

**Statement of Robert Vastine
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on the Australia Free Trade Agreement
before the Trade Policy Staff Committee
Office of the United States Trade Representative**

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Introduction

Thank you for this opportunity to testify on behalf of the Coalition of Service Industries on the US Free Trade Agreement with Australia. CSI is comprised of US service companies and trade associations seeking to achieve market access in all modes of supply in all negotiating forums. We have prepared a guidebook of services priorities for the FTA as a ready reference to the trade liberalization priorities of most of the sectors represented in CSI's membership.

These negotiating priorities reflect the tremendous economic importance of services in market economies. They are essential inputs into the production of virtually all products. The price and quality of services influence cost and productivity of all other sectors including manufacturing and agriculture. Thus when liberalized and made more efficient, services have a strong effect on the competitiveness of an entire economy.

The proposed Free Trade Agreement will improve the already vigorous and dynamic trade in services between the United States and Australia. Australia is the 15th largest US export market. In 2001, US exports of private commercial services to Australia (including travel, passenger fares, transportation, royalties and license fees, and other private services) amounted to \$4.7 billion. Within the category of other private services, affiliated transactions consisting of intrafirm trade within multinational companies amounted to \$620 million in exports and unaffiliated transactions, consisting of transactions with foreigners that neither own, nor are owned by, the US party to the transaction, amounted to \$1,302 million in exports. Within unaffiliated transactions, \$540 million of US exports was in business, professional, and technical services including legal services, accounting and advertising, \$286 million was in funds management, credit card services, and fees and commissions on transactions and securities, \$158 million was in telecommunications services, and \$64 million was in expenditures for tuition and living expenses by Australian students enrolled in United States colleges and universities.

The US is Australia's largest services export market. In 2001, the US imported \$3.4 billion in private commercial services from Australia including \$453 million in affiliated transactions and \$449 million in unaffiliated transactions. Of these unaffiliated transactions, \$216 million was in business, professional and technical services, \$103

million was in education, \$99 million was in financial services, and \$64 million was in telecom services.ⁱ

Australia is an active participant in the WTO GATS negotiations with substantial commitments in the GATS. Australia has also tabled negotiating proposals in accountancy, construction, distribution, education, engineering, environmental, financial, legal, maritime, and telecommunications services in the current WTO round of services negotiations. These proposals may be indicative of possible services requests in the bilateral agreement. For example we do anticipate that Australia will call for a mechanism in the agreement that will facilitate the provision of Australian professional services in architecture and engineering as well as legal consultants. Australia may request the rationalization of sub federal measures in insurance. Australia may also ask for regulation of commercial relationships between ISPs that use the Internet infrastructure.

With respect to professional services, we anticipate that Australia will request that steps be taken toward the mutual recognition of Australian professional service providers. CSI would support such a cooperative effort to streamline administrative procedures for recognition of professional service requirements. We note that the American Institute of CPAs and the National Association of State Boards of Accountancy have negotiated mutual recognition agreements with both the Australian Institute of Chartered Accountants and the Australian Society of Certified Practicing Accountants.

CSI is aware of Australian complaints about the equity of the provision of Internet transit services, and of consequent calls for regulation of the Internet backbone market. Yet the OECD's Directorate for Science Technology and Industry has found that the "United States is the most competitive backbone market in the OECD area". The OECD reports that telecommunication carriers have a range of options for moving Internet traffic: partnering with a carrier, purchasing dark fiber, purchasing capacity and services, swapping capacity, purchasing a company or even a share of a company.ⁱⁱ

Therefore with regard to Internet transit services, CSI maintains that commercial negotiations provide the most efficient means to allocate resources in the very competitive Internet backbone market. CSI would oppose any provision in the agreement that would regulate Internet transit services due to the competitive nature of the backbone market. In addition, any regulatory actions directed towards the Internet infrastructure should focus solely on opening markets to competition particularly with respect to local telecommunications facilities where incumbents continue to control local facilities.

Australian GATS Commitments

Australia has significant GATS commitments across almost all services sectors. It has committed to 34% of all possible WTO GATS services commitments, which is consistent with the level of commitments of most developed WTO members. To determine this measure, the number of Australia's GATS commitments on market access and national

treatment is divided by the possible number of market access and national treatment commitments for all sectors in all modes of supply.ⁱⁱⁱ Australia does maintain horizontal market access and national treatment limitations on movement of personnel across all services sectors. Australia also maintains reservations in its GATS schedule on professional, communication, financial, and tourism services. A discussion of Australia's commitments is contained in Annex A.

