

**UNITED STATES – PERU  
TRADE PROMOTION AGREEMENT  
ENVIRONMENTAL AFFAIRS COUNCIL**

**DECISION NO. 1**

**PROCEDURES FOR THE SECRETARIAT**

Pursuant to the Understanding between the Government of the United States and the Government of the Republic of Peru for Implementing Article 18.8 of the of the United States – Peru Trade Promotion Agreement (hereinafter the “Understanding”), which establishes the Secretariat for Submissions on Environmental Enforcement Matters (the “Secretariat”), the Environmental Affairs Council (Council), set up according to Article 18.6 of the United States – Peru Trade Promotion Agreement (the “TPA”),

**DECIDES:**

To adopt the Procedures appended to this Decision for:

- (1) Selecting (i) the Executive Director of the Secretariat, (ii) any professional, technical-support and administrative staff of the Secretariat, and (iii) any other positions with relevant expertise to assist the Secretariat in preparing factual records;
- (2) Preparing reports to the Council;
- (3) Communicating with the Council;
- (4) Making documents publicly available; and
- (5) Preparing and submitting the annual budget of the Secretariat.

## **Procedures for Selecting the Executive Director and Staff**

### **Section 1: The Executive Director**

1. The Council shall select an Executive Director with relevant experience in environmental or international trade matters or both to perform the duties set out in paragraphs 3 and 4 of Annex I (Terms of Reference for the Executive Director).
2. The Council shall select the Executive Director:
  - (a) through a transparent process as set out in Annex II (Council Process for Selecting Secretariat Staff);
  - (b) on the basis of relevant competence, experience, and integrity; and
  - (c) according to the criteria set out in paragraph 5 of Annex I.

### **Section 2: The Staff**

#### *General*

1. As appropriate to carry out the duties assigned to them, staff shall have previous experience according to the Terms of Reference in the attached Annexes. The Executive Director and professional staff shall be nationals of the United States of America or Peru (hereinafter the “Parties” to the TPA); with due regard to the importance of recruiting an equitable portion of professional staff from among the nationals of each Party. The Executive Director and professional staff must be recruited from outside of, and be independent of, the entity that houses the Secretariat.

#### *Legal Advisor*

2. The Secretariat’s professional staff shall include a Legal Advisor who shall perform the duties set out in paragraphs 3 and 4 of Annex III (Terms of Reference for the Legal Advisor). The Council shall select the Legal Advisor:
  - (a) through a transparent process as set out in Annex II;
  - (b) on the basis of relevant competence, experience, and integrity; and
  - (c) according to the criteria set out in paragraph 5 of Annex III.

#### *Other Professional Staff*

3. As decided by the Council, the Secretariat’s professional staff may include other professional staff positions. As appropriate to carry out the Secretariat’s functions and activities, the Executive Director shall notify the Council of the need for additional professional staff positions. Any such notification shall describe the intended duties of the additional professional staff position and include proposed terms of reference for the position.

4. For any vacant professional staff position other than the Executive Director or Legal Advisor, the Council shall select a candidate through the procedures outlined in Annex II. The Parties may identify and propose candidates for those positions, if necessary. The Council may decide to delegate this authority to the Executive Director, in which case the procedures set out in Annex IV shall apply.

#### *Technical-Support and Administrative Staff*

5. The Executive Director shall draw technical-support and administrative staff from the General Secretariat of the Organization of American States' Department of Sustainable Development (GS/OAS/DSD) staff, except where no member of the GS/OAS/DSD staff is qualified and willing to carry out the duties that the Executive Director may assign. The Executive Director shall select technical-support and administrative staff as follows:

- (a) The Executive Director shall coordinate with the GS/OAS to determine whether there is a member of the GS/OAS/DSD staff that is qualified and willing to carry out the duties required by the Secretariat. If there is a member of the GS/OAS/DSD staff that is qualified and willing to carry out the duties required by the Secretariat, the Executive Director shall select that individual to join the Secretariat's technical-support and administrative staff.
- (b) If there is no member of the GS/OAS/DSD staff that is qualified and willing to carry out these duties, the Executive Director may select any other person that is qualified and willing to carry out the duties required by the Secretariat based on a transparent process as set out in Annex IV and according to the terms of reference that the Executive Director submits to the Council.
- (c) The Executive Director shall select persons to serve on the Secretariat's technical-support and administrative staff strictly based on their competence, experience, and integrity.

### **Section 3: Consultants**

The Executive Director may select consultants with relevant expertise to assist the Secretariat in preparing a factual record through the transparent process set out in Annex V (Process for Selecting Consultants) and according to the terms of reference that the Executive Director submits to the Council.

Those consultants must be recruited from outside of, and be independent of, the entity that houses the Secretariat.

### **Procedures for Preparing Reports**

#### **Section 4: Reports**

1. The Secretariat shall prepare an annual report and a mid-year status report to the Council. The annual report shall:

- (a) provide a detailed report of the Secretariat's activities and expenses;
- (b) summarize the submissions that the Secretariat has received, and any responses or other relevant information provided by the Parties, and provide a brief explanation of the status of each submission;
- (c) summarize final factual records that have been made publicly available; and
- (d) include any other information the Council may request.

Unless the Council directs otherwise, the Executive Director shall submit the annual report to the Council on a date the Council specifies and on or before such date each year thereafter.

- 2. Subject to Article 8 of the Understanding, the Secretariat shall make the report publicly available, unless the Council decides otherwise.

### **Procedures for Communicating with the Council**

#### **Section 5: Communicating with the Council**

- 1. The Secretariat shall communicate with the Council through electronic communications or, as necessary, through other appropriate means.
- 2. The Secretariat shall submit all formal written communications and factual records to the Council in both official languages, unless the Council decides otherwise.

### **Procedures for the Secretariat Website**

#### **Section 6: Website**

The Secretariat website shall include:

- (a) documents and communications referred to in Article 7 of the Understanding;
- (b) information on how to contact the Secretariat;
- (c) information and procedures on filing a submission under Article 18.8 of the TPA;
- (d) any working 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; and
- (e) a procedure to submit, via the internet, public submissions and Party responses made pursuant to Article 18.8.5 of the TPA.

### **Procedures for Preparing the Budget**

## **Section 7: Budget**

1. The Executive Director shall prepare a draft annual budget for the Secretariat 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 each anniversary of that date, unless the Council decides otherwise.
2. In preparing the draft annual Secretariat budget for submission to the Council, the Executive Director shall coordinate with GS/OAS/DSD.
3. The budget shall include, at a minimum, the specific proposed expenditures for:
  - (a) personnel;
  - (b) fringe benefits;
  - (c) travel;
  - (d) supplies;
  - (e) contractual (consultant fees);
  - (f) other direct costs; and
  - (g) indirect costs.
4. In coordination with the GS/OAS/DSD, the Secretariat also shall, as necessary and upon a Council Member's request, prepare and submit (via a designated point of contact) separate budgets that delineate each Party's share of the annual budget;
5. In coordination with the GS/OAS/DSD, the Secretariat shall respond to requests for information from the United States and Peru in relation to their respective domestic procedures for transferring funds to the General Secretariat of the Organization of American States (GS/OAS) to house and support the Secretariat;
6. In coordination with the GS/OAS/DSD, the Secretariat shall comply with the terms and conditions of the instruments that the United States and Peru use to transfer contributions to the GS/OAS (in the case of the United States, a cooperative agreement).

## **Annexes**

### **Section 8: Annexes**

The Annexes are an integral part of this Council Decision.

## **Annex I**

### **Terms of Reference for the Executive Director**

#### *Introduction*

1. The position of Executive Director is with the Secretariat for Submissions on Environmental Enforcement Matters, established pursuant to the United States – Peru Trade Promotion Agreement (TPA) which, unless the United States and Peru (hereinafter the “Parties” to the TPA) decide otherwise, is housed in the General Secretariat of the Organization of the American States (GS/OAS) in Washington, D.C.

2. Article 18.8 (Submissions on Enforcement Matters) and Article 18.9 (Factual Records and Related Cooperation) of Chapter 18 (Environment) prescribe specific functions for the Secretariat related to carrying out the provisions in these Articles. On June 9, 2015, the United States and Peru signed an Understanding for Implementing Article 18.8 of the TPA (the “Understanding”), which came into force on March 20, 2016. The Understanding establishes the Secretariat for Submissions on Environmental Enforcement Matters (Secretariat) and designates it to carry out the functions prescribed for the Secretariat in Articles 18.8 and 18.9 of the TPA. The Understanding specifies that the Secretariat shall comprise an Executive Director and as appropriate to carry out its functions professional, technical-support and administrative staff. The Understanding specifies 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. The Executive Director shall operate under the sole direction and supervision of the Environmental Affairs Council established under Article 18.6 of the TPA.

#### *General Responsibilities*

3. The Executive Director will carry out the functions assigned to the Secretariat in Articles 18.8 and 18.9 of Chapter 18 of the TPA and in the Understanding..

#### *Specific Responsibilities*

4. In particular, the Executive Director will be responsible for:
- (a) receiving and considering a submission under Article 18.8 of the TPA;
  - (b) determining whether such a submission merits a response from a Party;
  - (c) determining (and informing the Council) whether such a submission warrants development of a factual record;
  - (d) preparing factual records when instructed;
  - (e) preparing annual reports, work plans, and budgets for the Environmental Affairs Council for approval;

- (f) communicating effectively with the Council or U.S. and Peruvian Environment and Trade Contact Points, including notifying them in a timely manner of any activities he or she is planning to undertake within his or her mandate;
- (g) ensuring an effective, up-to-date, and easily accessible website is established and maintained for the Secretariat, in both English and Spanish;
- (h) managing the Secretariat's professional, technical-support and administrative staff; and
- (i) undertaking other activities related to fulfilling Secretariat obligations in Articles 18.8 and 18.9 of the TPA, the Understanding, and Council Decisions related to operation of the Secretariat.

*Knowledge, Experience, and Qualifications Required for the Position*

5. Candidates should:

- (a) have completed post graduate work, preferably in law;
- (b) have at least 7 years of relevant expertise in environmental law or international trade law or its implementation, preferably in both;
- (c) have demonstrated knowledge of Chapter 18 of the TPA;
- (d) have, in addition, experience in any of the following areas with respect to the United States or Peru:
  - (i) public policy-making,
  - (ii) inter-governmental relations,
  - (iii) international or regional institutions, or
  - (iv) knowledge of issues related to environmental and/or international trade matters, particularly in both countries;
- (e) possess superior writing, speaking, analytical , interpersonal, and public speaking skills;
- (f) be professionally fluent in written and spoken Spanish and English; and
- (g) be a national of the United States or Peru.

*Salary*

6. Salary is dependent on experience up to an amount specified by the Council, in addition to any benefits that may be offered.

*Procedure for applying*

7. Interested candidates should send the following information in English and Spanish to the appropriate contact point by a date established by the Council:

- (a) curriculum vitae;
- (b) writing sample; and
- (c) at least 3 references.

The candidate must have drafted the writing sample in both languages him/herself. Candidates should send the above information to the designated contact points for each Party.



## Annex II

### Council Process for Selecting Secretariat Staff

1. The Council shall use the following process for selecting the Executive Director, the Legal Advisor and any other professional staff that the Council agrees shall be selected according to this process.
2. The Council, working via the Parties' points of contact as appropriate, shall:
  - (a) draft a position description in Spanish and English, which for the Executive Director and Legal Advisor shall be substantially based on the terms of reference, established in Annex I and III, respectively, and for any other professional staff that the Council agrees to select according to these procedures shall be substantially based on the terms of reference for the position;
  - (b) post the position description on U.S. and Peruvian government websites (if possible);
  - (c) broadly distribute the position description, including through the Embassies of the Parties and USAID distribution lists;
  - (d) draft a truncated version of the position description in Spanish and English to publish in relevant U.S. and Peruvian publications (*e.g.*, the Economist, the Washington Post, and daily Peruvian newspapers, among others);
  - (e) identify funds to pay for such publication;
  - (f) review applications received;
  - (g) reject applicants that clearly do not meet the qualifications;
  - (h) decide on a process for ranking qualified applicants and determining how many applicants to interview;
  - (i) select finalists;
  - (j) interview finalists and, as appropriate, review any written material; and
  - (k) contact references for top candidates and review results.
3. The Council shall:
  - (a) select a top finalist with one or two alternates based on the results of the process set out in paragraph 2;

- (b) offer the top finalist the position, which may be conveyed by the Council through the Parties' points of contact, and ask for a response by a certain date;
- (c) if the top finalist accepts, send rejection letters to other finalists; or
- (d) if not, offer the position to the remaining finalists in rank order until one accepts.

## **Annex III**

### **Terms of Reference for the Legal Advisor**

#### *Introduction*

1. This position is located in the Secretariat for Submissions on Environmental Enforcement Matters, established pursuant to the United States – Peru Trade Promotion Agreement (TPA) and housed in the GS/OAS in Washington, DC unless the United States and Peru (hereinafter the “Parties” to the TPA) decide otherwise.
2. Article 18.8 (Submissions on Enforcement Matters) and Article 18.9 (Factual Records and Related Cooperation) of Chapter 18 (Environment) prescribe specific functions to the Secretariat related to carrying out the provisions in these Articles. On June 9, 2015, the United States and Peru signed an Understanding for Implementing Article 18.8 of the TPA (the “Understanding”), which came into force on March 20, 2016. The Understanding establishes the Secretariat for Submissions on Environmental Enforcement Matters (the Secretariat) and designates it to carry out the functions prescribed for the Secretariat in Articles 18.8 and 18.9 of the TPA. The Understanding specifies that the Secretariat shall comprise an Executive Director and, as appropriate to carry out its functions, professional, technical-support and administrative staff. The Understanding specifies 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. The Executive Director shall operate under the sole direction and supervision of the Environmental Affairs Council established under Article 18.6 of the TPA. The Legal Advisor shall operate under the direction and supervision of the Executive Director.

#### *General Responsibilities*

3. The Legal Advisor will assist the Executive Director in carrying out the functions assigned to the Secretariat in Articles 18.8 and 18.9 of the TPA and the Understanding.

#### *Specific Responsibilities*

4. In particular, the Legal Advisor will be responsible for assisting the Executive Director in:
  - (a) receiving and considering a submission under Article 18.8 of the TPA;
  - (b) determining whether such a submission merits a response from a Party;
  - (c) determining (and informing the Council) whether such a submission warrants development of a factual record;

- (d) preparing factual records when instructed;
- (e) undertaking other activities related to fulfilling Secretariat obligations in Articles 18.8 and 18.9 of the TPA and the Understanding as directed by the Executive Director.

*Knowledge, Experience, and Qualifications Required for the Position*

5. Candidates should:

- (a) have a law degree in the United States or Peru;
- (b) have at least 4 years of relevant expertise in environmental law or international trade law, preferably in both;
- (c) have knowledge of Chapter 18 of the TPA;
- (d) have experience in any of the following areas with respect to the United States or Peru;
  - (i) public policy-making,
  - (ii) inter-governmental relations,
  - (iii) knowledge of issues related to environment and/or international trade law matters, particularly in both countries;
- (e) possess superior writing, speaking, and analytical skills;
- (f) be professionally fluent in written and spoken Spanish and English; and
- (g) be a national of the United States or Peru.

