Chapter Eighteen

Environment

Objectives

Recognizing that each Party has sovereign rights and responsibilities with respect to its natural resources, the objectives of this Chapter are to contribute to the Parties' efforts to ensure that trade and environmental policies are mutually supportive, to promote the optimal use of resources in accordance with the objective of sustainable development, and to strive to strengthen the links between the Parties' trade and environmental policies and practices, which may take place through environmental cooperation and collaboration.

Article 18.1: Levels of Protection

Recognizing the sovereign right of each Party to establish its own levels of domestic environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall strive to ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve its respective levels of environmental protection.

Article 18.2: Environmental Agreements[1]

A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the multilateral environmental agreements listed in Annex 18.2 ("covered agreements"). [2]

Article 18.3: Enforcement of Environmental Laws

1. (a) A Party shall not fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.

(b) (i) The Parties recognize that each Party retains the right to exercise prosecutorial discretion and to make decisions regarding the allocation of

[1] To establish a violation of Article 18.2 a Party must demonstrate that the other Party has failed to adopt, maintain, or implement laws, regulations, or other measures to fulfill an obligation under a covered agreement in a manner affecting trade or investment between the Parties.

[2] For purposes of Article 18.2: (1) "covered agreements" shall encompass those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which both Parties are party; and (2) a Party's "obligations" shall be interpreted to reflect, *inter alia*, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws and all laws, regulations, and other measures to fulfill a Party's obligations under the covered agreements, a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable, articulable, *bona fide* exercise of such discretion, or results from a reasonable, articulable, *bona fide* decision regarding the allocation of such resources.

(ii) The Parties recognize the importance of the covered agreements. Accordingly, where a course of action or inaction relates to laws, regulations, and other measures to fulfill its obligations under covered agreements, that shall be relevant to a determination under clause (i) regarding whether an allocation of resources is reasonable and *bona fide*.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the Parties.

3. Paragraph 2 shall not apply where a Party waives or derogates from an environmental law pursuant to a provision in law providing for waivers or derogations, provided that the waiver or derogation is not inconsistent with the Party's obligations under a covered agreement.[3]

4. Annex 18.3.4 sets out additional provisions with respect to forest sector governance.

5. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party other than as specifically provided in Annex 18.3.4.

Article 18.4: Procedural Matters

1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws, and that each Party's competent authorities shall give such requests due consideration in accordance with its law.

2. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to provide sanctions or remedies for violations of its environmental laws.

(a) Such proceedings shall be fair, equitable, and transparent and, to this end, shall comply with due process of law, and be open to the public except where the administration of justice otherwise requires.

[3] Paragraph 3 does not apply with respect to any law of Peru with respect to the forest sector.

(b) Tribunals that conduct or review such proceedings shall be impartial and independent and shall not have any substantial interest in the outcome of the matter.

3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter shall have appropriate access to the proceedings referred to in paragraph 2.

4. Each Party shall provide persons with a legally recognized interest under its law in a particular matter appropriate and effective access to remedies for violations of that Party's environmental laws or for violations of a legal duty under that Party's law relating to the environment or environmental conditions affecting human health, which may include rights such as:

(a) to sue another person under that Party's jurisdiction for damages under that Party's laws;

(b) to seek injunctive relief where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to that Party's jurisdiction;

(c) to seek sanctions or remedies such as monetary penalties, emergency closures, temporary suspension of activities, or orders to mitigate the consequences of such violations; or

(d) to request a tribunal to order that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm.

5. Each Party shall provide appropriate and effective sanctions or remedies for violations of that Party's environmental laws that:

(a) take into consideration, as appropriate, the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

(b) may include administrative, civil, and criminal remedies and sanctions, such as compliance agreements, penalties, fines, imprisonment, injunctions, closure of facilities, or requirements to take remedial action or pay for the cost of containing or cleaning up pollution.

Article 18.5: Mechanisms to Enhance Environmental Performance

1. The Parties recognize that flexible, voluntary, and incentive-based mechanisms can contribute to the achievement and maintenance of environmental protection, complementing the

procedures set out in Article 18.4, as appropriate, and in accordance with its law and policy, each Party shall encourage the development and use of such mechanisms, which may include:

(a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

(i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations,

(ii) voluntary guidelines for environmental performance, or

(iii) voluntary sharing of information and expertise among authorities, interested parties, and the public concerning: methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

(b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, sustainable use, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging permits or other instruments to help achieve environmental goals.

2. As appropriate and feasible and in accordance with its law, each Party shall encourage:

(a) the maintenance, development, or improvement of performance goals and standards used in measuring environmental performance; and

(b) flexible means to achieve such goals and meet such standards.

Article 18.6: Environmental Affairs Council

1. The Parties hereby establish an Environmental Affairs Council (Council). Each Party shall designate a senior level official with environmental responsibilities to represent it on the Council and an office in its appropriate ministry or government entity to serve as its contact point for carrying out the work of the Council.

2. The Council shall:

(a) consider and discuss the implementation of this Chapter;

(b) provide periodical reports to the Free Trade Commission regarding the implementation of this Chapter;

(c) provide for public participation in its work, including by:

(i) establishing mechanisms to exchange information and discuss matters related to the implementation of this Chapter with the public,

(ii) receiving and considering input in setting the agenda for Council meetings, and

(iii) receiving public views and comments on the issues the public considers relevant to the Council's work and requesting public views and comments on the issues the Council considers relevant to its work;

(d) consider and discuss the implementation of the environmental cooperation agreement (ECA) signed by the Parties, including its work program and cooperative activities, and submit any comments and recommendations, including comments and recommendations received from the public, to the Parties and to the Environmental Cooperation Commission established under the ECA;

(e) endeavor to resolve matters referred to it under Article 18.12.4; and

(f) perform any other functions as the Parties may agree.

3. The Council shall meet within the first year after the date of entry into force of this Agreement and annually thereafter, unless the Parties otherwise agree.

4. All decisions of the Council shall be taken by consensus except as provided in Article 18.9.2 and 18.9.7. All decisions of the Council shall be made public, unless the Council decides otherwise.

5. Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members have an opportunity to meet with the public to discuss matters related to the implementation of this Chapter.

Article 18.7: Opportunities for Public Participation

1. Each Party shall promote public awareness of its environmental laws by ensuring that information is available to the public regarding its environmental laws, enforcement, and compliance procedures, including procedures for interested persons to request a Party's competent authorities to investigate alleged violations of its environmental laws.

2. Each Party shall seek to accommodate requests from persons of any Party for information or to exchange views regarding the Party's implementation of this Chapter.

3. Each Party shall provide for the receipt of written submissions from persons of that Party that concern matters related to the implementation of specific provisions of this Chapter. A Party shall respond in writing, except for good cause, to each such submission that states that it is made pursuant to this Article. Each Party shall make such submissions and responses available to the public in a timely and easily accessible manner.

4. Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising persons of the Party with relevant experience, including experience in business and environmental matters. Each Party shall solicit the committee's views on matters related to the implementation of this Chapter including, as appropriate, on issues raised in submissions the Party receives pursuant to this Article.

5. Each Party shall solicit public views on matters related to the implementation of this Chapter including, as appropriate, on issues raised in submissions it receives and shall make such views it receives in writing available to the public in a timely and easily accessible manner.

6. Each time it meets, the Council shall consider input received from each Party's consultative or advisory committee concerning implementation of this Chapter. After each meeting, the Council shall provide the public a written summary of its discussions on these matters and shall, as appropriate, provide recommendations to the Environmental Cooperation Commission on such matters.

Article 18.8: Submissions on Enforcement Matters

1. Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body (secretariat) that the Parties designate.[4]

2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:

(a) is in writing in either English or Spanish;

(b) clearly identifies the person making the submission;

(c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based and identification of the environmental laws of which the failure to enforce is asserted;

(d) appears to be aimed at promoting enforcement rather than at harassing industry;

(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and

(f) is filed by a person of a Party, except as provided in paragraph 3.

[4] The Parties shall designate the secretariat and provide for related arrangements through an exchange of letters or understanding between the Parties.

3. The Parties recognize that the *North American Agreement on Environmental Cooperation* (NAAEC) provides that a person or organization residing or established in the territory of the United States may file a submission under that agreement with the Secretariat of the NAAEC Commission for Environmental Cooperation asserting that the United States is failing to effectively enforce its environmental laws.[5] In light of the availability of that procedure, a person of the United States who considers that the United States is failing to effectively enforce its environmental laws may not file a submission under this Article. For greater certainty, a person of a Party other than the United States who considers that the United States is failing to effectively enforce its environmental laws may file a submission with the secretariat.

4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by whether:

(a) the submission is not frivolous and alleges harm to the person making the submission;

(b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;

(c) private remedies available under the Party's law have been pursued; and

(d) the submission is drawn exclusively from mass media reports.

Where the secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and on notification to the secretariat, within 60 days of delivery of the request:

(a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and

(b) of any other information the Party wishes to submit, such as:

(i) whether the matter was previously the subject of a judicial or administrative proceeding,

[5] Arrangements will be made for the United States to make available in a timely manner to the other Parties all such submissions, U.S. written responses, and factual records developed in connection with those submissions. At the request of any Party, the Council shall discuss such documents.

(ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued, or

(iii) information concerning relevant capacity-building activities under the ECA.

Article 18.9: Factual Records and Related Cooperation

1. If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.

2. The secretariat shall prepare a factual record if any member of the Council instructs it to do so.

3. The preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:

(a) that is publicly available;

(b) submitted by interested persons;

(c) submitted by national advisory or consultative committees;

(d) developed by independent experts; or

(e) developed under the ECA.

5. The secretariat shall submit a draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.

6. The secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.

7. The secretariat shall make the final factual record publicly available, normally within 60 days following its submission, if any member of the Council instructs it to do so.

8. The Council shall consider the final factual record in light of the objectives of this Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Cooperation Commission related to matters addressed in the factual record, including recommendations related to the further development of the Party's mechanisms for monitoring its environmental enforcement.

9. The Council shall, after five years, review the implementation of this Article and Article 18.8 and report the results of its review, and any associated recommendations, to the Commission.

Article 18.10: Environmental Cooperation

1. The Parties recognize the importance of strengthening their capacity to protect the environment and of promoting sustainable development in concert with strengthening their trade and investment relations.

2. The Parties are committed to expanding their cooperative relationship on environmental matters, recognizing it will help them achieve their shared environmental goals and objectives, including the development and improvement of environmental protection, practices, and technologies.

3. The Parties are committed to undertaking cooperative environmental activities pursuant to the ECA, including activities related to implementation of this Chapter. Activities that the Parties undertake pursuant to the ECA will be coordinated and reviewed by the Environmental Cooperation Commission established under the ECA. The Parties also acknowledge the importance of environmental cooperation activities in other fora.

4. Each Party shall take into account public comments and recommendations it receives regarding cooperative environmental activities undertaken pursuant to this Chapter and the ECA.

5. The Parties shall, as appropriate, share information on their experiences in assessing and taking into account environmental effects of trade agreements and policies.

Article 18.11: Biological Diversity

1. The Parties recognize the importance of the conservation and sustainable use[6] of biological diversity and their role in achieving sustainable development.

2. Accordingly, the Parties remain committed to promoting and encouraging the conservation and sustainable use of biological diversity and all its components and levels, including plants, animals, and habitat, and reiterate their commitments in Article 18.1.

3. The Parties recognize the importance of respecting and preserving traditional knowledge and practices of indigenous and other communities that contribute to the conservation and sustainable use of biological diversity.

4. The Parties also recognize the importance of public participation and consultations, as provided by domestic law, on matters concerning the conservation and sustainable use of biological

[6] For purposes of this Chapter, sustainable use means non-consumptive or consumptive use in a sustainable manner.

diversity. The Parties may make information publicly available about programs and activities, including cooperative programs, it undertakes related to the conservation and sustainable use of biological diversity.

5. To this end, the Parties will enhance their cooperative efforts on these matters, including through the ECA.

Article 18.12: Environmental Consultations and Panel Procedure

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to a contact point designated by the other Party for this purpose.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue. If the matter arises under Article 18.2, or under both that Article and another provision of this Chapter, and involves an issue related to a Party's obligations under a covered agreement, the Parties shall endeavor to address the matter through a mutually agreeable consultative or other procedure, if any, under the relevant agreement, unless the procedure could result in unreasonable delay.[7]

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other consulting Parties.[8]

5. (a) The Council shall promptly convene and shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

(b) When the matter arises under Article 18.2, or under both that Article and another provision of this Chapter, and involves an issue relating to a Party's obligations under a covered agreement, the Council shall:

(i) through a mechanism that the Council establishes, consult fully with any entity authorized to address the issue under the relevant agreement; and

[7] The Parties understand that for purposes of paragraph 3, where a covered agreement requires a decision to be taken by consensus, such a requirement could create an unreasonable delay.

[8] For purposes of paragraphs 4, 5, and 6, the Council shall consist of senior level officials with environmental responsibilities of the consulting Parties or their designees.

(ii) defer to interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement.

6. If the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.

7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with paragraphs 1 through 5.

8. In a dispute arising under Article 18.2, or under both that Article and another provision of this Chapter, that involves an issue relating to a Party's obligations under a covered agreement, a panel convened under Chapter Twenty-One (Dispute Settlement) shall in making its findings and determination under Articles 21.13 (Initial Report) and 21.14 (Final Report):[9]

(a) consult fully, through a mechanism that the Council establishes, concerning that issue with any entity authorized to address the issue under the relevant environmental agreement;

(b) defer to any interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement; and

(c) where the agreement admits of more than one permissible interpretation relevant to an issue in the dispute and the Party complained against relies on one such interpretation, accept that interpretation for purposes of its findings and determination under Articles 21.13 and 21.14.[10]

Article 18.13: Relationship to Environmental Agreements

1. The Parties recognize that multilateral environmental agreements to which they are all party, play an important role globally and domestically in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental

[9] For greater certainty, the consultations and guidance in this paragraph are without prejudice to a panel's ability to seek information and technical guidance from any person or body consistent with Article 21.12 (Role of Experts).

[10] The guidance in subparagraph (c) shall prevail over any other interpretative guidance.

objectives thereof. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are all party and trade agreements to which they are all party.

2. To this end, the Parties shall consult, as appropriate, with respect to negotiations on environmental issues of mutual interest.

3. Each Party recognizes the importance to it of the multilateral environmental agreements to which it is a party.

4. In the event of any inconsistency between a Party's obligations under this Agreement and a covered agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade.[11]

Article 18.14: Definitions

For purposes of this Chapter:

environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto;

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas;[12] or

(d) for Peru, the management of forest resources,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

[11] For greater certainty, paragraph 4 is without prejudice to multilateral environmental agreements other than covered agreements.

[12] The Parties recognize that such protection or conservation may include the protection or conservation of biological diversity.

laws, regulations, and all other measures to fulfill its obligations under a covered agreement means a Party's laws, regulations, and other measures at the central level of government.

For the United States, **statute or regulation** means an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the central level of government.

For Peru, **statute or regulation** means a law of Congress or Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government.

For Peru, **indigenous and other communities** means those communities which are defined in Article 1 of Andean Decision 391.

Annex 18.2

Covered Agreements

1. For purposes of this Chapter, **covered agreement** means a multilateral environmental agreement listed below to which both Parties are party:

(a) the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington, March 3, 1973, as amended;

(b) the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal, September 16, 1987, as adjusted and amended;

(c) the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973*, done at London, February 17, 1978, as amended;

(d) the *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, done at Ramsar, February 2, 1971, as amended;

(e) the *Convention on the Conservation of Antarctic Marine Living Resources*, done at Canberra, May 20, 1980;

(f) the *International Convention for the Regulation of Whaling*, done at Washington, December 2, 1946; and

(g) the *Convention for the Establishment of an Inter-American Tropical Tuna Commission*, done at Washington, May 31, 1949.

2. The Parties may agree in writing to modify the list in paragraph 1 to include any other multilateral environmental agreement.

Annex 18.3.4

Annex on Forest Sector Governance[13]

1. The Parties recognize that trade associated with illegal logging, and illegal trade in wildlife, including wildlife trafficking, undermine trade in products from legally harvested sources, reduce the economic value of natural resources, and weaken efforts to promote conservation and sustainable management of resources. Accordingly, each Party commits to combat trade associated with illegal logging and illegal trade in wildlife. The Parties recognize that good forest sector governance is critical to promoting the economic value and sustainable management of forest resources. Accordingly, each Party commits to take action under this Annex to enhance forest sector governance and promote legal trade in timber products.

Strengthening Forest Sector Governance

2. The Parties recall their joint efforts, both through bilateral initiatives and in relevant international fora, to address matters relating to trade in timber products. The Parties also note the considerable progress that Peru has made in developing the institutions and legal and regulatory framework necessary to ensure the sustainable management of its forest resources.

3. In order to further strengthen the governance of its forest sector, Peru shall, within 18 months after the date of entry into force of this Agreement, take the following actions:

(a) Increase the number and effectiveness of personnel devoted to enforcing Peru's laws, regulations, and other measures relating to the harvest of, and trade in, timber products, with a view to substantially reducing illegal logging and associated trade in these products. In this context, Peru shall:

(i) Increase the number of enforcement personnel in national parks and concessions and in forest regions designated under Peruvian law as "indigenous protected" areas; and

(ii) Develop and implement an anti-corruption plan for officials charged with the administration and control of forest resources.

(b) Provide criminal and civil liability at adequate deterrent levels for actions that impede or undermine the sustainable management of Peru's forest resources. Such actions shall include:

[13] For greater certainty, this Annex is subject to Chapter Twenty-One (Dispute Settlement). No Party may have recourse to dispute settlement with respect to a matter arising under this Annex without first seeking to resolve the matter in accordance with Article 18.12.

(i) Threats or violence against, or other intimidation of, government personnel engaged in enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products;

(ii) Knowingly creating, using, presenting or providing false information on any material document relating to enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products, including forest management plans, annual operating plans, applications for permits/concessions, and transportation documents;

(iii) Obstructing an investigation, verification, or audit conducted by government personnel engaged in enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products;

(iv) Knowingly harvesting or purchasing timber or timber products from areas or persons not authorized under Peruvian law; or knowingly transporting timber or timber products taken from areas or persons not authorized under Peruvian law; and

(v) Providing to a government official, or receiving as a government official, compensation, whether monetary or in kind, in exchange for particular action taken in the course of that official's enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products.

(c) Impose criminal and civil penalties designed to deter violations of laws, regulations and other measures relating to the harvest of, and trade in, timber products. This shall include:

(i) Substantially increasing criminal penalties prescribed in Article 310 of Peru's Penal Code (Código Penal, Decreto Legislativo No. 635, 8 April 1991); and

(ii) Suspending the right to export the product as to which a law, regulation, or other measure has been violated.

(d) Adopt and implement policies to monitor the extent and condition of tree species listed in any Appendix of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), including by:

(i) Conducting a comprehensive inventory including analysis of the populations of these tree species to determine their geographic distribution, density, size, age-class structure and regeneration dynamics, as well as threats to their survival;

(ii) Conducting technical studies to determine product yields for the purpose of calculating accurate conversion factors and informing decisions on export quotas; and

(iii) Providing for technical review and periodic updating of these inventory and product yield studies and making their results publicly available.

(e) Finalize and adopt a strategic plan of action to implement the CITES Appendix II listing of Bigleaf Mahogany by decree or resolution promulgated by the central level of government, and endeavor to provide financial resources adequate to carry out the plan.

(f) Establish an annual export quota for bigleaf mahogany, covering logs, sawn wood, veneer sheets and plywood, at a level and in a manner consistent with Article IV of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the advice of Peru's CITES Scientific Authority for forest species. Peru shall:

(i) Include in the annual export quota only bigleaf mahogany harvested from Native Communities or concessions for which Instituto Nacional de Recursos Naturales (INRENA) has approved and verified annual operating plans, subject to oversight by the Organismo Supervisor de los Recursos Forestales Maderables (OSINFOR);

(ii) Ensure that the export quota takes into account studies conducted under sub-paragraph (d); and

(iii) Ensure that the export quota does not exceed the range recommended by Peru's Scientific Authority for Forest Species.

(g) Improve the administration and management of forest concessions. Peru shall:

(i) Build on existing mechanisms to implement a competitive and transparent process to award concessions;

(ii) Review proposed annual operating plans for such concessions and, if a plan is approved, make it publicly available and regularly verify in a timely manner that a concessionaire is complying with the terms of the plan; and

(iii) Physically inspect area designated for the extraction of any CITES-listed tree species prior to approving or verifying an operating plan and produce a publicly available report detailing the results of the verification. OSINFOR, in its oversight of INRENA, shall supervise the physical inspections and, as necessary, participate in the physical inspections.

(h) Develop and promote the use of tools that complement and strengthen regulatory controls and verification mechanisms relating to the harvest of, and trade in, timber products. In this context, Peru shall:

(i) Take into account the views of local and indigenous communities, non-governmental organizations, and the private sector, including operators of timber harvesting concessions;

(ii) Develop systems to verify the legal origin and chain of custody of CITES-listed tree species and develop systems, including requirements for management oversight and record keeping, to reliably track specimens from harvest through transport, processing and export;[14] [15]

(iii) Fully implement existing laws and regulations for forest sector governance and strengthen institutions responsible for enforcing these laws and any aspect of forest management in Peru. In this context, Peru shall establish OSINFOR as required under Forest Law No. 27308. OSINFOR shall be an independent and separate agency and its mandate shall include supervision of verification of all timber concessions and permits; and

(iv) Identify within the Government of Peru a focal point, with appropriate and sufficient authority and staff to investigate violations of laws and regulations for forest sector governance. The focal point shall (a) have a transparent process for the reporting of forest sector crimes; (b) ensure coordination and the accurate and timely flow of information between relevant technical and financial agencies; and (c) where appropriate prosecute or refer violations for prosecutions.

(i) Strengthen, protect and increase the capacity of indigenous communities to manage their lands for commercial timber production, including by ensuring that any commercial timber production has the approval of the Peruvian government.

(j) Appropriately identify protected areas and concessions.

4. The Parties are committed to work cooperatively to implement the actions required under the preceding paragraph, including through capacity-building and other joint initiatives to promote the sustainable management of Peru's forest resources. The Parties shall develop and implement any capacity-building activities they undertake pursuant to this paragraph in

[14] An effective chain of custody system should provide management oversight, document control, material separation and tracking, purchasing and receiving, processing, shipping and sales, claims and training, and may employ innovating tracking technologies, such as barcodes.

[15] The Parties note Peru has mechanisms in place to promote the use of voluntary certification programs that address legal origin and chain of custody issues for CITES-listed tree species.

accordance with the Environmental Cooperation Agreement, as provided for in Article 18.10. Such capacity building activities may include:

(a) Strengthening the legal, policy, and institutional framework governing the forest estate and the international trade in forest products;

(b) Building institutional capacity for forest law enforcement and the international trade in forest products;

(c) Improving the performance of the forest concession system in meeting economic, social, and ecological objectives; and,

(d) Increasing public participation and improve transparency in forest resource planning and management decision-making.

Verification and Enforcement Measures

5. The Parties shall cooperate for the purpose of enforcing or assisting in the enforcement, and deterring circumvention, of the laws, regulations, and other measures of each Party related to forest sector governance, including those related to the harvest of, and trade in, timber products.

Audits of Producers and Exporters

6. (a) Peru shall conduct periodic audits[16] of producers and exporters in its territory of timber products exported to the United States, and verify that exports of those products to the United States comply with all applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, timber products including, in the case of tree species listed in CITES Appendix II, relevant chain of custody requirements.

(b) In addition, on the written request of the United States, Peru shall conduct an audit of a particular producer or exporter in its territory as specified in the request, with a view to evaluating the compliance of that producer or exporter with those laws, regulations, and other measures. On written request of the United States, Peru shall provide a written summary of its finding of the request audit. The United States will treat any documents or information exchanged in the course of an audit as confidential if such documents or information had been designated by Peru as confidential under Article 5.6.

Verifications

7. On the written request of the United States, Peru shall verify whether, with respect to a particular shipment of timber products from Peru to the United States, the exporter or producer

[16] Such audits shall be conducted at least every five years and may be conducted by a mutually agreed third party.

of those products has complied with applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, those products.[17]

8. A request under paragraphs 6 or 7 shall identify:

(a) the relevant producer or exporter;

(b) Peru's laws, regulations, and other measures at issue; and

(c) the reason the United States considers an audit or verification to be warranted.

9. The United States shall, to the extent authorized under its law, provide Peru with trade and transit documents and other information that will assist Peru in conducting a verification under paragraph 7. Each Party shall treat any documents or information exchanged in the course of a verification as if such documents or information had been designated as confidential by the other Party under Article 5.6 (Confidentiality).

10. To facilitate a verification under paragraph 7, Peru shall, unless the Parties agree otherwise, visit the premises of the exporter or producer, or of any other enterprise in the territory of Peru in the chain of production or transportation for the product concerned. The following procedures shall apply with respect to such visits:

(a) Peru shall inform the United States in writing of a visit it proposes to conduct at least 20 days before it takes place.

(b) If the United States seeks to have its officials participate in the visit, its competent authorities shall transmit a request to Peru in writing no later than 10 days before the visit, identifying the names and titles of the officials the United States proposes to participate in the visit.

(c) Peru shall permit the United States officials identified in the request to participate in the visit unless Peru informs the United States competent authorities otherwise in writing at least five days before the visit.

(d) With respect to the shipment that is the subject of the verification under paragraph 7, Peru shall obtain and examine copies of documents relating to the enterprise's compliance with Peru's laws, regulations, and other measures governing the harvest of, and trade in, timber products including, in the case of shipments of products derived from tree species listed in a CITES Appendix, relevant chain of custody requirements.

[17] The United States may detain a shipment which is subject to a verification request pending the result of the verification and the notification provided under paragraph 13.

(e) No later than 10 days after a visit, the United States officials that participated in the visit shall provide Peru with their written observations, if any, regarding the shipment.

11. If Peru denies a request under paragraph 10(b) for the identified officials of the United States to participate in a visit, the United States may deny entry to the shipment that is the subject of the verification.

12. Unless the Parties agree otherwise, Peru shall provide the United States a written report on the results of any verification it conducts in response to a request under paragraph 7 within 45 days after the date the United States delivers the request or, if Peru conducts a verification visit in response to the request, within 75 days after the date the United States delivers the request. The report shall take into account any written observations that United States officials have provided under paragraph 10(e) and shall include an assessment, based on documents examined in the course of the verification, of whether the enterprise has complied with Peru's applicable laws, regulations, and other measures. The report shall append all relevant documents and facts supporting Peru's assessment.

Compliance Measures

13. Within a reasonable time after Peru provides a report under paragraph 12, the United States shall notify Peru in writing of any actions it will take with respect to the matter, and the duration of such actions, taking into account, *inter alia*, that report, information that United States customs authorities have obtained regarding the shipment or relevant enterprise, and information that United States officials obtained during the verification visit.

(a) These actions may include:

(i) denying entry to the shipment that was the subject of the verification and

(ii) where an enterprise has knowingly provided false information to Peruvian or United States officials regarding a shipment, denying entry to products of that enterprise derived from any tree species listed in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

(b) The United States shall cease action under sub-paragraph (a)(ii) by the later of

(i) the end of the period specified in its written notification, or

(ii) 15 days after the date on which Peru submits proof to the United States of an audit under paragraph 6 that concludes the enterprise complies with all applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, timber products.

14. If Peru does not provide a verification report under paragraph 12 within the time prescribed in that paragraph, the United States may take such actions with respect to the exporter's timber products as it considers appropriate, including those described in paragraph 13.

CITES Commitments

15. Each Party reaffirms its commitment to work within the framework of CITES to protect CITES-listed species. To this end, the Parties shall cooperate and take action under this Annex in a manner consistent with each Party's obligations under CITES and in a manner that takes into account decisions and resolutions of the CITES Conference of the Parties as well as its Standing Committee, Animals Committee, and Plants Committee. Furthermore, nothing in this Annex shall limit the authority of either Party to take action consistent with its legislation implementing CITES.

Sub-Committee on Forest Sector Governance

16. In order to facilitate the cooperation provided for in this Annex, and provide a forum for them to share views and information on any matter arising under this Annex, the Parties hereby establish a Sub-Committee on Forest Sector Governance under both the Committee on Trade in Goods and the Environmental Affairs Council.

17. The Parties shall consult regularly through the Sub-Committee and shall exchange appropriate, non-confidential information on bilateral trade in timber products to the extent consistent with and as authorized under their respective laws and policies. This shall include information such as: customs data, information on efforts to combat illegal logging and associated trade (including interdiction, confiscations, arrests, prosecutions and convictions), implementation of CITES requirements and other relevant information.

18. Unless they otherwise agree, the Parties shall make any information they exchange under paragraph 17 publicly available in a timely manner, subject to any conditions the Sub-Committee may establish.

Public Comments

19. Each Party shall establish a procedure for the public to submit comments regarding any matter under this Annex. Each Party shall take these comments into account and transmit them to the other Party if they are not publicly available.

Review

20. The Parties shall review the operation of this Annex within three years after the date of entry into force of this Agreement.