures inconsistent with the Article on Market Access with respect to spectrum management.

(h) Taxation concessions for investment in Australian cultural activity where eligibility for the concession is subject to local content or production requirements.

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

² No one channel will be subject to an expenditure quota for more than a single category.

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Existing *Broadcasting Services Act 1992*
Measures: *Radiocommunications Act 1992*

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Sector: Audiovisual services

**Obligations
Concerned:** Most-favoured Nation Treatment
Performance requirements

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain, under the Australian Government Co-production programme, 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, including in respect of access to finance and tax concessions.

**Existing
Measures:**

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Sector: Distribution services

**Obligations
Concerned:** Market Access

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:** -

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Sector:	Education services
Obligations Concerned:	National Treatment Market Access Local presence Senior management and Boards of Directors Performance Requirements
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:	-

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Sector: Maritime

**Obligations
Concerned:** National Treatment

Description: Investment

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

**Existing
Measures:**

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Sector: Maritime Transport

Obligations Concerned: National Treatment
Local presence
Market Access
Performance requirements
Senior Management and Boards of Directors

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to maintain or adopt any measure with respect to maritime cabotage services and offshore transport services³.

Existing Measures:

³ For the purposes of this entry, cabotage is defined as 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 refers to 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.

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Sector: Transport

Obligations Concerned: National Treatment
Senior management and Boards of Directors

Description: Investment

Australia reserves the right to maintain or adopt 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

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Sector: All

**Obligations
Concerned:** Most-Favoured-Nation Treatment

Description: Cross-Border 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 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:**