

MEMORANDUM OF UNDERSTANDING (MOU)  
BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA,  
THE GOVERNMENT OF THE REPUBLIC OF PERU,  
AND  
THE GENERAL SECRETARIAT OF THE ORGANIZATION OF  
AMERICAN STATES  
REGARDING  
A SECRETARIAT FOR SUBMISSIONS ON ENVIRONMENTAL  
ENFORCEMENT MATTERS UNDER THE UNITED STATES –  
PERU TRADE PROMOTION AGREEMENT

THE PARTIES, the General Secretariat of the Organization of American States (“GS/OAS”), the Government of the United States of America (“United States”) and the Government of the Republic of Peru (“Peru”),

*Noting* that on February 1, 2009, the United States – Peru Trade Promotion Agreement (“US-Peru TPA”) entered into force;

*Recognizing* that Articles 18.8 and 18.9 of the Environment Chapter of the US-Peru TPA call on the United States and Peru to designate a secretariat to receive and consider submissions filed by any person of a Party asserting that a Party is failing to effectively enforce its environmental laws and to prepare factual records concerning such submissions, if any member of the Environmental Affairs Council (“Council”) established pursuant to Article 18.6 of the US-Peru TPA instructs it to do so;

*Recalling* that the United States and Peru, through an exchange of letters dated April 25 and April 27, 2011, agreed to request of the GS/OAS that its Department of Sustainable Development (“GS/OAS/DSD”) house and provide administrative and technical support for the secretariat, which shall function independently under the sole direction and supervision of the Council;

*Acknowledging* that on April 27, 2011, the United States and Peru sent a letter to the GS/OAS requesting that the GS/OAS/DSD house and provide technical and administrative support for the secretariat, noting that the United States and Peru intended to make arrangements to provide funds to and enter into an agreement with the GS/OAS to enable the secretariat to carry out these functions; and

*Acknowledging further* that on June 17, 2011, the GS/OAS delivered a letter to the United States and Peru consenting to that request subject to the provision of funds by the United States and Peru and to the completion of an agreement between the United States, Peru and the GS/OAS detailing the arrangements for the GS/OAS/DSD to house and support the secretariat;

**HAVE AGREED AS FOLLOWS:**

**ARTICLE 1: PURPOSE AND INTERPRETATION OF THIS MEMORANDUM OF UNDERSTANDING (“MOU”)**

1. The purpose of this MOU is to establish the relationship between the Parties under which the GS/OAS will house and support a Secretariat for Submissions on Environmental Enforcement Matters under the US-Peru TPA (“the Secretariat”).
2. The Parties understand that the United States and Peru are entering into this MOU with the GS/OAS in order to carry out their obligations under Articles 18.8 and 18.9 of the US-Peru TPA and the Understanding for Implementing Article 18.8 of the United States-Peru Trade Promotion Agreement (the “Understanding”, signed at Lima, on June 9, 2015). Accordingly, this MOU shall be construed as to avoid any conflict with the US-Peru TPA or the Secretariat Understanding.
3. To the extent there is any ambiguity as to any of the obligations created by the provisions, the Parties shall refer to Articles 18.8 and 18.9 of the US-Peru TPA or the Secretariat Understanding to assist them in interpreting the scope of their respective obligations.

**ARTICLE 2: SECRETARIAT**

1. The Secretariat shall be housed in the GS/OAS/DSD headquarters in Washington, DC under the sole direction and supervision of the Council and with regards to the functions established in Articles 18.8 and 18.9 of the U.S. – Peru TPA and the Secretariat Understanding; it shall function separately and independently from the GS/OAS.
2. As provided in Article 3.2 of the Secretariat Understanding, the Secretariat shall follow GS/OAS rules and procedures regarding administrative matters necessary for the GS/OAS to house the Secretariat and provide it with administrative and technical support.

3. As provided in Article 4 of the Secretariat Understanding:
  - (a) The Secretariat shall comprise an Executive Director and, as appropriate to carry out its functions, professional, technical-support, and administrative staff. The Executive Director shall report to the Council, and the Secretariat staff shall report to the Executive Director. The Executive Director, or exceptionally the Council if it so decides, shall determine the duties of Secretariat staff in accordance with the functions of the Secretariat established in Articles 18.8 and 18.9 of the TPA.
  - (b) The Executive Director and professional staff shall be nationals of Peru or the United States.
  - (c) The Council shall select the Executive Director and any professional staff, and the Executive Director shall select any technical-support and administrative staff for the Secretariat according to procedures the Council shall establish and with due regard to the importance of recruiting an equitable proportion of professional staff from among the nationals of Peru or the United States.
4. In addition:
  - (a) The Council may, but is not obligated to, consult the GS/OAS or any other entity about potential candidates for the Executive Director and professional staff positions.
  - (b) The Executive Director shall coordinate with the GS/OAS/DSD regarding the selection of technical-support and administrative staff for the Secretariat.
  - (c) The Executive Director and professional staff shall be recruited from outside the OAS. The duties of the Executive Director shall be detailed in a Council decision.
5. The Secretariat shall perform the functions established for the Secretariat under Articles 18.8 and 18.9 of the US-Peru TPA and the Secretariat Understanding, including any amendments to those agreements.

