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HEARING BEFORE THE
SENATE FINANCE COMMITTEE
“FREE TRADE AGREEMENT IMPLEMENTATION: LESSONS FROM THE PAST”

MARCH 3, 2016

Thank you, Mr. Chairman, Ranking Member Wyden and members of the Committee for the opportunity to present the views of The Nature Conservancy on the implementation of international trade agreements entered into by the United States. Our views will focus largely on the environmental provisions of such agreements.

The Nature Conservancy is the world’s largest conservation organization with over one million members and on the ground programs in over 35 countries that aim to conserve the lands and waters upon which all life depends. In our work, we are continually faced with the environmental challenges caused by illegal or unsustainable patterns of trade and consumption, particularly around the illegal trade in wildlife and timber, and illegal and unsustainable fishing practices. Addressing these threats is essential if we are to secure the health of the world’s forest, wildlife and oceans and ocean fisheries so that they can continue to provide their benefits to future generations.

With this objective in mind, **The Nature Conservancy has strongly supported and welcomed the increasing levels of environmental protection** incorporated in sequential trade agreements over time. The Bush administration in 2007 agreed to a landmark agreement involving a bipartisan Congress and the White House to incorporate a specific list of multilateral environmental agreements (MEAs), including CITES, into future FTAs. This has paved the way for successful inclusion of environmental chapters in FTAs as well as stronger enforcement mechanisms. Linking trade to improved environmental management gives us valuable new leverage to encourage countries to deal with natural resource issues, many of which can be exacerbated by increased international trade—particularly in countries with important timber or other natural resources to export.

While including environmental commitments as a core component of FTAs unquestionably provides an important enforcement tool to ensure compliance, it is also critical that we position countries to be able to comply by providing the resources, tools and technical assistance for them to do so. **We commend Congress for its historically strong role in supporting effective implementation of environmental components of Free Trade Agreements** – with over \$177 million appropriated to support environmental cooperation and capacity building under FTAs with 20 different trading partners over the past 10 years. This support has been crucial to the environmental progress we have seen under the agreements.

While challenges to implementing these obligations remain, TNC believes these commitments have overall been successful and have resulted in positive developments for

the environment. The initial effect of environmental FTA commitments has been to spur legislative action to create at least the legal enabling framework for compliance. Environmental provisions in past agreements have mobilized passage of important new environmental laws in our trading partners. For example, the Peru Forestry and Wildlife Law was in part a direct response to the US-Peru TPA, and laws and policies driven by the Central American Free Trade Agreement (CAFTA) have been important to wildlife and protected areas conservation in those member states. We believe that FTAs have been an important contributor to the passage of these laws.

TNC was directly involved in CAFTA implementation in the Dominican Republic through a USAID-funded project to improve environmental regulations, streamline its review of Environmental Impact Statements, build enforcement capacity of government regulatory agencies, and support biodiversity conservation. We feel these advances continue to play a role in enhancing environmental performance and outcomes in that country. Other studies have concluded that provisions for transparency and public engagement on environmental issues required by CAFTA were advantageous for civil society seeking to ensure enforcement of domestic wildlife conservation laws, specifically around sea turtle protection, through this FTA¹.

The Peru Trade Promotion Agreement included a groundbreaking approach to address core environmental concerns, and it continues to serve as a platform to support Peru's efforts to combat illegal logging. The provisions in the Peru agreement also committed Parties to biodiversity conservation, including non-consumptive use, and recognize the link between illegal logging and illegal wildlife trade. TNC was involved in an advisory role with many of the specifics around this agreement, which included arrangements for US-Peru environmental cooperation to:

- Strengthen the legal, policy, and institutional framework governing the forest estate and the international trade in forest products;
- Build institutional capacity for forest law enforcement and the international trade in forest products;
- Improve the performance of the forest concession system in meeting economic, social, and ecological objectives; and
- Increase public participation and improve transparency in forest resource planning and management decision-making.
- Designing and implementing projects funding by USAID-Peru to promote sustainable production in the indigenous territories as a way to avoid deforestation and illegal logging.

TNC pushed for a great deal of specificity in the Forest Sector Governance Annex with Peru, because we believe **clear environmental obligations spelled out in the agreements, coupled with follow-on funding, technical assistance and capacity building to implement those obligations, are the main ingredients for success.**

¹ A Lurié and M Kalinina, "Protecting Animals in International Trade: a Study of the Recent Successes at the WTO and in Free Trade Agreements," *Am U Int'l L Rev*, 2015.

However, the Peru case also illustrates the complex challenges involved. The recent disturbances in Peru in response to the independent forestry enforcement agency's (OSINFOR) attempts to enforce the US-Peru FTA Forestry Annex gives us some idea of the scale of the problem. Even competent and honest officials are often no match for powerful and corrupt elements in the timber sector.

What the US-Peru FTA does create, however, is **the transparency and opportunity** to begin to address this problem. The electronic timber tracking system developed under the agreement has proven to be a very positive tool. It has increased transparency and has thwarted the ability of criminals to change source-origin documentation. We also now have detailed information in a public database—also available to US importers trying to comply with the Lacey Act— about the concessions and companies involved in the Peruvian illegal timber trade. **The systems created by the obligations in the Forestry Annex and built with US assistance are proving their mettle by identifying the illegal actors and providing at least the means to hold these actors accountable.** Without the agreement, it is likely we would have little to no information on the scope of the problem in Peru.

But there are still gaps in the supply chain – namely, problems of documentation in the concession system that OSINFOR has brought to light. Due to lack of resources and time constraints, all the pieces have not yet fallen into place in Peru and work remains to be done both on technical tools and certainly on the political will to enforce violations.

The ongoing lessons we draw from the implementation of the US-Peru agreement include the need to reinforce creation of a strong, **independent** agency to address legality issues in the forestry sector, as well as ongoing political and material support for their efforts. We also need to support robust **training on enforcement** for local officials, coupled with continued **monitoring and oversight** by US officials. The **transparency** provisions embedded in these commitments are another crucial component, and can help improve governance, rule of law and public participation even beyond environmental matters.

On a related note, we urge that implementation arrangements provide a significant role for civil society. Engaging NGOs can help provide accountability, information and public support to reinforce trade and environment measures, helping to reduce corruption in environmental regulation. We recommend that programs to implement environmental cooperation be public, subject to review and comment, and implemented by a broad stakeholder partnership to promote a culture of positive environmental engagement.

While this discussion is about our past experience on trade implementation, I would just mention that the recently concluded Trans-Pacific Partnership contains important new obligations for Parties to address illegal and unsustainable fisheries practices, and to combat illegal wildlife trade. The Nature Conservancy is very optimistic about the power of these provisions to tackle what are often systemic problems that are depleting ecosystems globally. We are also cognizant that effective compliance will involve significant capacity building and technical support among the partners. We look forward to working with Congress and US government agencies to ensure the robust implementation of TPP environmental commitments throughout the Pacific region.

Thank you, Mr. Chairman, Members of the Committee.