Australia Free Trade Agreement (FTA)

In general we seek a highly ambitious agreement that will build on the achievements of the Chile and Singapore agreements, which combined should be a model for the Australia negotiations. CSI members have described the Australian services market as well regulated and efficient. There are areas for improvement which are related to GATS reservations and domestic regulations.

I will identify crosscutting objectives such as the negotiating approach, transparency, electronic commerce, temporary entry of natural persons, acquired rights, and government procurement. And I will identify priorities for the advertising, audiovisual, computer and related services, education, express delivery, energy, financial, legal, maritime, multimedia information technology, telecommunications, and tourism sectors.

Negotiating Approach

The US and Australia should use a negative list negotiating approach in which countries only identify exceptions to liberalization. This is the approach used in Chile and Singapore. We believe it should be used in all agreements. The negative list speeds the process of negotiations, provides clarity because exceptions must be clearly identified, and embraces all new services, thus avoiding problems associated with attempting to define "new" services. In terms of achieving free trade, the negative list is superior as it covers all services unless reserved.

Framework for Transparency in Services

CSI very strongly believes that the trade agreement with Australia must affirm crosscutting disciplines that ensure regulatory transparency for services. A transparent and fair regulatory system is a precondition for the liberalization of services. The trade agreement with Australia should contain strong disciplines to ensure transparency across the board for all services. Crosscutting transparency commitments should be affirmed in three areas: (A) Standard-setting; (B) the Regulatory Application Process; and (C) Judicial, Arbitral, or Administrative Tribunals. In particular service sectors, sectoral agreements or scheduling can be used to lay out additional transparency requirements for that sector, including broader regulatory reform as necessary and appropriate. Some sectors may need little supplementation, while other sectors may need many special rules tailored to that sector. For example, in the insurance industry we recommend the adoption of best practices on solvency and prudential issues, regulation of monopolies, and an independent regulatory authority. This approach allows negotiators to respond flexibly to

the particular needs of each sector while at the same time building on the transparency disciplines that apply across all sectors.

Temporary Entry of Key Business Personnel

The agreement should provide for the entry of persons at professional or highly skilled levels through expeditious issuance of visas that allow for multiple entry and the performance of temporary work assignments. There is no US visa category that covers both intracorporate movement and work for clients or customers in another country where there is no affiliate office of the parent company.

Electronic Commerce

The trade agreement with Australia should include the groundbreaking provisions on electronic commerce contained in the US Singapore FTA, which inter alia prevent discriminatory treatment of digital products on the basis of origin. The agreement should also provide trade-liberalizing provisions that address electronic commerce issues affecting goods, services, and intellectual property as well as binding principles that support the maintenance of open markets for electronic commerce.

The agreement should ensure maximum liberalization in those services that:

- constitute the infrastructure of the Internet: basic telecommunications, value added services (on a technology neutral basis, including wireline, wireless, cable and satellite), computer and related services, and electronic naming and authentication services;
- facilitate e-commerce, e.g. financial (including online payments), distribution, advertising, and express delivery services;
- are traded electronically, e.g. accounting and educational services.

The agreement should provide binding commitments to:

- avoid the creation of any unnecessary barriers to e-commerce;
- ensure that, where regulations are necessary, they are as least trade-restrictive as possible; and
- ensure that firms are not restricted from using advanced technologies (hardware, software, technical data or know-how) in the conduct of their business.

With respect to intellectual property, the agreement should:

- provide maximum liberalization for distribution of intellectual property based content including software and audiovisual products;
- adopt and ensure full compliance with existing international intellectual property accords, including the WIPO digital treaties, and
- provide effective and timely implementation and enforcement of TRIPS;
- provide copyright term extension,

- provide TRIPS plus levels of commitments for IP with limitations on liability for Internet service providers as regards copyright protection;
- provide additional higher level commitments consistent with the WIPO digital treaties including anticircumvention measures.

The agreement should ensure that customs valuation for digitized products delivered on a physical medium is based solely upon the valuation of the carrier medium.