*Salary*

6. Salary will be dependent on experience up to an amount specified by the Council, in addition to benefits.

*Procedure for applying*

7. Interested candidates should send the following information in English and Spanish to the appropriate contact point specified below by a date established by the Council:

- (a) curriculum vitae;
- (b) writing sample; and
- (c) at least 3 references.

The candidate must have drafted the writing sample in both languages him/herself. Candidates should send the above information to the designated contact points from each Party.

## **Annex IV**

### **Executive Director Process for Recommending Secretariat Staff**

1. The Executive Director shall use the following process for recommending Secretariat professional staff pursuant to Section 2.4 of this Council Decision.
2. The Executive Director shall:
  - (a) draft a position description in Spanish and English;
  - (b) post the position description on-line on U.S. and Peruvian government websites (if possible);
  - (c) send the position description out broadly, including through solicitation of candidates from the Council, and the Embassies of the Parties and USAID distribution lists;
  - (d) draft a truncated version of the position description in Spanish and English to publish in relevant U.S. and Peruvian publications (*e.g.*, the Economist, the Washington Post, and daily Peruvian newspapers, among others);
  - (e) identify funds to pay for such publication;
  - (f) review applications received;
  - (g) reject applicants that objectively do not meet the qualifications;
  - (h) decide on a process for ranking all other qualified applicants and how many applicants to interview;
  - (i) select finalists for the next stage in the process, which shall comprise an interview and, as appropriate, a written exercise;
  - (j) interview the finalists and review any written material; and
  - (k) contact references for top candidates and review results.
3. The Executive Director shall:
  - (a) present the Council with application materials of qualified candidates;
  - (b) make a recommendation to the Council regarding selection by identifying the finalists in rank order based on the results of the process set out in paragraph 2.

4. If, after 30 days of the date on which the Executive Director notifies the Council of his or her recommendation, no member of the Council requests a meeting of the Council to consider the recommendation, the Executive Director shall:

- (a) offer the position to the person the Executive Director identified as the top finalist and ask for a response by a date certain; and
- (b) if he or she accepts, send rejection letters to other finalists; or
- (c) if not, offer the position to the remaining finalists in rank order until one accepts.

5. If a member of the Council requests a meeting of the Council to consider the Executive Director's recommendation within 30 days of the date on which the Executive Director notifies the Council of his or her recommendation, the Executive Director shall not offer the position until instructed by the Council to do so.

## **Annex V**

### **Process for Selecting Consultants**

1. The Executive Director shall use the following process for selecting consultants with relevant expertise to assist the Secretariat in preparing factual records.
2. The Executive Director shall:
  - (a) draft terms of reference for the consultant position that describe the relevant expertise and nature of the assistance that the Secretariat seeks and submit them to the Council;
  - (b) draft a description of the consultant position, which shall be substantially based on the terms of reference for the position submitted to the Council;
  - (c) publish or otherwise circulate the position description, including through solicitation of candidates from the Council, and, as needed, identify funds to pay for such publication;
  - (d) review applications received;
  - (e) reject applicants that objectively do not meet the qualifications;
  - (f) decide on a process for ranking the other applicants;
  - (g) select finalists for the next stage in the process which may comprise, as appropriate, an interview, written exercise, and contacting of candidate references;
  - (h) present the Council with the application materials of all qualified candidates;
  - (i) make a recommendation to the Council regarding selection by identifying the finalists in rank order based on the results of the process set out in this paragraph.
  - (j) offer, unless the Council objects within 30 days after the presentation of the candidates, the top finalist the position, or if he or she does not accept, offer the position to the other remaining finalists in rank order until one accepts; and
  - (k) send rejection letters to other finalists.