

**AGREEMENT ESTABLISHING A SECRETARIAT FOR ENVIRONMENTAL
ENFORCEMENT MATTERS UNDER THE UNITED STATES-COLOMBIA
TRADE PROMOTION AGREEMENT**

The Government of the United States of America and the Government of the Republic of Colombia (“the Parties”):

COMMITTED TO implementing Articles 18.8 (Submissions on Enforcement Matters) and 18.9 (Factual Records and Related Cooperation) of the Environment Chapter of the United States – Colombia Trade Promotion Agreement (“TPA”);

SEEKING to establish the Secretariat for Environmental Enforcement Matters (“Secretariat”) and provide for its operation;

ACKNOWLEDGING that they selected *Fondo para la Acción Ambiental y Niñez* to house the Secretariat and provide facilities and administrative support for the Secretariat;

HAVE AGREED AS FOLLOWS:

Article 1: Establishment

The Parties hereby establish the Secretariat and designate it to carry out the functions prescribed for the Secretariat in Articles 18.8 and 18.9 of the TPA.

Article 2: Location

The Secretariat shall be located in *Fondo para la Acción Ambiental y Niñez*, Bogota, Colombia, unless the Parties decide otherwise.

Article 3: Direction and Supervision

1. The Secretariat shall function independently from *Fondo para la Acción Ambiental y Niñez* and any other entity in which the Secretariat is housed. The Secretariat shall carry out its functions under the sole direction and supervision of the Environmental Affairs Council (“Council”)¹ established under Article 18.6 of the TPA and shall report exclusively to the Council with respect to those functions. The Secretariat shall not receive or act on instructions from *Fondo para la Acción Ambiental y Niñez* or any authority other than the Council, except as provided in paragraph 2. The Secretariat may not hold itself out as a representative of the Parties or the Council.

2. The Secretariat shall comply with any rules and procedures specified by *Fondo para la Acción Ambiental y Niñez* in connection with housing the Secretariat and the provision of administrative and technical support, except to the extent such rules or procedures would be inconsistent with the TPA or this Agreement.

Article 4: Staff

1. The Secretariat shall comprise an Executive Director and a technical assistant. The hiring of any additional staff must be approved by the Council. The Executive Director may make recommendations to the Council about the number and type of staff that in his or her opinion would be appropriate to carry out the Secretariat’s functions. The Executive Director

¹ For the United States, the Council is comprised of senior officials from the Office of the United States Trade Representative and the United States Department of State’s Bureau of Oceans and International Environmental and Scientific Affairs. For Colombia, the Council is comprised of senior officials from the Colombian Ministry of Environment and Sustainable Development and the Colombian Ministry of Trade, Industry and Tourism.

shall report to the Council, and the Secretariat staff shall report to the Executive Director.

2. The Council shall select the Executive Director, and the Executive Director shall select the technical assistant and any additional staff according to procedures the Council shall establish. The Executive Director shall communicate via the points of contact designated pursuant to Article 18.6.1 of the TPA. The Council may decide to remove the Executive Director or any staff at any time for cause or other appropriate reason.

Article 5: Functions

1. The Secretariat shall perform the functions established for it under Articles 18.8 and 18.9 of the TPA and may take such additional actions as are appropriate to carry out the functions established in Articles 18.8 and 18.9 of the TPA.

2. The Secretariat shall apply working and other 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 related to the Secretariat's functions.

3. In furtherance of Articles 18.8 and 18.9 of the TPA and this Agreement, the Secretariat shall take such further actions as the Council may direct and shall promote public awareness and understanding of the public submissions and factual record process by, *inter alia*, developing an outreach plan, and publishing guides, explanatory documents and other relevant information, unless the Council decides otherwise. The Secretariat shall consult with the Council, via the points of contact designated pursuant to Article 18.6.1 of the TPA, on the development of an outreach plan and any associated materials.

Article 6: Funds and Budget

1. Each Party shall contribute an *equal share* of the Secretariat's budget, subject to the availability of appropriated funds in accordance with the Party's legal procedures.²

2. If a Party fails to contribute its share of the Secretariat's budget, the other Party may refer the matter to the Council for discussion.

Article 7: Transparency

1. The Parties are committed to ensuring that the Secretariat and the public submissions process operate in a transparent manner. To this end, in accordance with procedures the Council may establish and subject to Article 8 of this Agreement, the Secretariat shall make publicly available documents and communications referred to in Articles 18.8 and 18.9 of the TPA and other submissions-related documents, including any Council decision. The Secretariat shall make a factual record publicly available only if instructed to do so by a member of the Council in accordance with paragraph 7 of Article 18.9 of the TPA.

2. The Secretariat shall maintain a Secretariat website that includes, *inter alia*, the documents and communications referred to in paragraph 1, information on how to contact the Secretariat, any working procedures the Council establishes regarding the public submissions process, and a procedure to submit, via the internet, public submissions, Party responses, and views that other persons may submit to the Secretariat regarding a submission or the submissions process.

² A Party's share of the Secretariat's budget shall be based on the exchange rate in effect on the date on which the Council approves the budget.

Article 8: Confidentiality

The Secretariat shall not furnish to the public or allow public access to any information it may receive:

- (a) (i) that its submitter has identified as confidential in accordance with the procedures the Council establishes for protecting confidential information;
- (ii) that is not otherwise publicly available; and
- (iii) the disclosure of which could reveal:
 - (1) the submitter's identity and subject the submitter to serious reprisal, or
 - (2) business or proprietary information; or
- (b) from a Party, where the Party has determined that disclosure of the information would impede law enforcement, compromise personal privacy, or reveal confidential business or proprietary information or governmental decision-making.

Article 9: Official Languages

1. The Secretariat's official languages shall be English and Spanish.
2. The Secretariat shall submit all formal written communications and factual records to the Council in both official languages, unless the Council decides otherwise.
3. The Secretariat shall provide English and Spanish language versions of all documents and communications that it makes publicly available, except that the Secretariat may make voluminous exhibits or other appendices, for which a member of the Council has not requested a translation, available solely in the language in which they were submitted or prepared.

Article 10: Amendments

1. The Parties may agree on any amendment of this Agreement.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Agreement to take effect on such date as the Parties may agree.

Article 11: Entry into Force

This Agreement shall enter into force thirty days following the date the Parties exchange written notifications certifying that they have completed their respective legal requirements for its entry into force or on such other date as the Parties may agree.

Article 12: Termination

This Agreement shall terminate on the date the TPA terminates, a date on which the Parties mutually agree, or upon 90 days prior written notice, whichever occurs earlier.

Article 13: Authentic Texts

The English and Spanish language texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement in two original copies in English and Spanish, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:



C.J. Mahoney
Deputy United States Trade
Representative
9 of July, 2018



Kevin Whitaker
Ambassador of the United States of
America to the Republic of Colombia
6 of July, 2018

FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA:



Maria Lorena Gutiérrez Botero
Minister of Trade, Industry and
Tourism
28 of June, 2018