

## THE UNITED STATES OF AMERICA - INITIAL OFFER

### Introduction

1. Recognizing WTO Members' commitment in these negotiations to achieve a progressively higher level of liberalization and to provide effective market access, and recognizing that current U.S. commitments under the GATS already provide among the highest levels of effective market access, in response to requests received from Members the United States proposes the following new commitments.
2. Consistent with GATS Article I.3(b) and (c), this offer applies only to services open to private sector participants, unless otherwise indicated, in the attached draft schedules, and does not include the right to acquire or invest in government monopolies supplying services included within any of the sectors or sub-sectors covered by this offer.
3. Under these proposed new GATS obligations, as under current obligations, the United States will continue to be able to establish, maintain, and fully enforce its domestic laws protecting, *inter alia*, consumers, health, safety, and the environment, as well as take actions it considers necessary for the protection of its essential security interests.
4. The United States will consider adopting new obligations under the GATS regarding transparency in regulation of services if other WTO Members are prepared to do so as well. The United States looks forward to work on these issues in bilateral request-offer discussions as well as in other appropriate WTO fora.
5. The United States reserves the right to withdraw, modify, or reduce this offer, in whole or in part, including necessary amendments to the offer regarding listing of tax measures, at any time prior to the conclusion of the negotiations.
6. The United State further reserves the right to make technical changes to this offer and to correct any errors, omissions, or inaccuracies.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

| Sector or subsector   | Limitations on market access   | Limitations on national treatment | Additional commitments |
|---|--|-----------------------------------|------------------------|
| <b>I. HORIZONTAL COMMITMENTS</b>  |  |                                   |                        |
| <u>ALL SECTORS COVERED BY THIS SCHEDULE:</u> For the purpose of this schedule the "United States" is defined as encompassing the 50 states of the United States, plus the District of Columbia. |  |                                   |                        |
| All Sectors: Temporary Entry And Stay of Natural Persons <sup>1</sup>   | 4) Unbound, except for measures concerning temporary entry and stay of nationals of another member who fall into the categories listed below:<br><br><u>Services Salespersons</u> - persons not based in the territory of the United States and receiving no remuneration from a source located within the United States, who are engaged in activities related to representing a services supplier for the purpose of negotiating for the sale of the services of that supplier where: a) such sales are not directly made to the general public and b) the salesperson is not engaged in supplying the service. Entry for persons named in this section is limited to a ninety-day period. | 4) Unbound                        |                        |

<sup>1</sup> "Temporary entry" means entry without intent to establish permanent residence under immigration laws of the US and confers no rights with respect to citizenship. US commitments regarding entry and temporary stay in the US do not apply in cases of labor/management disputes.

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|                     | <p><u>Intra-corporate Transferees</u> - managers, executives and specialists, as defined below, who are employees of firms that provide services within the United States through a branch, subsidiary, or affiliate established in the United States and who have been in the prior employ of their firm outside the United States for a period of not less than one year immediately preceding the date of their application for admission and who are one of the following:</p> <p>a) <b>Managers</b> - persons within an organization who primarily direct the organization, or a department or sub-division of the organization, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or recommend hiring, firing, or other personnel actions (such as promotion or leave authorization), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service.</p> |                                   |                        |

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|---------------------|---|-----------------------------------|------------------------|
|                     | <p>b) <b>Executives</b> - persons within the organization who primarily direct the management of the organization, establish the goals and policies of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of a service or services of the organization.</p> <p>c) <b>Specialists</b> - persons within an organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization's services, research equipment, techniques, or management. (Specialists may include, but are not limited to, members of licensed professions.)</p> <p>Entry for persons named in this section is limited to a three-year period that may be extended for up to two additional years for a total term not to exceed five years.</p> |                                   |                        |