Acquired Rights

The term “acquired rights” refers to rights that a given company may have obtained in a market over time. These rights are typically unbound in trade agreements, and thus may be revoked by governments. A central objective of trade negotiations, such as accession agreements and free trade agreements, is to secure these rights or at least not to impair them. In these agreements, CSI seeks affirmative commitments to maintaining such rights, as in the Oman accession agreement^{iv}. In trade agreements based on the “negative list” approach, such rights remain unimpaired unless specifically reserved. In such cases, however, we seek an affirmative explanatory statement by negotiators assuring that such acquired rights are intact and unimpaired.

Government Procurement

Australia is not a signatory to the WTO Agreement on Government Procurement. US companies have a significant interest in the Australian government procurement market, therefore, we recommend that the FTA include commitments on government procurement that will result in transparent and predictable procedures and access for American companies to public contracts in Australia.

Telecommunications Services

Australian GATS Commitments in Telecommunication Services^v

	a.	b.	c.	d.	e.	f.	g.	h.	i.	j.	k.	l.	m.	n.	1	2	3	RP
Australia	x	x	x	x		x	x	x	x	x	x	x	x		x	x		x

¹ Key: a. voice telephone services b. packet switched data transmission services c. circuit switched data transmission services d. telex services e. telegraph services f. facsimile services g. private leased circuit services h. electronic mail i. voice mail j. online information and database retrieval k. electronic data interchange l. enhanced/value added facsimile services m. code and protocol conversion n. online information and/or data processing 01. terrestrial-based mobile 02. satellite-based mobile 03. other, other. RP. 1997 Telecom Reference Paper

The Agreement should include commitments on telecommunications in leased circuit services consistent with those achieved in the Singapore and Chile Agreements.

Australia should provide full market access and national treatment for services supplied cross border and through commercial presence for basic telecom services, value-added network services, and computer and related services.

It should ensure pro-competitive, cost based interconnection and non-discriminatory access to unbundled elements of basic telecommunications networks and services. It should also provide non-discriminatory, cost based access to all communications platforms for value added services.

Australia should ensure that independent regulators have sufficient sanctioning power to prevent abuse and should allow new entrants and new technologies the freedom to respond innovatively without burdening them with traditional telecommunications regulation.

Financial Services

Australian GATS Commitments in Financial Services^{vi}

	Life	Nonlife	Reinsurance	Intermediation	Deposits	Lending	Trading in foreign exchange	Trading in derivatives	Trading in Securities	Under-writing	Asset Management	Financial Information
Australia	x	x	x	x	X	x	X	x	x	x	X	x

Banking, Securities and Related Financial Services

Stability of domestic financial markets is reinforced by the healthy, nondiscriminatory participation of local and international firms who are equally encouraged to invest capital, talent and technology in environments marked by strong regulatory institutions and transparency. In order to take advantage of the significant contribution financial services can make to all sectors of Australia's economy, negotiators should:

- Remove barriers to establishment by foreign investors and allow companies to operate through wholly owned subsidiaries, branches or other forms of commercial presence.
- Remove economic needs tests and other geographic or product-specific restrictions.
- Commit to grandfather existing investments in operations and activities.
- Schedule commitments to permit financial services to be provided cross-border without local establishment, and by consumption abroad.
- Commit to facilitate the temporary entry of key financial services personnel required for managerial, technological, systems or risk managements purposes.
- Commit to liberalize transfers of financial information, financial data processing and the provision of advisory and software related services.
- Commit to market access and national treatment for asset management and pension fund services provided by the full range of financial services firms.

Australia should also eliminate the following barriers:

- Australia considers financial services a “sensitive” sector, therefore head offices are required to be located in Australia, and the Chairman and the majority of the Board of Directors must be Australian citizens. Investments of A\$10,000,000 or more to establish a new business, or the acquisition of an interest of 15% or more in an existing business valued at more than A\$50,000,000 require government approval, which can be refused on national interest grounds.
- To be allowed to operate, foreign banks are required to demonstrate their potential contribution to competition in Australia. This requirement is unclear and is not based on objective criteria. Acquisition of an interest of more than 15% in a bank or insurance company requires additional government approval.
- A foreign-owned Australian subsidiary bank is required to appoint at least two directors who are entirely independent of the management of the Australian bank subsidiary, its parent, or any of their associates.
- Foreign bank branches providing retail deposit services face restrictions. They can only receive “wholesale market” deposits, not deposits of individuals. Foreign branches are prohibited from accepting “initial” deposits and other funds of less than A\$250,000 from individuals and non-corporate institutions. Foreign bank branches are allowed to accept deposits and other funds in any amount from incorporated entities, non-residents and employees. These discriminatory measures of course violate national treatment.
- Public procurement of financial services discriminates against foreign firms.
- There is discriminatory taxation of foreign bank branches. Specifically, the Interest Withholding Tax of 10% is imposed on half of the interest on intra-bank borrowing by foreign bank branches. This taxation regime again violates national treatment.
- Foreign banks willing to provide both retail and substantial corporate banking services must obtain two licences. Domestic banks are required to obtain only one licence in such cases. This results in foreign banks being exposed to two levies by the Australian Prudential Regulation Authority – one for each licence. The present disallowance of consolidation fails to recognise that the branch and subsidiary operation constitute parts of a whole in economic terms.

