

UNITED STATES – PERU TRADE PROMOTION AGREEMENT: STRENGTHENING FOREST SECTOR GOVERNANCE IN PERU

The Environment Chapter of the United States – Peru Trade Promotion Agreement (PTPA) contains commitments to ensure trade and environmental policies are mutually supportive and that environmental protection and enforcement are strengthened. With respect to forestry matters in particular, the Environment Chapter contains an Annex on Forest Sector Governance (Forest Annex) that sets out a series of obligations for Peru to strengthen forest sector governance, combat illegal logging and illegal trade in timber and wildlife products, and further sustainable management of forest resources.

With the fifth anniversary of the PTPA’s entry into force approaching, this paper reviews the extensive actions that Peru has undertaken, including with assistance and support from the United States through, *inter alia*, environmental cooperation programs, to implement the Forest Annex and to continue to improve forest sector governance, including through implementation of a bilateral Action Plan agreed upon by the United States and Peru in January 2013 that builds on obligations in the Forest Annex. It also reviews mechanisms and activities related to the administration, monitoring and enforcement of the PTPA Environment Chapter and Forest Annex, USTR’s commitment to stakeholder engagement, and key upcoming activities that USTR will be pursuing over the next year. While continued efforts are needed to maintain momentum and address remaining challenges, the Forest Annex has served as a lynchpin to Peru’s forestry sector reform efforts.

Key Actions Undertaken by Peru to Implement the Forest Annex and Strengthen Forest Sector Governance

In preparation for and following the entry-into-force of the PTPA on February 1, 2009, Peru has undertaken a number of actions to implement its obligations under the Environment Chapter and Forest Annex, and to improve forest sector governance. Key examples include:

- creating a Ministry of Environment with an investigatory arm, El Organismo de Evaluación y Fiscalización Ambiental (OEFA), to verify compliance with environmental legislation and oversee the process of obtaining environmental impact assessments;
- designating the Ministries of Environment and Agriculture as the country’s Scientific Authority and Management Authority, respectively, to carry out Peru’s obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- attaining Category I status under the CITES National Legislation Project, meaning that the CITES governing body has evaluated Peru’s CITES implementing legislation and determined it generally meets the requirements for implementation of CITES;
- adopting laws and administrative procedures for the management, supervision and issuance of export permits for CITES timber species, specifically big-leaf mahogany and Spanish cedar, consistent with recommendations from the CITES Secretariat;
- establishing an independent forestry oversight body, Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre (OSINFOR), which has conducted thousands of

audits of forestry concessions and other forest lands, including physical inspections, to verify that the harvesting of timber on such lands meets legal requirements and has taken administrative enforcement actions, assessed monetary fines, and cancelled forestry concessions where discrepancies have been found.

- amending Peru's criminal code to include substantial penalties for illegal activities, such as illegal logging and wildlife trafficking;
- developing and furthering efforts to implement a National Anti-Corruption Plan for Forestry and Wildlife;
- working with technical assistance of the U.S. Forest Service to develop, pilot and implement methodologies to accurately inventory permanent production forests; and
- working with technical assistance of the Finland- FAO (United Nations Food and Agriculture Organization) Forest Programme and the U.S. Forest Service to make progress on developing a National Forestry Inventory.

As these and other reforms have been achieved, exports of big-leaf mahogany and Spanish cedar from Peru to the United States have significantly declined in recent years. Based on CITES export permits received by the U.S. Fish and Wildlife Service (and required for any U.S. imports of CITES-listed specimens), U.S. imports of big-leaf mahogany from Peru in 2011, 2012, and January 1, 2013 – November 15, 2013, totaled 837 cubic meters, 100 cubic meters, and 50.8 cubic meters respectively – a decline of 94% over this period. U.S. imports of Spanish cedar from Peru totaled 127 cubic meters in 2011 and there were no imports of Spanish cedar in 2012 or 2013 (as of November 15, 2013). These figures reflect only imports of CITES-listed material, which for big-leaf mahogany is logs, sawn wood, veneer sheets, and plywood and for Spanish cedar is logs, sawn wood and veneer sheets.

Peru also enacted a new Forestry and Wildlife Law (no. 29763) in July 2011 that will, *inter alia*, improve implementation of key provisions of the Forest Annex, such as by providing additional detail regarding systems to track forest resources from extraction to export to enable verification of the legal origin and chain of custody of timber species. Peru also just recently published a draft of the regulations to implement the new Forestry and Wildlife Law, and is undertaking a public consultations process to collect input from all interested stakeholders, including indigenous communities.

