

**ANNEX 11D : PERU CROSS-BORDER TRADE IN SERVICES AND INVESTMENT
RESERVATIONS FOR FUTURE MEASURES**

HEADNOTE

1. This Annex sets out, pursuant to Article 10.14 (Non-Conforming Measures) of Chapter 10 (Investment) and Article 11.7 (Non-Conforming Measures) of Chapter 11 (Cross-Border Trade in Services), the reservations taken by a Party for sectors, sub-sectors or activities for which it may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 10.3 (National Treatment) of Chapter 10 (Investment) or Article 11.3 (National Treatment) of Chapter 11 (Cross-Border Trade in Services);
- (b) Article 10.4 (Most-Favoured-Nation Treatment) of Chapter 10 (Investment) or Article 11.4 (Most-Favoured-Nation Treatment) of Chapter 11 (Cross-Border Trade in Services);
- (c) Article 11.5 (Market Access) of Chapter 11 (Cross-Border Trade in Services);
- (d) Article 11.6 (Local Presence) of Chapter 11 (Cross-Border Trade in Services);
- (e) Article 10.7 (Performance Requirements) of Chapter 10 (Investment); or
- (f) Article 10.13 (Senior Management and Board of Directors) of Chapter 10 (Investment).

2. The sectors, sub-sectors or activities to which a reservation applies shall be stated in the Description of Reservation element. In the interpretation of a reservation, all elements of the reservation shall be considered in their totality.

3. The reservations and commitments related to cross-border trade in services shall be read together with the relevant guidelines, stated in GATT documents MTN.GNS/W/164 dated 3 September 1993 and MTN.GNS/W/164 Add.1 dated 30 November 1993.

4. Each entry in a Party's Schedule sets out the following elements:

- (a) **Sector** refers to the sector in which the entry is made;
- (b) **Industry Classification** refers, where applicable, to the activity covered by the non-conforming measure, according to the CPC codes as used in the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No.77, Department of

International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

- (c) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1;
- (d) **Measures** identify laws, regulations, rules, procedures, requirements, practices or any other form for which the reservation is made. A measure cited in the Measures element:
 - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and
- (e) **Description**, sets out the non-conforming measure to which the reservation applies.

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| 1. Sector | All Sectors |
| Obligations Concerned | Most-Favoured-Nation Treatment (Article 10.4; Article 11.4) |
| 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,^{11D-1} including salvage. |

^{11D-1} For greater certainty, maritime matters include transport by lakes and rivers.

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| 2. Sector | Indigenous Communities, Peasant, Native, and Minority Affairs |
| Obligations Concerned | National Treatment (Article 10.3, Article 11.3) Most-Favoured-Nation Treatment (Article 10.4; Article 11.4) Local Presence (Article 11.6) Performance Requirements (Article 10.7) Senior Management and Board of Directors (Article 10.13) |
| 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, native and peasant communities. |

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| 3. Sector | Fishing and Services Related to Fishing |
| Obligations Concerned | National Treatment (Articles 10.3, Article 11.3) Most Favoured Nation Treatment (Article 10.4, Article 11.4) Performance Requirements (Article 10.7) |
| Description | <u>Investment and Cross-Border Trade in Services</u> Peru reserves the right to adopt or maintain any measure relating to artisanal fishing. |

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| 4. Sector: | Cultural Industries |
| Obligations Concerned: | Most-Favoured-Nation Treatment (Article 10.4; Article 11.4) |
| 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^{11D-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 regarding cultural industries, including audio-visual cooperation agreements.

For greater certainty, Article 10.3 (National Treatment) and Article 10.4 (Most-Favoured-Nation Treatment) and Chapter 11 (Cross-Border Trade in Services) do not apply to government support for the promotion of cultural industries.

^{11D-2} Theater arts means live performances or presentations such as drama, dance, or music.

5. Sector: Handicraft Industries

Obligations Concerned: National Treatment (Article 11.3)
Performance Requirements (Article 10.7)

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.

6. Sector: Audio-Visual Industry

Obligations Concerned: National Treatment (Article 11.3)
Performance Requirements (Article 10.7)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure whereby a specified percentage (up to twenty percent (20%)) 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.

7. Sectors: Jewelry Design
Theater Arts
Visual Arts
Music
Publishing

Obligations Concerned: National Treatment (Article 11.3)
Performance Requirements (Article 10.7)

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 support 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.