Asset Management

Australia is an important market for US asset management firms with a projected growth rate of approximately 11% in the next several years. Australia also has a compulsory retirement savings system and its pension market is the sixth largest in the world. We hope that the US negotiators will take the opportunity provided by the negotiations to

address regulatory issues that would provide US firms with effective market access to an increasingly significant market.

Insurance

CSI's insurance members advocate that the "Proposed Model Schedule for Future Insurance Commitments by WTO Members" be used in negotiations with Australia as it was in Chile and Singapore.

The Model Schedule first identifies commitments to market access and national treatment. Its purpose is to give greater specificity and predictability to commitments important to the industry. The text builds on existing commitments and incorporates certain specific obligations to remove any ambiguity and to ensure that those commitments are built into the more general obligations. It sets forth obligations not addressed clearly in current schedules, including the obligation to fully stage a commitment within a specified timeframe, and to ensure a standstill to protect acquired rights.

The Model also provides "Best Practices in Insurance" that take the form of "additional commitments." It covers aspects of domestic regulation that are not addressed by the market access or national treatment provisions, like transparency, solvency and prudential issues, regulation of monopolies, and independent regulatory authority.

Negotiators should use the proposed model schedule for future insurance commitments and pay particular attention to eliminating foreign capital limitations and non-discriminatory treatment of foreign service providers.

Australia should also eliminate barriers inconsistent with the Model Schedule for Insurance. For example:

- In the GATS, commitments are made only in cross-border trade for marine, aviation and transport insurance, and reinsurance.
- Non-established foreign insurance firms must have a resident Australian agent.
- Domestic monopolies are maintained in third party motor liability insurance and workers' compensation insurance at the State and Territory level.
- Foreign establishment in life insurance is limited to subsidiaries only (no branching). The principal officer must be resident in Australia.
- Domestic monopolies are maintained in third party motor liability insurance and workers' compensation insurance at the State and Territory level.
- No notification procedures are provided before taxation measures affecting all insurance products are adopted.

In addition, the provision of financial services in Australia has become more difficult for some retail classes of business due to the new Financial Services Reform Act. The Act requires that as of March 11, 2002, an intermediary must be licensed by the Australian Securities and Investments Commission (ASIC) to conduct retail insurance business. Other than a ban on foreign branches, there are no significant barriers for established life insurance firms. However, there are restrictions in services offered by firms that have not established in the market.

Financial Information

The agreement should contain language ensuring the ability to provide financial information to all end-users, including cross-border provision.

Advertising Services

Australia should make commitments in advertising services to provide full market access and national treatment, as well as commit to the adoption of the least trade restrictive measures for advertising.

Advertising commitments should be interpreted as technology neutral. The type of technology or distribution platform used should not affect the coverage of a commitment. Australia should remove content restrictions on advertising.

Audiovisual Services

With regard to audiovisual services, the agreement should include:

- Full market access and national treatment for production, distribution, and projection services (including cinema theater ownership and management) for motion pictures and sound recordings.
- Full market access and national treatment for radio and television services and transmission services.
- Customs valuation based on the carrier medium for goods needed in the conduct of AV services.
- Tariff reductions on AV line items, including production equipment and final products, and zero duties on DVDs and other digital products.