Environmental Cooperation Achievements

In addition to, and in combination with, the actions listed above, the United States and Peru are working closely on a number of environmental cooperation programs with respect to the obligations in the Forest Annex and continued improvement of forest sector governance. The Governments signed an Environmental Cooperation Agreement (ECA) in association with the PTPA, which laid the foundation for this extensive collaboration. With funding from USAID, the United States has invested over \$60 million in environmental cooperation programs in Peru since 2009, the majority of which has been targeted at programs related specifically to implementation of the Environment Chapter and Forest Annex. For example, the International Programs arm of the U.S. Forest Service established the Peru Forest Sector Initiative (PFSI) in 2009 and continues to maintain an office in Lima devoted to supporting Peru's efforts to implement the Forest Annex.

Through these programs, which include technical assistance from a range of U.S. Government agencies such as the Department of Justice and Environmental Protection Agency, significant progress in forestry governance and protection has been made. Illustrative examples of ongoing and completed programs include:

- strengthening institutional capacity within Peru's agencies and regional governments;
- helping develop Peru's National Forestry and Wildlife Information System (SNIFF), a new system built from the ground up in coordination with 18 Peruvian institutions to replace paper-based methods with an electronic system to verify and track the legal origin and proper chain of custody of timber harvested from Peru's forests, from stump to port;
- assisting with permanent production forest inventory in Amazon regions, including by completing an inventory manual and field guide and providing assistance in the standardization of field measurement practices and protocols to facilitate coordination among the responsible authorities;
- providing training to forest investigators and environmental prosecutors in five Amazonian regions, and presenting about the U.S. Lacey Act at the XII International Environmental Law Workshop for Environmental Prosecutors in Cusco, Peru in October 2013 (training done by representatives of the Environment and Natural Resources Division of the Department of Justice and the U.S. Forest Service);
- working with Peru's Public Prosecutor's office to develop an updated training module to enhance investigation techniques and rates of prosecution for forest crimes such as illegal logging;
- conducting a four-day training on flora and fauna identification for 45 law enforcement officers with responsibilities for controlling trade in CITES species;
- providing capacity building to regional governments to support Regional Environmental Authorities (ARAs);
- providing technical support to the regional governments to construct a permanent forum for dialogue and coordination between the state, indigenous communities and support institutions;
- supporting community forestry activities, including development of forest management plans and operating plans for future timber harvest in the Amazonas Region.

Administration, Monitoring, and Enforcement of the PTPA Environment Chapter

The United States and Peru also have an active record of engagement to ensure consistent monitoring of Peru's implementation of its obligations under the Environment Chapter and Forest Annex. Bodies and committees established under the PTPA and the ECA meet regularly to discuss issues and ensure progress continues. There is also frequent, often daily engagement via phone calls, email, conference calls, digital video conferences, and country visits. Since January of 2013, USTR and State Department representatives have travelled to Lima three times, and representatives of Peru's Trade and Environment Ministries have visited Washington, D.C. on two occasions for meetings to discuss matters under the PTPA Environment Chapter and Forest Annex. This

engagement has enabled us to effectively review Peru's forest sector reform efforts and continue to ensure further progress.

- *Environmental Affairs Council (EAC) and Environmental Cooperation Commission (ECC):* The EAC and ECC were established pursuant to the PTPA Environment Chapter and Environmental Cooperation Agreement (ECA), respectively, and are composed of senior level officials from the United States and Peru who formally meet on an annual basis to discuss implementation of obligations in the Environment Chapter and Forest Annex and progress under the ECA. There have been four EAC/ECC meetings to date, and another will be scheduled in the spring of 2014. Each meeting includes a public session that allows stakeholders to engage and ask questions.
- *Forestry Sub-Committee:* The Forest Annex calls for establishment of a Sub-Committee on Forest Sector Governance comprising government representatives from the United States and Peru to share information and views on any issue arising under the Annex, including implementation of CITES and enforcement matters. In July 2009, the United States and Peru held the first meeting of the Sub-Committee in Lima, Peru. The Sub-Committee has formally met an additional five times since then, with the most recent meeting held in Lima in April 2013. Again, each meeting includes a public session that allows stakeholders to engage and ask questions.
- *Interagency Committee on Trade in Timber Products from Peru:* Established pursuant to Presidential Memorandum on May 1, 2009, as called for by the PTPA Implementing Act, this Committee is chaired by USTR and composed of senior officials from the Departments of State, Justice, the Interior, and Agriculture. Representatives from the Department of Homeland Security and the United States Agency for International Development are observers. The Committee is empowered to review information received about possible illegal shipments of timber from Peru to the United States, and to determine any appropriate actions in response, including requesting Peru to conduct audits and verifications of particular producers and export shipments, and denying shipments entry to the United States as appropriate. The Committee reviewed a petition by an environmental group and issued a response in December 2012, as described below.

