

ANNEX II

Explanatory Notes

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 10.13 (Non-Conforming Measures) and 11.6 (Non-Conforming Measures), the specific sectors, subsectors, 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 10.3 or 11.2 (National Treatment);
 - (b) Article 10.4 or 11.3 (Most-Favored-Nation Treatment);
 - (c) Article 11.5 (Local Presence);
 - (d) Article 10.9 (Performance Requirements);
 - (e) Article 10.10 (Senior Management and Boards of Directors); or
 - (f) Article 11.4 (Market Access).
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 article(s) referred to in paragraph 1 that, pursuant to Articles 10.13.2 (Non-Conforming Measures) and 11.6.2 (Non-Conforming Measures), do not apply to the sectors, subsectors, or activities scheduled in the entry;
 - (c) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry; and
 - (d) **Existing Measures** identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.
3. In accordance with Article 10.13.2 (Non-Conforming Measures) and 11.6.2 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, subsectors, and activities identified in the **Description** element of that entry.

ANNEX II

Schedule of the United States

Sector:	Communications
Obligations Concerned:	Most-Favored-Nation Treatment (Articles 10.3 and 11.2)
Description:	<u>Cross-Border Services and Investment</u>

The United States reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2)
Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
Local Presence (Article 11.5)
Performance Requirements (Article 10.9)
Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The United States 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 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.

Sector: Minority Affairs

Obligations Concerned: National Treatment (Articles 10.3 and 11.2)
Local Presence (Article 11.5)
Performance Requirements (Article 10.9)
Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the *Alaska Native Claims Settlement Act*.

Existing Measures: *Alaska Native Claims Settlement Act*, 43 U.S.C. §§ 1601 *et seq.*

Sector: Transportation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2)
Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
Local Presence (Article 11.5)
Performance Requirements (Article 10.9)
Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:

- (a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways;
- (b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;
- (c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;
- (d) requirements related to documenting a vessel under the U.S. flag;
- (e) promotional programs, including tax benefits, available for shipowners, operators, and vessels meeting certain requirements;
- (f) certification, licensing, and citizenship requirements for crew members on U.S.-flagged vessels;
- (g) manning requirements for U.S.-flagged vessels;
- (h) all matters under the jurisdiction of the Federal Maritime Commission;

- (i) negotiation and implementation of bilateral and other international maritime agreements and understandings;
- (j) limitations on longshore work performed by crew members;
- (k) tonnage duties and light money assessments for entering U.S. waters; and
- (l) certification, licensing, and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation. However, the treatment in (b) is conditional upon obtaining comparable market access in these sectors from Peru:

- (a) vessel construction and repair; and
- (b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines, and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap; and ship classification societies. For greater certainty, measures relating to the landside aspects of port activities are subject to the application of Article 22.2 (Essential Security).

Existing Measures:

Merchant Marine Act of 1920, §§ 19 and 27, 46 U.S.C. App. § 876 and §§ 883 *et seq.*
Jones Act Waiver Statute, 64 Stat 1120, 46 U.S.C. App., note preceding Section 1
Shipping Act of 1916, 46 U.S.C. App. §§ 802 and 808
Merchant Marine Act of 1936, 46 U.S.C. App. §§ 1151 *et seq.*, 1160-61, 1171 *et seq.*, 1241(b), 1241-1, 1244, and 1271 *et seq.*
Merchant Ship Sales Act of 1946, 50 U.S.C. App. § 1738
 46 U.S.C. App. §§ 121, 292, and 316
 46 U.S.C. §§ 12101 *et seq.* and 31301 *et seq.*

