

## **Interagency Committee on Trade in Timber Products from Peru**

### **Organization, Function and Internal Procedures**

#### **INTERAGENCY COMMITTEE ON TRADE IN TIMBER PRODUCTS FROM PERU**

##### **Description of the Organization, Functions and Internal Procedures of the Interagency Committee**

**SUMMARY:** In the interest of transparency and open government, the members of the Interagency Committee on Trade in Timber Products from Peru (“Interagency Committee”) are publishing this description of the organization, functions, and internal procedures of the Interagency Committee in particular with respect to its authorities regarding audits and verifications under Section 501 of the United States-Peru Trade Promotion Agreement Implementation Act, Public Law No. 110-138 (hereinafter cited as the “Implementation Act”). Because the Interagency Committee is an ad hoc group comprising representatives from several agencies to coordinate implementation of a trade agreement with a foreign government, it is not an agency for purposes of the Administrative Procedure Act, as defined in 5 U.S.C. § 551(1). Nevertheless, in the interests of good governance and transparency, the members have agreed to follow the internal procedures described below and to make them available to the public. Nothing in the content of the procedures or their publication should be construed as creating any substantive or procedural rights for any individual or entity.

**FOR FURTHER INFORMATION CONTACT:** Amy Karpel, Director for Environment and Natural Resources, (202) 395-7320.

##### **SUPPLEMENTARY INFORMATION:**

The Interagency Committee was established by Presidential Memorandum dated May 1, 2009. 74 Fed. Reg. 20865. Section 501 of the Implementation Act is the primary statutory authority for the Interagency Committee.

The Interagency Committee is to oversee the implementation of the Annex on Forest Sector Governance (Annex 18.3.4) to the United States-Peru Trade Promotion Agreement (PTPA). In the process of authorizing creation of the Interagency Committee, the House Ways and Means Committee explained its desire “to ensure that the commitments under the Annex . . . are being faithfully implemented and enforced and that any violation of the applicable Peruvian laws, regulations and measures governing the harvest of, and trade in, timber products is addressed.” H.R. Rep. No. 421, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. 22-23 (2007). The United States-Peru Trade Promotion Agreement requires the parties to fulfill their obligations under certain multilateral environmental treaties, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), with violations that affect trade or investment between the Parties being subject to the consultation and dispute resolution provisions of the PTPA. Under the Annex on Forest Sector Governance, the Government of Peru is obligated to strengthen its forest sector governance and its laws and enforcement capabilities to combat illegal logging. Further, the United States Government is authorized to request that Peru conduct

audits of a particular exporter or producer's compliance with relevant Peruvian law or, with respect to a particular shipment, verifications of compliance with relevant Peruvian laws.

Rather than vest the new agreement-based authorities set out in the Annex on Forest Sector Governance in an existing Executive Branch department or agency, the Congress chose to assign these responsibilities and authorities to an "interagency committee" to be established by the President. Therefore, although representatives from the Department of Agriculture, the Department of the Interior, the Department of Justice, the Department of State, and the Office of the U.S. Trade Representative (USTR) were designated by the President as the membership of the Interagency Committee on Trade in Timber Products from Peru, these officials can exercise the authorities provided in Section 501 of the Implementation Act solely through their roles as members of the Interagency Committee. They have no authority to take decisions under Section 501 in their individual capacities as Executive Branch officers.

### Organization

A representative of the USTR serves as Chair of the Committee. Representatives of the Departments of Justice, Agriculture, Interior, and State serve as Members of the Committee. As stipulated in the President's Memorandum of May 1, 2009, representatives from the Department of Homeland Security and the U.S. Agency for International Development shall participate as observers, and the Chair may invite representatives from other departments or agencies, as appropriate, to participate as observers. The titles of the officials identified as the Committee's first members are available on USTR's web site at <http://www.ustr.gov/peru-tpa/environment>.

Pursuant to the President's Memorandum, each department or agency that has a representative on the Interagency Committee "shall bear its own expenses incurred in connection with the Committee's functions." Sec. 6(a). The Chair of the Interagency Committee is responsible for managing the business of the Committee by issuing notices of meetings, coordinating the submission of data, maintaining the records of the Interagency Committee, issuing communications to interested parties and to the Government of Peru on behalf of the Committee, and otherwise taking such other steps as are necessary for the effective functioning of the Committee.

