



SUMMARY OF US NEGATIVE LISTS IN BILATERAL INVESTMENT TREATIES

In its multiple bilateral investment treaties (BITs) with other countries, the United States uses a “negative list” approach in which the terms of the treaty apply to all sectors except those expressly listed as exclusions. This means that investments by foreign entities are treated the same as investments by domestic entities, except for a few sectors specifically excluded from the terms of the treaty.

The two most recent US BITs, with Uruguay (2005) and Rwanda (2008), include the same list of exceptions (full text and annexes of the agreements are available on USTR’s [website](#)¹).

Those restrictions are summarized below. The US “negative list” has very few sectors that are closed to foreign ownership. Most of the restrictions are criteria that foreign investors must meet to participate in a sector or are limitations on certain activities.

In addition, the US rarely limits foreign ownership to a certain percentage of an investment, as China does across many sectors. The United States allows 100 percent foreign ownership of banks, insurance companies, and securities companies in the United States if they meet the same requirements as domestic investors, for example.

Importantly, there are eight restrictions that are based on reciprocal treatment – that is, areas that are actually open to foreign investment if American companies are able to invest in a BIT partner economy.

Finally, there are six areas in which the United States maintains the right to maintain or impose further restrictions after a BIT goes into force (marked by an asterisk in the list below). Three of those restrictions are based on the reciprocal treatment American companies face in a BIT partner economy.

Restriction	Notes
Sectors in which Foreign Investment is Prohibited	
Nuclear energy utilization and production facilities for commercial or industrial purposes, medical therapy and R&D using components regulated by the Nuclear Regulatory Commission	Licenses to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import or export cannot be issued to entities known or believed to be owned, controlled or dominated by a non-US citizen, foreign corporation or foreign government.
Customs brokerage services	Only US citizens may obtain customs broker’s licenses.

¹ <http://www.ustr.gov/trade-agreements/bilateral-investment-treaties/bit-documents>

Restriction	Notes
Domestic air services (passenger and air freight forwarding)	Only air carriers that are “citizens of the United States” may offer domestic air service. However, non-US citizens may obtain approval from the Department of Transportation to participate in air freight forwarding and passenger charter activities.
Credit unions, savings banks, savings associations	Federal and state laws do not permit these entities to be established through branches of corporations organized under a foreign country’s laws. A foreign-invested corporation organized under US law can establish these entities.
Issuance of surety bonds by foreign insurance companies for US government contracts	Branches of foreign insurance companies cannot provide surety bonds for US government contracts, but US-licensed foreign insurance companies may do so.
Sectors in which Foreign Ownership may have Restrictions	
Overseas Private Investment Corporation financing (quasi-government program)	Not available to certain aliens, foreign enterprises or foreign-controlled enterprises.
Small business designation in public securities filings	Foreign firms may not register public offerings using small business registration forms or to register a class or securities or file annual reports.
Bank board membership	All directors of national banks must be US citizens, but can be waived by the Comptroller of the Currency for not more than a minority of the total number of directors.
Edge corporations	Edge corporations are financial institutions authorized by the US to do business internationally. Foreign ownership of these entities is limited to foreign banks and US subsidiaries of foreign banks. Foreign non-bank firms may not own Edge corporations.
Domestic retail deposits in foreign banks	To accept or maintain domestic retail deposits below \$100,000, a foreign bank must establish an insured banking subsidiary.
Investment advisors of foreign banks	Foreign banks must register as investment advisors to engage in securities advisory and investment management services in the United States.
Federal Reserve System membership	Foreign banks cannot be members of the Federal Reserve System and thus may not vote for directors of a Federal Reserve Bank. This provision does not apply to foreign-owned bank subsidiaries, however.

Restriction	Notes
Bank branches in certain US states	Foreign banks may not establish a federal branch or agency in states that prohibit it. Certain restrictions on fiduciary powers apply to federal agencies.
Insurance for maritime vessels with more than 50 percent of hull built under US federally guaranteed mortgage funds	Non-US insurers for vessels meeting the criteria must demonstrate that the risk was substantially first offered in the US market.
All other non-conforming measures at the state level and in the District of Columbia and Puerto Rico	All existing non-conforming measures are exempted from national treatment, most favored nation treatment, performance requirements and senior management and boards of directors requirements.
Restrictions Based on Reciprocity	
Rights-of-way for oil or gas pipelines; access to federal leases on Naval Petroleum Reserves	Non-US citizens may own 100% interest in a domestic US corporation that acquires a right-of-way if foreign investor's home country allows 100% ownership by foreign companies.
Specialty air services	Foreign civil aircraft must obtain approval from the Department of Transportation, which reviews based on reciprocity.
Trustees of indentures for bond offerings	Authority to act as sole trustee is based on reciprocity.
Dealer of US government debt securities	Designation as a primary dealer in US government debt securities is based on reciprocity.
Radio spectrum allocation, direct-to-home and direct broadcasting television services, digital audio services*	US reserves the right to provide differential treatment to non-US citizens, based on reciprocity.
Cable television operations*	US reserves the right to provide differential treatment to non-US citizens, based on reciprocity.
Preference programs for minorities*	US reserves the right to maintain preferences for socially or economically disadvantaged minorities, based on reciprocity.
Maritime services*	US reserves the right to provide differential treatment for the operation of services in these areas, excluding vessel construction and repair and landside services, which are based on reciprocity.
Other Restrictions	
Banking and insurance	National treatment for foreign banks is provided based on its "home state" – that is, the original state of its incorporation in the United States. National treatment for insurance companies is based on its state of domicile.

Restriction	Notes
Broker-dealers registered in Canada	Broker-dealers registered under US law with a principal place of business in Canada may maintain its required reserves in Canada.
Government-Sponsored Enterprises (GSEs) such as Fannie Mae, Freddie Mac, Sallie Mae	US reserves the right to grant advantages to US GSEs, including exemptions from taxation and securities reporting. US Treasury may purchase debt obligations issued by a GSE.
Radio broadcasting*	US reserves the right to restrict foreign ownership of radio licenses and broadcasting.
Social services including income security or insurance, social security or insurance, social welfare, public education, public training, health, child care*	US reserves the right to provide differential treatment for the operation of services in these areas.
Areas covered by multilateral or bilateral agreements including aviation, fisheries, maritime and telecommunications*	US reserves the right to provide differential treatment in these sectors to countries with which it has bilateral or multilateral international agreements.

** The US reserves the right to maintain or impose further restrictions on foreign investors in these sectors.*