Computer and Related Services

The trade agreement with Australia should ensure that the following priorities are achieved in computer and related services:

- Trade negotiations for the information technology services sector should achieve full market access and national treatment commitments for all services relating to information technology in the on-line and off-line services.
- Liberalization commitments in all services, including computer and related services should be taken at the highest level possible.
- Existing GATS commitments for all services should apply when these services are made available over the Internet.
- Software and other digitized products made available online, whether classified as a good or a service, should receive market access, MFN and national treatment no less favorable than the products would receive if it were traded as a good through physical delivery.
- Both general management consulting and information technology consulting should be fully liberalized.
- As part of negotiations on information technology services, Australia should ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade in computer and related services.
- Australian countries should reduce or remove, where appropriate, measures that impede or restrict the temporary movement of key business personnel.
- Australia should commit to market access and national treatment in government procurement while ensuring a transparent procurement process.
- Services that are needed to create the infrastructure for electronic commerce and services that can be delivered electronically should be liberalized.

Education Services

The trade agreement with Australia should remove obstacles to the provision of higher education, adult education, training (including testing) services through electronic or physical means. Examples of such barriers are included in the guidebook.

Energy Services

Both market access and regulatory issues must be addressed in the trade agreement negotiations. The agreement on energy services should ensure the broadest possible market access commitments. Energy services providers should have the opportunity to distribute their services through all four modes of supply: cross border supply, purchase and consumption abroad, establishment of a commercial presence, and through the temporary movement of natural persons. Classifications for energy services should be

flexible and cover the full array of commercial activities to encompass new energy activities and technologies.

To ensure that energy services providers can use the best available technology, market access should be allowed without regard for the technology used to provide the energy services. Energy services providers should also be allowed to import, on a temporary duty-free basis, tools of the trade and equipment essential to the provision of those services.

Energy services companies should also have the right to the temporary entry of essential personnel with highly specialized skills necessary to provide a covered service.

Australia must adopt regulatory systems that provide:

- transparency in the formulation, promulgation and implementation of rules; regulations, licenses, technical standards, and arbitration and judicial review;
- non-discriminatory third-party access to and interconnection with energy networks and grids;
- an independent regulatory authority separate from and not accountable to any supplier of energy services; and
- transparent, objective and timely procedures for the allocation of scarce network resources, such as transmission capacity and rights of way.

Environmental Services

Negotiators should seek commitments that include services for environmental clean-up, remediation, prevention and monitoring. With this broad scope of services, negotiators should seek deep and broad commitments across all modes of supply. Environmental services providers should also be allowed to import, on a temporary duty-free basis, tools of the trade and equipment essential to the provision of those services.

Australian GATS Commitments in Environmental Services ^{vii}

	Sewage services	Refuse disposal services	Sanitation and similar services	Cleaning services of exhaust gases	Noise abatement services	Nature and landscape protection services	Other environment protection services
Australia	x	x	x				

Express Delivery Services

The agreement should include:

- Language that appropriately defines express delivery services to include the full scope of services provided.

- Narrowly drawn reservations on services related to express delivery services, such as ground transportation or warehousing. Such reservations should specify that they do not apply to express delivery services.
- A narrowly tailored reservation on postal services. This reservation should make clear that it does not apply to express delivery services.
- A prohibition on cross-subsidies of revenues derived from a postal service's monopoly operations into competitive express delivery service operations.
- Trade facilitation provisions that expedite treatment of express delivery shipments.

The agreement should provide full national treatment and market access in the express delivery services sector. Barriers in the areas of customs, postal, ground transportation, operational control, radio frequency, licensing and ownership should be eliminated. Commitments in electronic commerce are also sought.

In addition, a free trade agreement with Australia should include trade facilitation provisions that expedite treatment of express delivery shipment. Specifically, the agreement should include provisions that separate the fiscal clearance from border clearance; increase the *de minimis* thresholds to A\$1,500; reduce the number of data elements required to complete a customs declaration; institute a simplified clearance scheme for FTA qualifying goods; and allow personal effects to be cleared by customs examination/x-ray alone.

Legal Services

Australian GATS Commitments in Legal Services ^{viii}

	Host country law		International law		Home country law		Other	Modes
	Advisory	Representation	Advisory	Representation	Advisory	Representation		
Australia			x	X	x	x		All

The agreement on legal services should ensure that individual lawyers and law firms are permitted to create and maintain their professional establishments in Australia to supply legal services under the name used in the US. Lawyers or law firms should be permitted to establish a presence in Australia in any form available to suppliers of legal services in the US, including as a branch.

Australia could require lawyers or law firms from the US to register with its competent authority. The competent authority should make administrative criteria and procedures, including procedures for applying for registration, publicly available in writing, and ensure that they are administered in an objective and impartial manner, within a reasonable period of time. As a condition to registration of an establishment, the

competent authority could require a registration by one or more lawyers who are responsible for the establishment, and the giving of an undertaking by the law firm.