### **ARTICLE 3: SPECIFIC OBLIGATIONS OF THE GOVERNMENT PARTIES**

The Governments of the United States and Peru shall have the following specific obligations:

- (a) inform the GS/OAS/DSD of the Council-approved annual budget for the Secretariat and the contribution each Government intends to make to that budget.
- (b) subject to the availability of appropriated funds in accordance with their respective legal procedures, provide the GS/OAS their respective contributions to the Secretariat's annual budget to the extent feasible by June 30<sup>th</sup> of each year.
- (c) inform the GS/OAS/DSD, as soon as possible and in writing, if they are unable to provide their respective contributions to the Secretariat's annual budget in order for the GS/OAS/DSD to take appropriate action consistent with Article 5.
- (d) notify the GS/OAS of any decision to terminate the Secretariat Understanding.
- (e) ensure that the Executive Director coordinates with the GS/OAS/DSD regarding the Secretariat's budget as provided in Article 5.1, the selection of technical-support and administrative staff for the Secretariat as provided in Article 2.4(b), and, as requested, any administrative matters necessary for the GS/OAS/DSD to house and support the Secretariat.

#### **ARTICLE 4: SPECIFIC OBLIGATIONS OF GS/OAS**

The GS/OAS shall have the following obligations:

Contingent on the contributions provided by the Governments of Peru and the United States and, in accordance with GS/OAS rules and procedures:

- (a) respond to requests for information from the United States and Peru in relation to their respective domestic procedures for transferring funds to the GS/OAS to house and support the Secretariat.
- (b) respond to requests for information from United States and Peru in relation to the contracts of the Secretariat professional staff, technical-support and administrative staff, and consultants.
- (c) provide facilities, equipment, and other technical and administrative support necessary for the Secretariat to carry out its functions.
- (d) ensure that GS/OAS/DSD coordinates with the Executive Director regarding the Secretariat's budget and staff (consistent with Article

- 2) and, as requested, administrative matters necessary for the GS/OAS/DSD to house and support the Secretariat.
- (e) appoint as GS/OAS associate staff members the persons selected by the Council as Executive Director and professional staff.
  - (f) appoint as a GS/OAS staff member any person that the Executive Director selects to serve on the Secretariat's technical-support and administrative staff, and who was not drawn from the GS/OAS personnel.
  - (g) assign any member of the GS/OAS/DSD staff selected by the Executive Director to serve on the Secretariat's technical-support and administrative staff, as necessary to carry out the Secretariat's functions.
  - (h) contract consultants with relevant expertise to assist the Secretariat in preparing factual records as requested by the Executive Director in accordance with the procedures established by the Council decision regarding the selection of consultants.
  - (i) upon proper notification from the Council, or in accordance with GS/OAS internal law, terminate the Executive Director and any other Secretariat staff, or withdraw the assignment of any GS/OAS/DSD personnel to the Secretariat's staff.
  - (j) provide to the Council a semi-annual technical and financial report on the execution of the Governments' contributions.
  - (k) support the Secretariat in a manner consistent with Articles 18.8 and 18.9 of the US-Peru TPA, the Secretariat Understanding, and any working procedures the Council may establish.

#### **ARTICLE 5: FINANCIAL PROVISIONS**

1. In preparing the draft annual Secretariat budget for submission to the Council, the Executive Director shall coordinate with the GS/OAS/DSD.
2. The Governments of the United States and Peru shall transfer their contributions to the GS/OAS by means of check deposit, letter of credit or through bank transfers.
3. GS/OAS shall administer the contributions it receives from the Governments according to its rules and procedures and the terms and conditions of the instruments the United States and Peru use to transfer the contributions.

All financial activity associated with the Governments' contributions shall be subject to audit. These audits shall be carried out in the context of a general review of GS/OAS's financial operations. The Governments of Peru and the United States also reserve the right to audit financial activity associated with their contributions. The cost of any additional audit that may be requested by the Governments of Peru and the United States shall be included in the yearly-approved budget of the Secretariat or covered with the contribution of the Governments. Any additional audits shall be coordinated with the GS/OAS Secretariat for Administration and Finance.

4. Any reduction in the value of a Government's contribution paid in a currency other than U.S. dollars relative to the budget approved by the Council, arising as a consequence of a devaluation of the currency, shall be assumed and covered directly by the Government making the respective contribution at the timely indication of the GS/OAS.

5. Where the Governments provide the GS/OAS insufficient funds to cover the Secretariat's annual budget, the Parties shall coordinate to determine appropriate action that the GS/OAS may take to address the budget shortfall. If the Parties are unable to agree on appropriate action to address the budget shortfall within 60 days of the GS/OAS notifying the Governments of the budget shortfall, the GS/OAS may allocate remaining funds to cover Secretariat expenses notwithstanding the Council approved budget. Unless the Governments decide otherwise and notify the GS/OAS, the GS/OAS shall, to the extent possible, allocate remaining funds to Secretariat staff salary and benefits. Where remaining funds are insufficient to cover Secretariat staff salary and benefits, the GS/OAS may, after consulting the Council, terminate Secretariat staff as necessary to address the budget shortfall.

## **ARTICLE 6: COORDINATION AND NOTICE**

1. The Parties shall consult as necessary to ensure the effective functioning of the Secretariat and to this end shall inform each other of any facts or circumstances that may arise that may affect the effective functioning of the Secretariat.

2. Within the GS/OAS, the responsibility for coordinating activities related to the Secretariat lies with the Environmental Law, Policy and Good Governance Section of the GS/OAS/DSD.

3. For the Governments of Peru and the United States, the agencies responsible for coordinating activities related to the Secretariat are, for Peru: the Ministry of Foreign Trade and Tourism, and (2) the Ministry of Environment; and for the United States: (1) the Office of the United States Trade Representative, and (2) the United States Department of State, Bureau of Oceans and

International Environmental and Scientific Affairs. The Parties shall exchange the names and contact information for their respective points of contact.

4. Any dispute or complaint that may arise in conjunction with the application or interpretation of this MOU, or the execution of activities related to the Secretariat, shall be settled by the settlement mode agreed upon by the Parties.

#### **ARTICLE 7: PRIVILEGES AND IMMUNITIES**

Nothing in this MOU constitutes an express or implied waiver of any privileges and immunities of the OAS or the GS/OAS, its personnel and its assets, by virtue of the relevant agreements and laws on the subject and general principles of international law.

#### **ARTICLE 8: GENERAL PROVISIONS**

1. Modification to this MOU may only be made by mutual agreement in writing by the Parties. The MOU may be modified by written articles of amendment or an exchange of letters signed and dated by the Parties.

2. The MOU shall enter into force thirty days following the date the Parties exchange written notifications certifying that they have completed their respective legal requirements for its entry into force or on such other date as the Parties may agree and shall remain in force for two years unless the Parties agree otherwise. The MOU may be terminated by mutual consent of the Parties or upon ninety (90) days prior written notice provided by one of the Parties to the other Parties.

3. The United States, per a cooperative agreement dated September 12, 2012, provided funding in the amount of USD 593,995 to the GS/OAS. The Parties agree that this funding is intended to provide for the Secretariat's operations as set out in the cooperative agreement.

4. The GS/OAS will notify the United States and Peru within two business days of any person filing a claim with respect to the Secretariat's operations including the public submission process. Thereafter, the GS/OAS will notify the United States and Peru of any material developments with respect to the claim, and shall constructively consult with the other Parties with regard to any settlement that involves the expenditure of resources. The GS/OAS will provide the United States and Peru with fifteen days advance notice of using either Party's funding for the defense of any such claim.

5. The GS/OAS shall have no liability regarding the public submission process, or any decisions, resolutions or factual records developed by the Secretariat and published by the Council. If any claims are filed against the GS/OAS in relation to the Secretariat's operations, the Parties agree that

GS/OAS may utilize the financial resources provided to support the Secretariat's operations in line item 8 of the Secretariat's budget, up to the amount of USD 75,000, to underwrite or reimburse the GS/OAS for expenses related to its defense, to the extent such costs are legally allowable pursuant to the cooperative agreement dated September 12, 2012, and the related laws and regulations of the Parties.

6. In case the financial resources in the preceding paragraph are insufficient to reimburse the GS/OAS for expenses related to its defense, or in the event the GS/OAS is obligated to pay judgments or settlements that are directly caused by actions related to the Secretariat's operations, Peru agrees to provide the GS/OAS additional funds up to the amount of USD 100,000. To authorize the payment to the GS/OAS, the Government of Peru needs to receive a copy of the corresponding settlement or judgment. The payment to the GS/OAS will be authorized by the Government of Peru no later than sixty days after the date of the receipt of the copy of the signed settlement or judgment from the GS/OAS. The GS/OAS shall send to the Government of Peru the corresponding document of acknowledgement of the payment received from the Government of Peru no later than five days after the receipt of such payment.

7. The amounts specified in paragraphs five and six shall remain in force for the duration of this MOU. Any extension of this MOU shall include amounts not less than those specified in paragraphs 5 and 6.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized, have signed this MOU.

Done at Lima, in duplicate, in the English and Spanish languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:**

**US Department of State**  
9<sup>th</sup> of June 2015

**FOR THE GOVERNMENT OF THE REPUBLIC OF PERU:**

**Ministry of Foreign Trade and  
Tourism**  
9<sup>th</sup> of June 2015

**Ministry of Environment**  
9<sup>th</sup> of June 2015

**FOR THE GENERAL SECRETARIAT OF THE ORGANIZATION OF  
AMERICAN STATES:**

**Secretary General**  
9<sup>th</sup> of June 2015