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|---------------------|--|-----------------------------------|------------------------|
|                     | <p><u>Personnel Engaged in Establishment</u> - A person who has been employed in the immediately preceding year by an entity described in Section II, receiving remuneration from that source, who occupies a managerial or executive position with that entity and is entering the territory of the United States for the purpose of establishing an entity described in Section II that will support employment of persons named in paragraphs a), b), and c) therein. The subject persons shall present proof of acquisition of physical premises for the entity that shall commence its business operations within one year of the date of entry of that person.</p> |                                   |                        |

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|---------------------|---|-----------------------------------|------------------------|
|                     | <p><u>Fashion Models and Specialty Occupations</u> - Up to 65,000 persons annually on a worldwide basis in occupations as set out in 8 USC. ' 1101 (a) (15) (H) (i) (b), consisting of (i) fashion models who are of distinguished merit and ability; and (ii) persons engaged in a specialty occupation, requiring (a) theoretical and practical application of a body of highly specialized knowledge; and (b) attainment of a bachelor's or higher degree in the specialty (or its equivalent) as a minimum for entry into the occupation in the United States. Persons seeking admission under (ii) above shall possess the following qualifications: (a) full licensure in a US state to practice in the occupation, if such licensure is required to practice in the occupation in that state; and (b) completion of the required degree, or experience in the specialty equivalent to the completion of the required degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. Entry for</p> |                                   |                        |

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|                     | <p>persons named in this section is limited to three years.</p> <p>Specialty occupation aliens and their employers must be in compliance with all labor condition application requirements that are attested to by the established employer. These requirements are: a) wages paid to the person are the greater of: 1) the actual wage paid by the employer to individuals in that place of employment with similar qualifications and experience, or 2) the prevailing wage for that occupational classification in the area of employment; b) conditions of work are such that they will not adversely affect working conditions for those similarly employed; c) there is no strike or lockout in the course of a labor/management dispute in progress at the place of employment affecting the subject occupation; labor/management dispute in progress at the place of employment;</p> |                                   |                        |

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|---|--|--|------------------------|
|   | <p>d) the employer has not laid off or otherwise displaced workers in the subject occupation in the previous six months and will not lay off or displace any US worker during the 90-day period following the filing of an application or the 90-day periods preceding and following the filing of any visa petition supported by the application; e) the employer has taken and is taking timely and significant steps to recruit and retain sufficient US workers in the specialty occupation; and f) notice is given at the time of application by the employer to employees or their representatives at the place of employment.</p> |  |                        |
| <p>All Sectors: Acquisition of Land</p> | <p>3) None</p>   | <p>3) The federal government restricts initial sale of federally-owned lands to US citizens. (Preceding restriction does not apply to foreign-owned companies formed under the laws of any state of the United States.)</p> <p>Acquisition of land reclaimed with federal funds and reclamation of desert land is restricted to individual US citizens</p> |                        |

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|                     |                              | <p>Ownership of land by non-US citizens is limited in: Kentucky (restrictions apply only to individuals, not to foreign-owned companies incorporated within the United States) and South Carolina (applies to individuals and foreign-owned corporations).</p> <p>Purchase of land by non-US citizens not resident within the state is restricted in: Oklahoma, Florida, and Wyoming. In Mississippi, non-US citizens may not purchase more than 5 acres for residential property, or more than 320 acres for industrial development.</p> <p>Non-US citizens may not purchase or bid on sales of public lands in: Hawaii, Idaho, Mississippi, Montana, and Oregon</p> |                        |

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|--------------------------------|-------------------------------|--|------------------------|
| All Sectors: Taxation Measures | 1) None<br>2) None<br>3) None | 1), 2), 3) At the federal level, with respect to direct taxes:<br><br>Differential tax treatment may be provided between trusts created or organized in the United States to provide employee benefits and trusts not created or organized in the United States and their respective beneficiaries. Such provisions affect the taxation of the income of the trust or the beneficiary, the availability of deductions to taxpayers for contributions to the trust, and tax administration requirements; these provisions include different rules for allowing deductions to, and determining the earnings of, foreign employee benefit plans.<br><br>An increase in the rate or a widening of the base of a federal income tax may be imposed on a national, resident or corporation of a foreign country where a national, resident or corporation of the United States is being subjected to discriminatory or extraterritorial taxes (as described in section 891 or section 896 of the Internal Revenue Code). |                        |
|                                |                               | At the federal level, with respect to taxes other than direct taxes:   |                        |