8. Sector: Audio-Visual Industry
Publishing
Music

Obligations Concerned: National Treatment (Article 10.3; Article 11.3)
Most-Favoured-Nation Treatment (Article 10.4; Article 11.4)

Description: Investment and Cross-Border Trade in Services

Peru may adopt or maintain any measure that affords a person of the other Party the treatment that is afforded by that Party to Peruvian persons in the audiovisual, publishing, and music sectors.

9. Sector

Social Services

Obligations Concerned

National Treatment (Article 10.3, Article 11.3)
Most-Favoured-Nation Treatment (Article 10.4, Article 11.4)
Local Presence (Article 11.6)
Performance Requirements (Article 10.7)
Senior Management and Board of Directors (Article 10.13)

DescriptionInvestment and Cross-Border Trade in Services

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.

10. Sector: Public Supply of Potable Water

Obligations Concerned: Local Presence (Article 11.6)

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.

11. Sector: Public Sewage Services

Obligations Concerned: Local Presence (Article 11.6)

Description: Cross-Border Trade in Services

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

12. Sector: Telecommunications

Obligations Concerned: Most-Favoured-Nation Treatment (Article 11.4)
Local Presence (Article 11.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the granting of a concession for the installation, operation, and exploitation of public telecommunication services.

13. Sector: Education

Obligations Concerned: National Treatment (Article 11.3)
Most-Favoured-Nation Treatment (Article 11.4)
Local Presence (Article 11.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to natural persons who render educational services, including teachers and auxiliary personnel rendering educational services in basic and superior education including “educación técnico productiva” as well as other people who render services related to education included sponsors of educational institutions of any level or stage of the educational system.

14. Sector: Transport: Road Transport Services

Obligations Concerned: National Treatment (Article 11.3)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that authorizes only Peruvian natural or juridical persons to supply land transportation of persons or merchandises inside the territory of Peru (cabotage). For this, the enterprises shall use the Peruvian automobile park.

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| 15. Sector: | Transport: International Road Transport Services |
| Obligations Concerned: | National Treatment (Article 10.3, Article 11.3) Most-Favoured-Nation Treatment (Article 10.4, Article 11.4) Local Presence (Article 11.6) |
| Description: | <p><u>Investment and Cross-Border Trade in Services</u></p> <p>Peru reserves the right to adopt or maintain any measure relating to the international land transportation of cargo or passengers in the bordering zones.</p> <p>Additionally, Peru reserves the right to adopt or maintain the following limitations for the supply of international land transportation from Peru:</p> <ol style="list-style-type: none">1. the service supplier must be a Peruvian natural or juridical person;2. must have a real and effective domicile in Peru; and3. in the case of juridical persons, it must be legally constituted in Peru, more than fifty percent (50%) of the capital must be owned by Peruvian citizens and the effective control must be under Peruvian citizens. |

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| 16. Sector: | All Sectors |
| Obligations Concerned: | Market Access (Article 11.5) |
| Description: | <u>Cross- Border Trade in Services</u> |

Peru reserves the right to adopt or maintain any measure relating to Article 11.5 (Market Access), except for the following sectors and sub-sectors subject to the limitations and conditions listed below:

Legal Services: For (a) and (c): None, except that the number of notary positions is limited as follows:

- (a) two hundred (200) for the capital;
- (b) forty (40) for each department capital; and
- (c) twenty (20) for each provincial capital (including the Constitutional Province of Callao). For (b): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Architectural Services: For (a), (b) and (c): None, except that to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Engineering Services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Veterinary Services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Services provided by midwives, nurses, physiotherapists, and paramedical personnel: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Computer and Related Services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Real Estate Services: Involving owned or leased property or on a fee or contract basis: For (a), (b) and (c): None.

For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Rental/leasing services without crew/operators, related to vessels, aircraft, any other transport equipment, and other machinery and equipment: For (a), (b) and (c): None, except that:

A “National Shipowner” or “National Ship Enterprise” means a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide water transportation services for cabotage or international traffic and which is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant ship and that has obtained the relevant Operation Permission from the General Aquatic Transport Directorate.