The competent authority could require lawyers to abide by each country's respective rules in regards to the legal profession, and could subject them to the disciplinary rules of the host country. Disciplinary actions should be administered in a reasonable, objective and impartial manner.

The establishment should be permitted to supply legal services which the lawyers or law firms are authorized to render in their home country. Authorized lawyers should be allowed to supply services relating to the law of each country even if they are not members of the establishment's professional staff. Lawyers should be given a reasonable opportunity to qualify as legal professionals in each country. Rules applicable to lawyers from the US should be no more restrictive than rules for Australia's.

An establishment should be permitted to include members of each country's legal profession on its professional staff, either as employees, or as partners or shareholders or the equivalent. A lawyer should be allowed to use a professional title authorized by Australia or the US with an appropriate reference.

Lawyers should be permitted to participate in any capacity in arbitration proceedings in Australia without subjecting the lawyers to any registration or other requirements applicable to establishments.

Maritime Transportation

Maritime matters should be excluded from the negotiations. However, the trade agreement with Australia should ensure elimination of the 50 per cent US ad valorem duty on ship repairs to US flag vessels outside of the US^{ix}.

Multimedia Information Technology

The ability of multimedia information technology firms to advance international business objectives depends on the creation of a global, regional and country-specific environment that enables the investment, production, distribution and sale of content, technology and services around the world. Trade negotiations are an important means of creating this environment. This trade agenda is also a tangible way to increase revenues and decrease costs for multimedia operations globally. The specific priorities to be pursued multilaterally, regionally and bilaterally include eliminating restrictions on the ability to invest or acquire overseas media and communications assets and engage in those lines of business. Governments should lower the costs for producing and moving both physical and digital products and network inputs and access devices. They should ensure fair and non-discriminatory access to all communications platforms. Governments should eliminate the barriers to digital delivery of multimedia information technology products and e-commerce and strengthen IPR protection.

Specifically, Australia should:

- Commit to full market access, national treatment and eliminate ownership restrictions on news agency, printed media and publishing, and advertising services.
- Commit to full access to its markets for film and home video services, distribution, video leasing and sales, sound recording and music production, and publishing and distribution services.
- Commit to full market access and national treatment (coupled with zero tariffs) in areas critical to the technology and entertainment sector, including zero tariffs on: packaged media such as movies, music, software on all carrier mediums, including cassettes (852452), disks for laser reading systems (852439), and 6.5 mm (852453), film and sound recording equipment, broadcast transmission equipment, movie and music promotional materials, and film and magnetic tape.

Tourism Services

The agreement should strive to generate investment for tourism by removing obstacles to the establishment and operation of hotels and other lodging places; by making it easier for travelers to visit and make purchases in Australia; and by reducing the problems faced by organizers of international conferences and conventions.

Australia should eliminate its GATS requirement that travel agencies and tour operators must be established in Australia in order to do business.

Australian GATS Commitments in Tourism Services ^x

	Hotel and Restaurants	Travel Agencies and Tour Operators Services	Tourists Guides Services	Other
Australia	x	x	x	

Conclusion

A US-Australia FTA that achieves a high standard in all aspects of trade in services will serve as an important example of what can be achieved in multilateral negotiations. The Agreement will also demonstrate that commitments to free trade are important to sustained economic growth for developing and developed countries.

ATTACHMENT A

AUSTRALIA'S WTO GATS RESERVATIONS

Horizontal Market Access & National Treatment Limitations in the GATS

Australia maintains specific market access limitations across all services sectors with respect to commercial presence and presence of natural persons. In the case of establishment, Australia maintains foreign investment policy guidelines and has inscribed its Foreign Acquisitions and Takeovers Act of 1975 in its GATS schedule. Under the guidelines, Australia retains the right to assert national interest considerations when considering approval of foreign investment in services. The guidelines require notification to the Australian government of acquisitions of Australian businesses with total assets of over 5 million, establishment of new businesses involving a total investment of \$10 million or more, and portfolio investments in the media of 5% or more and all non-portfolio investments irrespective of size.

In movement of natural persons, Australia has left this category unbound except for measures concerning the entry and temporary stay of natural persons in specific categories. Executives and senior managers as intracorporate transferees may enter for periods of initial stay up to four years, independent executives for periods of initial stay up to a maximum of two years, service sellers for periods of initial stay up to six months, and specialists for periods of initial stay up to a maximum of two years with possible extension not exceeding four years.