The PTPA's enforcement tools include a requirement under the Forest Annex for Peru to conduct audits and verifications of particular producers and exporters upon request from the United States, the ability of U.S. Customs and Border Protection to deny entry to certain shipments subject to verifications or to any CITES-listed products from enterprises who knowingly provide false information during a verification, and recourse to consultations and dispute settlement under the PTPA Environment and Dispute Settlement Chapters.

Under U.S. law, the Lacey Act also makes it unlawful, with some limited exceptions, to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant taken, possessed, transported or sold in violation of U.S. law or foreign laws protecting plants or regulating certain plant-related offenses. Violations of the Lacey Act, which also covers wildlife, can result in civil or criminal penalties, including seizure and forfeiture of the product in question.

Stakeholder Participation

There has been strong stakeholder interest and engagement on trade and environment issues under the PTPA, particularly with respect to the Forest Annex. USTR and other U.S. Government colleagues understand the great importance and value of stakeholder input, and have had dozens of meetings with stakeholders leading up to and following entry-into-force of the PTPA through both formal public sessions, meetings with the Trade and Environment Policy Advisory Committee (TEPAC), and informal briefings and discussions.

Stakeholders have also sent letters to USTR outlining concerns, in some cases requesting formal action. In April 2012, USTR received a petition from an environmental group requesting audits and verifications under the Forest Annex of certain timber shipments, producers, and exporters of big-leaf mahogany and Spanish cedar. The Interagency Committee on Trade in Timber Products from Peru thoroughly reviewed and analyzed the information in the petition and sought additional information from Peru. Over a six-month period, the Committee met 15 times to determine the appropriate course of action.

The Committee determined that it would not invoke the audit or verification procedures under the Forest Annex based on information collected in its review demonstrating that *inter alia* Peru had cancelled, suspended or otherwise taken action to address all of the 29 timber concessions that were listed in the petition. The Committee's decision was further influenced by the fact that total exports of big-leaf mahogany and Spanish cedar from Peru to the United States, as well as exports from the two exporters named in the petition, declined significantly in 2011-2012 from 2009-2010, the period analyzed in the Petition. The Committee instead determined the best course of action would be to build upon ongoing cooperative efforts with Peru to focus efforts in a forward-looking manner, and to take action to address the specific challenges identified in the petition.

Within one month of the Committee issuing its decision, representatives from USTR and the Department of State travelled to Peru and reached agreement on a five-point bilateral Action Plan.

2013 Bilateral Action Plan on Forest Sector Governance

The bilateral Action Plan agreed upon in January 2013 identifies a targeted set of actions for Peru to undertake to address specific challenges in its forestry sector, including implementing anti-corruption measures, improving systems to track and verify the chain of custody of timber exports, ensuring timely criminal and administrative proceedings for forestry-related crimes and infractions, and strengthening development of accurate annual operating plans for forestry concessions. The Action Plan covers areas addressed by the Forest Annex, but with greater specificity, reflecting *inter alia* challenges identified in the petition.

The United States is supporting Peru's actions to implement the Action Plan through a number of ongoing environmental cooperation projects as well as planned activities that will further enhance implementation. For example, the United States and Peru are collaborating on the design and implementation of an information system that will verify the legal origin and proper chain of custody of timber harvested in Peru's forests. The United States is also working with various ministries and bodies in Peru, including their Public Prosecutor's Office, to develop a training program for environmental prosecutors that will build capacity to investigate and prosecute forestry crimes, thereby increasing the rate of prosecution and conviction. The United States and Peru are

also looking to coordinate on anti-corruption training for those entities involved in oversight and enforcement in Peru's forestry sector.

Upcoming Activities

Over the next year, the United States intends to keep focus on efforts to implement the Action Plan and strengthen forest sector governance under the Forest Annex, including by hosting trainings for Peruvian environmental prosecutors and law enforcement officials on forestry crimes and anti-corruption and providing comments on Peru's draft Forestry and Wildlife regulations. The United States will seek to identify ways to catalyze further progress and address remaining challenges through continued close engagement with Peru, including at senior levels, which will include formal meetings of the Forestry Sub-Committee, EAC, and ECC. The United States will also continue outreach to stakeholders and Congress, and seek to increase coordination and engagement with relevant agencies and the Interagency Timber Committee to leverage all available resources.

Additional Resources

For more information about trade and environment issues under the PTPA, visit the following link on USTR's website: <http://www.ustr.gov/peru-tpa/environment>

For more detailed information about the actions Peru has undertaken to implement its commitments under the Annex, visit the following link:

http://www.acuerdoscomerciales.gob.pe/images/stories/eeuu/matriz_cumplimiento-anexo_forestal_apc_peru_eeuu_marzo_2013.pdf