

# EDITORIAL

*EPL* is grateful for the awareness and journalistic precision of Melissa Blue Sky and Marie Mekosh of the Center for International Environmental Law (CIEL) for updating us on the status of one of the most interesting aspects of the 2006 US-Peru Trade Promotion Agreement – lauded as “the first bilateral trade agreement to recognize and seek to address the pervasive issue of illegal logging”, but also containing an important mechanism to address both countries’ general implementation/enforcement of all of their environmental laws (“Open to the Public: Independent Body Begins Reviewing Complaints about Enforcement of US & Peru Environmental Laws”, online at <https://www.ciel.org/open-public-independent-body-begins-reviewing-complaints-enforcement-us-peru-environmental-laws/>). The Agreement entered into force early in 2009. Later, in 2015, the countries reiterated one aspect of its commitments in a Memorandum of Understanding (the 2015 MOU) in which the Organization of American States (OAS) also joined.

Among other innovations, the Agreement created an *independent* Secretariat and an Environmental Affairs Council. The Secretariat’s role includes most prominently the receipt of “Submissions on Environmental Enforcement Matters” – claims by individuals and organisations in the US or Peru that *either country* has failed to effectively enforce its national environmental laws, causing detriment to the filing person or organisation. It was this commitment – the creation of the Secretariat – that formed the basis of the 2015 MOU. In 2016, this body was formally created, housed and hosted in the OAS, and its first Executive Director was appointed.

CIEL reports that, earlier this year, the Secretariat received its first two submissions, both addressing matters in Peru. One of these focused on wetlands issues and the other on pre-development consultation with local indigenous peoples regarding environmental impacts. The handling of these submissions is certainly a matter that we at *EPL* will follow with interest.

The most important aspect of this Secretariat, however, remains its potential: it offers a governmentally approved, independent international investigative body with the power to investigate the claims and publicly report the investigation results to the Council, which is authorised to make recommendations. Most important, this process applies to *all* environmental laws of *either* country. While many international environmental instruments around the world require that the countries enact relevant laws that impose environmental obligations and formally recognise and support environmental rights, the US-Peru Trade Agreement goes further. It takes the normally-ignored step of also pressuring governments to implement and comply with the environmental laws they adopt – to make sure their commitments are more than “paper promises”. Although the Secretariat does not have any formal adjudicatory power to order compliance, its public nature and independent status enable it to exert a useful level of pressure and “encouragement” to the participating countries.

In the past 18 months, the environmental/legal developments we have commented on have often been negative, or reported along with major events or statements that give rise to doubts that any progress will result. It is a pleasure to remind ourselves of an important step forward that has not been negated and thus still offers hope for the future, particularly where that step so prominently includes a country whose negative environmental posture has been so apparent in recent months.

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