Australia also maintains specific national treatment limitations across all service sectors with respect to commercial presence and presence of natural persons. With respect to establishment, Australia's foreign investment policy guidelines apply to foreign owned or controlled enterprises. At least two of the directors of a public company must be ordinarily resident in Australia. Australia has left unbound current and future measures at the federal, state or local government levels according rights or preferences to any indigenous person or organization. It has also left unbound subsidies for research and development. The national treatment limitations on movement of natural persons are consistent with the market access limitations.

Professional Service Reservations in the GATS

In legal services, natural persons practicing foreign law may only join a local law firm as an employee or as a consultant and may not enter into partnership with or employ local lawyers. With respect to national treatment, in New South Wales or Victoria at least one equity partner in a firm engaged in advising on foreign law matters must be a permanent resident: in Queensland at least one equity partner in a foreign law firm must be resident for a minimum period of 180 days per calendar year. At the same time, joint offices involving revenue-sharing between foreign law firms and Australian local law firms are permitted in New South Wales, Victoria, Queensland and Tasmania subject to the foreign law firms satisfying certain requirements, including in relation to liability, standard of conduct and professional ethics. In accounting, only natural persons may be registered

as auditors and liquidators and at least one equity partner must be a permanent resident.

Communication Service Reservations in the GATS and Domestically

In Telecommunications, Australia's establishment exceptions on satellite services and public mobile cellular telecom expired June 1997. Australia bound itself to the outcome of its parliamentary process governing basic telecommunications, which determined the number of available carrier licenses and foreign equity limitations on such licenses. According to its reservations, an entity holding a new carrier license must be a public body or a constitutional corporation under Australian law. Australia bound its schedule for sale of Telstra. Australia has also bound foreign investment policy requirements for Optus (the holder of general carrier and mobile license), which limit the share of equity any individual foreign shareholder may hold. In addition, the chairman and directors of Optus must be Australian citizens, other than those directors appointed by the two current major foreign investors. Australia does stipulate its requirement for majority Australian ownership of Vodafone (holder of a mobile carrier license).

In the GATS, Australia has not made any audiovisual commitments. National restrictions do exist on content and investments in media. The 1992 Broadcasting Services Act restricts foreign ownership of commercial and subscription television services. The 1999 Broadcasting Services (Australian Content) Standard, Television Program Standard for Australian Content in Advertising, and the Federation of Australian Radio Broadcasters Industries Code of Practice restricts content.

Australia's market restrictions in media require that proposals involving portfolio shareholdings of 5% or more be in accordance with the Foreign Acquisitions and Takeovers Act of 1975. There is a maximum foreign investment in national and metropolitan newspapers of 30% and a single foreign shareholder maximum interest limit of 25%. The maximum level of aggregate foreign interest in provincial and suburban newspapers is 50%. For television services individual foreign interests are limited to 15% and 20% in aggregate. No foreign persons may be in a position to exercise control of a license and no more than 20% of directors may be foreign. Foreign investors in subscription television are limited to 35% and a maximum 20% for individuals. Commercial free to air television is most heavily regulated, with quota requirements for Australian programming overall and for several program categories. In addition, 80% of advertising on television must be local and at least 10% of program expenditures for adult and children's pay TV channels must be local.^{xi}

In music broadcasting, the Australian Broadcasting Authority in 1999 asserted that mainstream rock, album oriented rock, contemporary hits, top 40, and alternative required no less than 25% Australian content. Hot/mainstream adult contemporary, country, classic rock required no less than 20% Australian content. Soft adult contemporary, hits and memories, gold (encompassing classic hits), news talk/sports talk required no less than 15% Australian content, oldies, easy listening, easy gold, country gold required no less than 10% Australian content, nostalgia, jazz, smooth jazz required no less than 5% Australian content.

Financial Service Reservations in the GATS

In insurance and insurance related services, approval of nonresident life insurers is restricted to subsidiaries. Registered foreign life insurance companies are required to have a principal officer resident in Australia. An authorized insurance company operating in Australia as a non-incorporated entity must appoint an Australian resident as agent of the insurer. Most state and territory governments maintain restrictions, by way of monopolies or licensing provisions and associated controls on premiums and other terms of policies, in the following areas of insurance: compulsory third party motor vehicle accident: VIC, WA, TAS, NT (monopolies); NSW, QLD, SA, ACT (licensing, premiums/policy terms). In workers compensation: SA, VIC, QLD (monopolies); NSW, WA, TAS^{xii} (licensing, premiums/policy terms). Comcare is the monopoly provider of workers compensation insurance to Commonwealth government employees. Also subnational guarantees are provided to some state and territory insurance offices.