As the document custodian of the Interagency Committee, the Chair is responsible for responding to all requests for information submitted by the public or the Congress as well as ensuring compliance with the Privacy Act with respect to those records. Any requests for information should be submitted to Amy Karpel, Director for Environment and Natural Resources, [amy\\_karpel@ustr.eop.gov](mailto:amy_karpel@ustr.eop.gov).

### Functions

The Interagency Committee is expected to focus on functions related to two major tools provided by the PTPA: the request for an audit, and the request for verification. PTPA, Annex 18.3.4 paragraphs 6(b) and 7. The Implementation Act sets forth the Interagency Committee's authorities with respect to these tools. Implementation Act, § 501(c)(5) & (7). The "audit" tool focuses on the conduct of particular timber producers or exporters in Peru to determine whether those producers or exporters are complying with applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, timber products. The Peruvian Government has

agreed to conduct an audit when so requested by the United States Government and, if the United States requests, to provide a written summary of its findings. PTPA, Annex 18.3.4, paragraph 6(b).

The “verification” tool focuses on particular shipments of timber products from Peru to the United States to determine whether the exporter or producer of those products has complied with applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, those products. The Peruvian Government has agreed to conduct a verification when so requested by the United States Government and, unless the Parties agree otherwise, to provide the United States a written report of the results of any verification. PTPA, Annex 18.3.4, paragraphs 7 and 12.

Once the Committee has received a verification or audit report from the Government of Peru and considered that information in combination with any other data it has obtained, the Committee will decide on the appropriate action, if any, that should be taken on the particular shipment or shipments at issue. The Implementation Act sets forth the actions the Interagency Committee may take after receiving and considering a verification report and any other data it has obtained. Implementation Act, § 501(c)(5)-(7).

#### Internal Procedures

Staff of the five members will help to prepare briefing materials on factual and legal issues that are relevant to the work of the Interagency Committee, and the Committee will consider these documents as it deliberates over timber trade issues on its agenda. The Interagency Committee intends to operate in a transparent manner, to encourage the involvement of interested persons in the work of the Committee, and to maximize the flow of relevant information.

It is the goal of the Committee that all five members will be present at meetings where final determinations are made on audit and verification requests to maximize the opportunity for meaningful debate and discussion among the members. However, if urgent matters require Committee action on an abbreviated schedule that cannot accommodate the schedules of all five members, then the Committee may meet with a quorum of three members present to vote on a particular action, or it may arrange for members to participate in meetings by telephone or video-conference. The Committee may also make decisions after a meeting through written communications. Consistent with the President’s Memorandum of May 1, 2009, the Committee will endeavor to make decisions by consensus, but if the Committee is unable to reach consensus and the Chair determines that allotting further time will cause a decision to be unduly delayed, it may make decisions by majority vote.

The internal procedures set out below describe the procedures the Interagency Committee will use, including how meetings will be called and voting and quorum procedures. The Interagency Committee approved these internal procedures and directed the Chair to publish them on USTR’s website.

**Authority:** Pub. L. No. 110-138, Sec. 501 (2008); Presidential Memorandum of May 1, 2009, 74 Fed. Reg. 20865.

## Internal Procedures

The Interagency Committee has adopted the following internal procedures:

- I. Meetings of the Interagency Committee
  - A. Meetings of the Interagency Committee may be called by the Chair at the Chair's initiative or at the request of any member. A quorum of 3 members, participating either in person or via teleconference, is required to constitute a meeting. A member may send an alternate at an appropriate level who may serve in the member's place from time to time as the exigencies of Government business may require.
  - B. The Chair will notify each member of a meeting at least one week ahead of the scheduled meeting date, except where circumstances, such as the impending arrival of a shipment in transit, necessitate shorter notice. Such notice will be conveyed by electronic mail to the member and to relevant staff contacts at each department or agency. Relevant staff contacts at each department or agency will confirm receipt of any meeting notice. Meeting notices will contain a draft agenda that identifies the particular matters that will be addressed at the meeting.
  - C. Consistent with the President's Memorandum of May 1, 2009, the Interagency Committee will endeavor to make decisions by consensus. If the Interagency Committee is unable to reach a consensus on a particular matter that requires a decision and the Chair determines that allotting further time will cause a decision to be unduly delayed, then the Committee will decide the matter by vote of at least 3 of its members. Votes will be cast by the members (1) at the meeting, either in person or via teleconference, or (2) if agreed by the members after participating in the discussion of a particular matter, in writing, including through electronic mail, submitted to the Chair within 3 calendar days after the adjournment of the meeting. Consensus decisions may also be agreed to in writing, including through electronic mail, within 3 calendar days after the adjournment of a meeting by those members who were unable to attend a meeting.
  - D. The Chair will maintain records of every vote cast by members of the Interagency Committee on decisions taken under Section 501(b) or (c) of the Implementation Act.
- II. Interagency Committee Proceedings
  - A. Request for an audit. The Interagency Committee may request that the Government of Peru conduct an audit, pursuant to paragraph 6(b) of Annex 18.3.4 of the PTPA, to determine whether a particular producer or exporter in Peru is complying with all applicable laws, regulations, and other measures of Peru (at the national or sub-national level) governing the harvest of, and trade in, timber products.