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| Sector or subsector    | Limitations on market access                                     | Limitations on national treatment   | Additional commitments |
|------------------------|--|---|------------------------|
|                        | <p>4) Unbound, except as indicated in the horizontal section</p> | <p>An excise tax may be imposed in connection with transfers of any property by a citizen or resident of the United States, or by a domestic entity (corporations, partnership, estate or trust) to a foreign entity (corporation partnership, estate or trust).</p> <p>An excise tax may be imposed on US source gross investment income of foreign organizations that are private foundations.</p> <p>4) None</p> |                        |
| All Sectors: Subsidies | <p>1) Unbound</p> <p>2) Unbound</p> <p>3) None</p>               | <p>1) Unbound</p> <p>2) Unbound</p> <p>3) The Federal Overseas Private Investment Corporation (OPIC) insurance and loan guarantees are not available to certain aliens, foreign enterprises, and foreign-controlled enterprises established in the United States</p> <p>Trade and Development Agency financing is limited to:</p>   |                        |

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|                     |                              | <p>I. individuals 1) who are either US citizens or non-US citizens lawfully admitted for permanent residence in the United States and 2) whose principal places of business are in the United States, or</p> <p>II. privately-owned commercial corporations or partnerships that are incorporated or legally organized under the laws of the United States and whose principal places of business are in the United States and (1) that are more than 50 per cent beneficially owned by individuals who are US citizens or (2) that have been incorporated or legally organized in the United States for more than 3 years, have performed similar services in each of the prior 3 years, and employ US citizens in more than half of their permanent full-time positions in the United States and have the existing capability in the United States to perform the contract</p> |                        |

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|---------------------|------------------------------|--|------------------------|
|                     |                              | <p>Unbound for measures at the federal, state or local levels that accord rights or preferences to members of socially or economically disadvantaged groups in the United States, including:</p> <p>Federal Small Business Administration - loans are restricted to US citizens or companies that are 100 per cent owned by US citizens and whose directors are all US citizens</p> <p>Maine - The Maine Veterans Small Business Loan Guarantee Program provides guarantees to eligible resident veterans for business loans from local lending institutions. A qualifying business is one that is independently owned and operated in Maine, and the applicant must be a war veteran. The Small Business Loan Guarantee Program in Maine provides guarantees of loans made by private lenders to eligible residents of Maine for business purposes.</p> |                        |

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|                     |                              | <p>Maryland - The Maryland Small Business Development Financing Authority makes direct loans to socially or economically disadvantaged business persons. Applicants must be US citizens and have a business that is 70 per cent owned by socially or economically disadvantaged persons. Applicants for the Maryland Small Business Surety Bond Guarantee Program must be US citizens and, if entities, must have their principal places of business in Maryland.</p> <p>Minnesota - Community Development Corporations are only eligible to receive grants if 60 per cent of their directors are residents of the specific geographic community in Minnesota within which they will operate.</p> <p>Oregon - Oregon law requires that the Economic Development Corporation (EDC) give preference in OBDF loans to businesses owned in whole or in part by dislocated timber workers.</p> |                        |

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|---------------------|--|---|------------------------|
|                     | <p>4) Unbound, except as indicated in the horizontal section</p> | <p>Pennsylvania - Minority Business Development Authority provides long-term low interest loans to minority-owned businesses. Applicants must be Blacks, Aleuts, Eskimos, Hispanics or American Indians who are residents of Pennsylvania.</p> <p>Unbound for research and development subsidies</p> <p>4) None</p> |                        |