In banking and other financial services, a foreign bank located overseas is able to offer its services to Australian enterprises, but is not allowed to raise deposit funds in Australia or undertake business with Australia unless it is an authorized bank (or establishes a money market corporation, subsidiary etc.). Foreign banks located overseas may, however, raise funds in Australia through the issuance of debt securities provided that those securities are offered or traded in parcels of not less than \$A500,000 and securities and any information memoranda clearly state the issuing bank is not authorized under the Banking Act in Australia.

Dealings in foreign exchange in Australia must be carried out through a dealer authorized by the Reserve bank. Only banks, including branches of overseas banks, and financial institutions incorporated in Australia with a required minimum capital base are eligible to seek authorization as a foreign exchange dealer.

Only foreign banks satisfying prudential requirements and demonstrating their "potential contribution to competition" in Australia may conduct banking in Australia. Foreign banks may undertake banking operations in Australia through locally incorporated subsidiaries and/or an authorized branch. However, a branch may not accept "retail" deposits. Foreign banks wishing to accept "retail" deposits must seek authorization as a locally incorporated subsidiary for that purpose. Foreign bank branches may accept deposits (and other funds) in any amount from incorporated entities, nonresidents and their own employees. Deposits (and other funds) may only be accepted from other sources where the initial deposit (or other funds) is greater than \$A250,000. Deposit taking outside of this is considered to be "retail" banking business.

A number of State and Territory Governments operate central financing authorities through which the governments wholly or partially owned or statutory authorities and business enterprises are obliged to borrow (and in some cases invest) their funds, or otherwise obtain certain financial services. In addition the financial operations of some State or Territory owned entities may be guaranteed by the State or Territory Governments. A number of State and Territory Governments have also provided

transitional guarantees to some of the assets and liabilities of former State-owned or controlled banks. Furthermore, the Provisions of the Trust Bank (Corporatization) Act of 1997 dealing with the Trust Bank of Tasmania may require a joint venture arrangement. The provisions of the Act require that at least a majority of the directors of the Trust Bank be resident in Tasmania and that policy and control of the Trust Bank be exercised in Tasmania.

Tourism Reservations in the GATS

Travel agencies and tour operator services are required to establish commercial presence in Australia.

ⁱ Bureau of Economic Analysis U.S. International Transactions, October, 2002.

ⁱⁱ OECD's Directorate for Science Technology and Industry March, 2002 (DSTI/ICCP/TISP(2001)5/Final).

ⁱⁱⁱ Hoekman, Bernard. 1996. "An Assessment of the General Agreement on Trade in Services," in Will Martin and L. Alan Winters (eds.), *The Uruguay Round and the Developing Economies*.

^{iv} Trade agreements using the positive list approach such as the accession agreement with Oman should include an acquired rights provision, which stipulates "that the conditions of ownership, management, operation, juridical form and scope of activities as set out in a license or other form of approval establishing or authorizing operation or supply of services by an existing foreign service supplier, will not be made more restrictive than they exist as of the date of each country's signing of the FTA."

^v WTO Guide to the GATS, 2001

^{vi} WTO Guide to the GATS, 2001

^{vii} WTO Guide to the GATS, 2001

^{viii} WTO Guide to the GATS, 2001

^{ix} The 50% *ad valorem* duty is imposed on ship repairs to U.S. flag vessels outside of the U.S. It is clearly in the interest of U.S. shipping companies that this burdensome duty be eliminated for repairs to U.S. flag vessels outside of the United States. The *ad valorem* duty has been in place to encourage job creation in U.S. shipyards, but has been a policy failure that is nothing more than an unnecessary tax on U.S. flag ship owners.

^x WTO Guide to the GATS, 2001

^{xi} Center for International Economics June 2001 Measures of Post Uruguay Round Protection.

^{xii} State Governments: Victoria (VIC), Western Australia (WA), Tasmania (TAS), Northern Territory (NT), New South Wales (NSW), Queensland (QLD), South Australia (SA).