Cabotage is exclusively reserved to Peruvian flagged vessels owned by a National Shipowner or National Ship Enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

(i) Twenty-five percent (25%) of the transport of hydrocarbons in national waters is reserved for the boats of the Peruvian Navy; and

(ii) Foreign-flagged vessels may be used by a National Shipowner or National Ship Enterprise for a period of no more than six (6) months for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels.

For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Advertising services: For (a), (b) and (c): None, except that: Commercial advertising produced in Peru, must have at least eighty percent (80%) of national artists. National artists shall receive no less than sixty percent (60%) of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising. For (d): No commitments, except as indicated in the “Ley de Artista, Intérprete y Ejecutante” and “Ley para la Contratación de Trabajadores Extranjeros”.

Market research and public opinion polling services, management consulting services, services related to management consulting, and technical testing and analysis services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Services related to agriculture, hunting, and forestry: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Services related to mining, placement and supply services of personnel, and investigation and security services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Maintenance and repair of equipment (not including vessels, aircraft, or other transport equipment), building-cleaning services, photographic services, packing services and convention services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Printing and publishing services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Telecommunication Services: For (a), (b), (c) and (d): Peru reserves the right to adopt or maintain any measure that is not inconsistent with Peru’s obligations under Article XVI of GATS, except for:

Carrier telecommunications services, private telecommunications services and value added services: For (a), (b), (c): None, except for the obligation of obtaining a concession, authorization, registry or any other title which Peru considers convenient to grant in order to habilitate the suppliers to provide these services. The juridical persons constituted under Peruvian law can be eligible for a concession.

Call-back, understood as being the offer of telephone services for the realization of attempts to make calls originating in the country with the objective of obtaining a return call with an invitation to dial, coming from a basic

telecommunications network located outside the national territory, is prohibited.

International traffic shall be routed through the installations of a company holding a concession or other permission for operation granted by the “Ministerio de Transporte y Comunicaciones”.

For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

For greater certainty, Peru’s telecommunication specific commitments under this entry shall not be interpreted to be in any way more restrictive with Peru’s specific commitments under GATS.

Commission agents services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Retailing services, except alcohol and tobacco: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Wholesale trade services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Franchising: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Repairment services of domestic and personal belongings: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Hotels and restaurants (including catering), travel agencies and tour operators services, and tourist guide services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Entertainment services (including theater, live bands, and circuit services), news agencies services, libraries,

archives, museums, and other cultural and sporting services: For (a), (b) and (c): None, except that:

i. Any domestic artistic audiovisual production and any domestic artistic live performance must be comprised at least of eighty percent (80%) of national artists. National artists shall receive no less than sixty percent (60%) of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

ii. A foreign circus may stay in Peru with the original cast for a maximum of ninety (90) days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of thirty percent (30%) Peruvian nationals as artists and fifteen (15%) Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages

For (d): No commitments, except as indicated in the “Ley de Artista, Intérprete y Ejecutante” and “Ley para la Contratación de Trabajadores Extranjeros”.

Exploitation of facilities for competitive and recreational sports: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Recreational parks services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Road Transport: rental of commercial vehicles with operator, maintenance and repair of road transport equipment, and exploitation of roads, bridges and tunnels services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Services auxiliary to all transport: cargo handling services; storage and warehouse services; freight transport agency services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Aircraft repair and maintenance services: For (a): No commitments. For (b) and (c): None. For (d): No

commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Selling and marketing of air transport services, and computer reservation system services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Research and Development services on natural sciences: For (a), (b) and (c): None, except that a permission of operation may be required and the competent authority may state the incorporation to the expedition of one or more representatives of the Peruvian pertinent activities, in order to participate and know the studies and its scope. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Research and Development services on social sciences and humanities: For (a), (b) and (c): None, subject to the respective authorizations of the competent authority. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

Interdisciplinary Research and Development services: For (a), (b) and (c): None, except that a permission of operation may be required. For (d): No commitments, except as indicated in the “Ley para la Contratación de Trabajadores Extranjeros”.

For purpose of this non-conforming measure:

1. (a) refers to the supply of a service from the territory of one Party into the territory of the other Party;
2. (b) refers to the supply of a service in the territory of a Party by one person of that Party to a person of the other Party;
3. (c) refers to the supply of a service in the territory of a Party by an investor of the other Party or by a covered investment; and
4. (d) refers to the supply of a service by a national of a Party in the territory of the other Party.