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Subject to Legal Review for Accuracy, Clarity, and Consistency
June 18, 2004

ANNEX I
SCHEDULE OF THE UNITED STATES

Sector:	Business Services
Obligations Concerned:	National Treatment (Article 10.2) Local Presence (Article 10.5)
Level of Government:	Central
Measures:	<i>Export Trading Company Act of 1982</i> , 15 U.S.C. §§ 4011-4021 15 C.F.R. Part 325
Description:	<p>Title III of the <i>Export Trading Company Act of 1982</i> 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.</p> <p>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.”</p> <p>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</p>

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nonprofit organization or relationship, by contract or other arrangement.”

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Obligations Concerned: National Treatment (Article 10.2)
Local Presence (Article 10.5)

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 through 774

Description: With some limited exceptions, exports and reexports 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.

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Sector: Air Transportation

Obligations Concerned: National Treatment (Article 10.2)
Most-Favored-Nation Treatment (Article 10.3)
Local Presence (Article 10.5)

Level of Government: Central

Measures: 49 U.S.C., Subtitle VII, Aviation Programs
49 U.S.C. § 41703

14 C.F.R. Part 375

As qualified by paragraph 2 of the **Description** element

- Description:**
1. Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States.*
 2. “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 49 U.S.C. § 40102(15), 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.

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil

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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.

*A person of Bahrain will be able to obtain such an authorization given Bahrain's acceptance of the U.S. definition of specialty air for the Cross-Border Services Chapter.

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Sector: Transportation Services - Customs Brokers

Obligations Concerned: National Treatment (Article 10.2)
Local Presence (Article 10.5)

Level of Government: Central

Measures: 19 U.S.C. § 1641(b)

Description: 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. For greater certainty, 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.

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- Sector:** Professional Services - Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office
- Obligations Concerned:** National Treatment (Article 10.2)
Most-Favored-Nation Treatment (Article 10.3)
Local Presence (Article 10.5)
- Level of Government:** Central
- Measures:** 35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office)

37 C.F.R. Part 10 (representation of others before the U.S. Patent and Trademark Office)
- Description:** 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; 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. § 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; 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)).

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Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.2)
Most-Favored-Nation Treatment (Article 10.3)
Local Presence (Article 10.5)

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: