

**UNDERSTANDING FOR IMPLEMENTING ARTICLE 18.8 OF THE UNITED STATES  
- PERU TRADE PROMOTION AGREEMENT**

The Government of the United States of America and the Government of the Republic of Peru (“the Parties”),

**COMMITTED TO** implementing Articles 18.8 (Submissions on Enforcement Matters) and 18.9 (Factual Records and Related Cooperation) of the United States - Peru Trade Promotion Agreement (the “TPA”) including by designating 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 TPA instructs it to do so;

**RECALLING** that the Parties through an exchange of letters dated April 25 and April 27, 2011, agreed to request the General Secretariat of the Organization of American States (“GS/OAS”) to house the Secretariat within its Department of Sustainable Development (“GS/OAS/DSD”) and provide it administrative and technical support to enable the Secretariat to carry out its functions;

**NOTING** that on April 27, 2011, the Parties sent a joint letter to the GS/OAS requesting the GS/OAS/DSD to house and provide technical and administrative support for the Secretariat;

**NOTING FURTHER** that on June 17, 2011 the GS/OAS delivered a letter to the Parties agreeing to that request, subject to the provision of funding by the Parties and to the completion of an agreement with the GS/OAS specifying the details of the arrangements for the GS/OAS/DSD to house and provide technical and administrative support for the Secretariat;

**SEEKING** to establish the Secretariat and provide for its operation; and

**ANTICIPATING** that they will conclude an agreement with the GS/OAS specifying the details of the arrangements for the GS/OAS/DSD to house and provide technical and administrative support for the Secretariat,

**HAVE AGREED AS FOLLOWS:**

**Article 1: Establishment**

The Parties hereby establish the Secretariat for Submissions on Environmental Enforcement Matters (“Secretariat”) and designate it to carry out the functions prescribed for the Secretariat in Articles 18.8 and 18.9 of the TPA.

**Article 2: Location**

The Secretariat shall be located in the GS/OAS headquarters in Washington, DC, as a separate unit within the GS/OAS/DSD, unless the Parties decide otherwise.

### **Article 3: Direction and Supervision**

1. The Secretariat shall function independently from the OAS and any other entity in which the Secretariat is housed. The Secretariat shall carry out the functions established in Articles 18.8 and 18.9 of the TPA under the sole direction and supervision of the Council. The Secretariat shall report exclusively to the Council, and shall not receive or act on instructions from the GS/OAS/DSD or any authority other than the Council with respect to the functions established in Articles 18.8 and 18.9 of the TPA. The Secretariat may not hold itself out as a representative of the Parties or the Council.

2. The Secretariat shall follow GS/OAS rules and procedures regarding administrative matters necessary for the GS/OAS/DSD, or any other entity in which the Secretariat is housed, to house the Secretariat and provide it with administrative and technical-support, except to the extent application of such rules and procedures would be inconsistent with the TPA or this Understanding. The Parties intend to reach an agreement with the GS/OAS regarding the application of such rules and procedures to the Secretariat.

### **Article 4: Staff**

1. 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.

2. The Executive Director and professional staff shall be nationals of a Party.

3. The Council shall select the Executive Director and any professional staff, and the Executive Director shall select any technical-support and administrative staff, 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 each Party. The Parties agree that the Council has the authority, pursuant to Article 18.6(2)(f) of TPA, to designate the Executive Director and any professional staff for appointment to the OAS or any other entity where the Secretariat is housed.

4. The Executive Director and any professional staff shall serve for terms of two years, unless the Council otherwise decides, and may be selected to successive terms. The Council may decide to remove the Executive Director or any staff at any time for cause or other appropriate reason.

5. When necessary and in accordance with procedures the Council shall establish, the Executive Director may select consultants to assist the Secretariat in preparing a factual record. Any such consultant shall have relevant expertise regarding the issues to be addressed in the factual record.

## **Article 5: Functions**

1. The Secretariat shall perform the functions established for it under Articles 18.8 and 18.9 of the TPA. In particular, the Secretariat shall:

- (a) receive and consider public submissions in accordance with paragraphs 1 and 2 of Article 18.8;
- (b) request a Party to respond to public submissions in accordance with paragraph 4 of Article 18.8, receive the Party's response in accordance with paragraph 5 of Article 18.8, and consider the submission and any response provided by the Party in accordance with paragraph 1 of Article 18.9;
- (c) inform the Council, in light of any response provided by the Party, whether public submissions warrant developing a factual record, in accordance with paragraph 1 of Article 18.9;
- (d) prepare factual records when any member of the Council instructs it to do so, submit them to the Council and, if directed by a member of the Council, make them available to the public, in accordance with Article 18.9;

and may take such additional actions as are appropriate to carry out the functions established in Articles 18.8 and 18.9 of the TPA.

2. The Secretariat shall apply working and other procedures that the Council establishes for considering public submissions, preparing factual records, engaging experts, preparing reports to the Council, protecting confidential information, making documents publicly available, or other matters related to its functions.

## **Article 6: Funds and Budget**

1. Each Party shall contribute a share of the Secretariat's budget, subject to the availability of appropriated funds in accordance with the Party's legal procedures.

2. If a Party fails to contribute its share of the Secretariat's budget, the other Party may refer the matter to the Council for discussion.

3. The Executive Director shall prepare a draft annual Secretariat budget and submit it to the Council for approval. The Executive Director shall submit the first such budget on or before a date the Council decides and each succeeding budget on or before the anniversary of that date, unless the Council decides otherwise.

## **Article 7: Transparency**

1. The Parties are committed to ensuring that the Secretariat and the public submissions process operate in a transparent manner. To this end, in accordance with procedures the Council

may establish and subject to Article 8, the Secretariat shall make publicly available documents and communications referred to in Articles 18.8 and 18.9 of the TPA and other submissions-related documents, including any Council decision. The Secretariat shall only make a factual record publicly available if instructed to do so by a member of the Council in accordance with paragraph 7 of Article 18.9 of the TPA.

2. The Secretariat shall maintain a Secretariat website that includes *inter alia* the documents and communications referred to in paragraph 1 as well as a procedure to submit, via the internet, public submissions and Party responses.

3. Any activities to promote public awareness to contribute to the understanding of the public submissions and factual record process shall be carried out by the Secretariat in accordance with a previously approved Council Decision to undertake such activities. In such case, a plan for those activities shall be approved by the Council.

#### **Article 8: Confidentiality**

The Secretariat shall not furnish to the public or allow public access to any information it may receive:

- (a) (i) that its submitter has identified as confidential in accordance with the procedures the Council establishes for protecting confidential information;
- (ii) that is not otherwise publicly available; and
- (iii) the disclosure of which could reveal:
  - (1) the submitter's identity and subject the submitter to serious reprisal, or
  - (2) business or proprietary information; or
- (b) from a Party, where the Party has determined that disclosure of the information would impede law enforcement, compromise personal privacy, or reveal confidential business or proprietary information or governmental decision-making.

#### **Article 9: Official Languages**

1. The Secretariat's official languages shall be English and Spanish.

2. The Secretariat shall submit all formal written communications and factual records to the Council in both official languages, unless the Council decides otherwise.

3. The Secretariat shall provide English and Spanish language versions of all documents and communications that it makes publicly available, except that the Secretariat may make

voluminous exhibits or other appendices, for which a member of the Council has not requested a translation, available solely in the language in which they were submitted or prepared. If a Party requests a translation, the Secretariat shall provide a translation in the language of the Party that requested it.

**Article 10: Amendments**

1. The Parties may agree on any amendment of this Understanding.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Understanding to take effect on such date as the Parties may agree.

**Article 11: Entry into Force**

This Understanding 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.

**Article 12: Termination**

This Understanding shall terminate on the date the TPA terminates, a date on which the Parties mutually agree or upon 90 days prior written notice, whichever occurs earlier.

**Article 13: Authentic Texts**

The English and Spanish language texts of this Understanding are equally authentic.

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

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

**Ministry of Foreign Trade and Tourism  
9 day of June 2015**

**Ministry of the Environment  
9 day of June 2015**

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

**Office of the United States Trade  
Representative  
5 day of June 2015**

**United States Department of State  
9 day of June 2015**