46 U.S.C. §§ 8904 and 31328(2)
Passenger Vessel Act, 46 U.S.C. App. § 289
42 U.S.C. §§ 9601 *et seq.*; 33 U.S.C. §§ 2701 *et seq.*; 33
U.S.C. §§ 1251 *et seq.*
46 U.S.C. §§ 3301 *et seq.*, 3701 *et seq.*, 8103, and 12107(b)
Shipping Act of 1984, 46 U.S.C. App. §§ 1708 and 1712
The Foreign Shipping Practices Act of 1988, 46 U.S.C.
App. § 1710a
Merchant Marine Act, 1920, 46 U.S.C. App. §§ 861 *et seq.*
Shipping Act of 1984, 46 U.S.C. App. §§ 1701 *et seq.*
Alaska North Slope, 104 Pub. L. 58; 109 Stat. 557
Longshore restrictions and reciprocity, 8 U.S.C. §§ 1101 *et*
seq.
Vessel escort provisions, Section 1119 of Pub. L. 106-554,
as amended
Nicholson Act, 46 U.S.C. App. § 251
Commercial Fishing Industry Vessel Anti-Reflagging Act of
1987, 46 U.S.C. § 2101 and 46 U.S.C. § 12108
43 U.S.C. § 1841
22 U.S.C. § 1980
Intercoastal Shipping Act, 46 U.S.C. App. § 843
46 U.S.C. § 9302, 46 U.S.C. § 8502; Agreement Governing
the Operation of Pilotage on the Great Lakes, Exchange of
Notes at Ottawa, August 23, 1978, and March 29, 1979,
TIAS 9445
Magnuson Fishery Conservation and Management Act, 16
U.S.C. §§ 1801 *et seq.*
19 U.S.C. § 1466
North Pacific Anadromous Stocks Convention Act of 1972,
P.L. 102-587; *Oceans Act of 1992, Title VII*
Tuna Convention Act, 16 U.S.C. §§ 951 *et seq.*
South Pacific Tuna Act of 1988, 16 U.S.C. §§ 973 *et seq.*
Northern Pacific Halibut Act of 1982, 16 U.S.C. §§ 773 *et*
seq.
Atlantic Tunas Convention Act, 16 U.S.C. §§ 971 *et seq.*
Antarctic Marine Living Resources Convention Act of
1984, 16 U.S.C. §§ 2431 *et seq.*
Pacific Salmon Treaty Act of 1985, 16 U.S.C. §§ 3631 *et*
seq.
American Fisheries Act, 46 U.S.C. § 12102(c) and 46
U.S.C. § 31322(a)

Sector: All

Obligations Concerned: Market Access (Article 11.4)

Description: Cross-Border Services

The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services.

Sector:	All
Obligations Concerned:	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
Description:	<p><u>Cross-Border Services and Investment</u></p> <p>The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none">(a) aviation;(b) fisheries; or(c) maritime matters, including salvage.

ANNEX II

Schedule of Peru

Sector	All Sectors
Obligations Concerned	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
Description	<p><u>Investment and Cross-Border Trade in Services</u></p> <p>Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none">(a) aviation;(b) fisheries; or(c) maritime matters,¹ including salvage.

¹ For greater certainty, maritime matters include transport by lakes and rivers.

Sector	Indigenous Communities, Peasant, Native, and Minority Affairs
Obligations Concerned	National Treatment (Articles 10.3, 11.2) Most Favored Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Board of Directors (Article 10.10)
Description	<u>Investment and Cross-Border Trade in Services</u> Peru reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities and ethnic groups. For purposes of this entry: ethnic groups means indigenous and native communities; minorities includes peasant (<i>campesinos</i>) communities.

Sector	Fishing
Obligations Concerned	National Treatment (Article 10.3) Most Favored Nation Treatment (Article 10.4) Performance Requirements (Article 10.9)
Description	<u>Investment</u> Peru reserves the right to adopt or maintain any measure relating to artisanal fishing.