B. Request for a verification. (1) The Interagency Committee may request the Government of Peru to conduct a verification, pursuant to paragraph 7 of Annex 18.3.4 of the PTPA, for the purpose of determining whether, with respect to a particular shipment of timber products from Peru to the United States, the producer or exporter of the products has complied with applicable laws, regulations, and other measures of Peru (at the national or sub-national level) governing the harvest of, and trade in, the products. Such request will include, to the extent authorized by law, trade and transit documents and other information to assist the Government of Peru in conducting the verification.

(2) The Interagency Committee may request the Government of Peru to allow officials of any department or agency represented on the Committee to participate in any visit (hereinafter referred to as the “verification visit”) conducted by the Government of Peru of the premises of the exporter or producer or other enterprise that is the subject of the verification. To participate in the visit, the United States must submit a request to the Government of Peru in writing at least 10 calendar days before any scheduled verification visit, and it must identify the names and titles of the officials who would participate.

(3) Pending the results of the verification, the Interagency Committee may direct U.S. Customs and Border Protection to either (i) detain the shipment that is the subject of the verification request or (ii) deny entry to such shipment if the Government of Peru has denied the Committee’s request to participate in the verification visit.

### III. Interagency Committee Determinations

A. After the Government of Peru provides a verification report to the Interagency Committee (or upon the Interagency Committee’s determination that the Government of Peru has failed to provide such report in accordance with paragraph 12 of Annex 18.3.4 of the PTPA), the Interagency Committee shall determine whether any action identified in paragraph III.B is appropriate. The Interagency Committee will consider any relevant factors in taking its decision on the appropriate action, if any, and its duration. Relevant factors include any verification report issued by the Government of Peru, any information that officials of the United States Government have obtained and provided to the Interagency Committee regarding the shipment or person that is the subject of the verification, and any information that officials of the United States Government obtained during a verification visit. The Chair will notify the Government of Peru in writing of any action that will be taken and its duration, and thereafter will publish promptly the Interagency Committee decision.

B. Within a reasonable time after the Government of Peru provides a report to the Committee describing the results of a verification, the Interagency Committee may take any of the following actions with respect to the shipment that was the subject of the verification, or the products of the relevant

producer or exporter, that the Interagency Committee decides is appropriate, including directing the U.S. Customs and Border Protection to:

- (1) deny entry to the shipment;
- (2) deny entry to timber products of that producer or exporter derived from any tree species listed in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, if the Committee finds that a producer or exporter has knowingly provided false information to officials of Peru or the United States regarding a shipment; or
- (3) take any other action the Interagency Committee decides is appropriate.

C. Any Interagency Committee action taken under paragraph III.B(2) shall terminate on the later of either the date specified in the written notification to the Government of Peru (see paragraph III.A), or 15 days after the date of receipt of an audit report from the Government of Peru that concludes that the producer or exporter has complied with all applicable laws, regulations, and other measures.

#### IV. Submission of Information by the Public

A. Any person may provide written information to the Interagency Committee to assist the Interagency Committee in identifying whether a producer or exporter in Peru has failed to comply with applicable laws, regulations, or other measures of Peru governing the harvest of, and trade in, timber products, including information about shipments of timber from Peru to the United States that may have been harvested or traded in violation of applicable laws, regulations, or other measures of Peru.

B. Submissions should be as specific as possible in describing the particular shipment or shipments or the particular producers or exporters that the person submitting the information believes should be the subject of an audit request or a request for verification. Wherever possible, submissions should be in English.

C. The submission of information to the Interagency Committee in this regard does not create any substantive or procedural rights with respect to the Interagency Committee's deliberations or determinations.

Date: August 10, 2011



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