Sector:	Cultural Industries
Obligations Concerned:	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
Description:	<u>Investment and Cross-Border Trade in Services</u>

For purposes of this entry, the term “cultural industries” means:

- (a) Publication, distribution, or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;
- (b) Production, distribution, sale, or display of recordings of movies or videos;
- (c) Production, distribution, sale, or display of music recordings in audio or video format;
- (d) Production and presentation of theater arts;²
- (e) Production and exhibition of visual arts;
- (f) Production, distribution, or sale of printed music scores or scores readable by machines;
- (g) Design, production, distribution and sale of handicrafts; or
- (h) Radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities, satellite programming services, and broadcasting networks.

Peru reserves the right to adopt or maintain any measure giving preferential treatment to persons of other countries pursuant to any existing or future bilateral or multilateral international agreement between Peru and any such country containing specific commitments regarding cultural cooperation or co-production by cultural industries, including audio-visual cooperation agreements.

² **Theater arts** means live performances or presentations such as drama, dance, or music.

For greater certainty, Articles 10.3 and 10.4 and Chapter Eleven do not apply to government support³ for the promotion of cultural industries.

³ For purposes of this entry, “government support” means tax incentives, incentives on mandatory contributions, government grants, government supported loans, guarantees, or trusts, or insurance provided by a government, irrespective of whether a private entity is wholly or partially responsible for its management. However, a measure is not covered by this entry to the extent that it is inconsistent with Article 22.3 (Taxation).

Sector: Handicraft Industries

Obligations Concerned: National Treatment (Article 11.2)
Performance Requirements (Article 10.9)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the design, distribution, retailing, or exhibition of handicrafts that are identified as Peruvian handicrafts.

Performance requirements shall in all cases be consistent with the WTO Agreement on Trade-Related Investment Measures.

Sector: Audio-Visual Industry

Obligations Concerned: National Treatment (Article 11.2)
Performance Requirements (Article 10.9)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure whereby a specified percentage (up to 20 percent) of the total cinematographic works shown on an annual basis in cinemas or exhibition rooms in Peru consist of Peruvian cinematographic works. In establishing such percentage, Peru shall take into account factors including the national cinematographic production, the existing exhibition infrastructure in the country and attendance.

For greater certainty, this entry does not apply to advertising.

Sectors: Jewelry Design
Theater arts
Visual arts
Music
Publishing

Obligations Concerned: National Treatment (Article 11.2)
Performance Requirements (Article 10.9)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure conditioning the receipt or continued receipt of government support⁴ for the development and production of jewelry design, theater arts, visual arts, music, and publishing on the recipient achieving a given level or percentage of domestic creative content.

For greater certainty, this entry does not apply to advertising.

⁴ For purposes of this entry, “government support” means tax incentives, incentives on mandatory contributions, government grants, government supported loans, guarantees, or trusts, or insurance provided by a government, irrespective of whether a private entity is wholly or partially responsible for its management. However, a measure is not covered by this entry to the extent that it is inconsistent with Article 22.3 (Taxation).

Sector:	Audio-visual industry Publishing Music
Obligations Concerned:	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
Description:	<u>Investment and Cross-Border Trade in Services</u> Peru may adopt or maintain any measure that affords a person of another Party the treatment that is afforded by that other Party to Peruvian persons in the audiovisual, publishing, and music sectors.

Sector	Social Services
Obligations Concerned	National Treatment (Articles 10.3, 11.2) Most-Favored-Nation Treatment (Articles 10.4, 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Board of Directors (Article 10.10)

Description	<u>Investment and Cross-Border Trade in Services</u> Peru 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 and insurance, social security, social welfare, public education, public training, health, and childcare.
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Sector: Public Supply of Potable Water

Obligations Concerned: Market Access (11.4)
Local Presence (11.5)

Description: Cross- Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the public supply of potable water.

For greater certainty, nothing in this reservation shall affect the ability of a foreign enterprise to supply bottled water.

Sector: Public Sewage Services

Obligations Concerned: Market Access (11.4)
Local Presence (11.5)

Description: Cross- Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to public sewage services.