



Implementation and Enforcement Failures in the US-Peru Free Trade Agreement (FTA) Allows Illegal Logging Crisis to Continue

June 2015 Briefing Paper

Overview

Illegal logging in Peru and the associated trade remains a serious and unabated problem. In 2007, in response to the crisis of illegal logging in Peru, the US and Peru agreed to include an Annex on Forest Sector Governance in the U.S.-Peru FTA¹ that lays out a suite of binding obligations on both parties to improve forest governance. While the U.S.-Peru FTA included laudable and innovative new provisions to address environmental impacts in trade agreements, the complete failure to enforce these obligations fundamentally undermines the effectiveness of these measures. Estimates have put illegal logging at 80% of all production² in Peru; by many accounts, permits and papers are to date still frequently falsified.³

Key Findings:

- Enforcement of the commitments under the U.S.-Peru FTA has not happened and is not currently happening. The volume and frequency with which illegalities occur across the supply chain remains staggering, and yet delays and inaction allow these illegal operators to continue their activities with near impunity.
- OSINFOR⁴ has made meaningful progress in addressing forest governance challenges, but the failure of the Peruvian government and USTR to support these nascent reforms by implementing and enforcing the obligations under the FTA is undermining the transformation so greatly needed in Peru.

¹ This trade agreement is officially called the U.S.-Peru Trade Promotion Agreement (TPA) though is referred to in this briefing paper as the FTA.

² World Bank. 2012. Justice for Forests: Improving Criminal Justice Efforts to Combat Illegal Logging.

³ Acosta, C. 27 February 2015. "Relatos Salvajes." *Revista Poder*.
<https://revistapoder.lamula.pe/2015/02/27/relatos-salvajes/poder/>

⁴ OSINFOR (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre*) is the Agency for Supervision of Forest Resources and Wildlife

- While there are some positive efforts underway to improve the legal operations of the timber sector in Peru, without political will and essential resources dedicated to enforcement, any improvements to the system will remain largely unimplemented and their impacts will be marginal at best.

Critical Enforcement Gap

Illegal logging is a serious crime that has devastating social and economic impacts. Both Peru and the United States have recognized the severity of this ongoing crisis by enacting criminal penalties for illegal logging and its associated trade. The United States as a consumer of these illicit goods bears a particular responsibility to act. However, actors throughout the supply chain, both in Peru and in the United States, continue to perpetuate this black market trade with impunity. According to publicly available data, no one, in either Peru or the US, has been held accountable for well-documented illegalities. From harvest in the concessions to import into the US, there remains a critical enforcement gap.

In April 2012, EIA issued a report, “The Laundering Machine,” detailing a multi-year investigation into illegalities in the Peruvian forest sector. In conjunction with the release of the report, EIA and the Center for International Environmental Law (CIEL) also petitioned USTR to employ the innovative enforcement mechanisms created under the U.S.-Peru FTA Forest Annex to ensure the requirements of the agreement were being upheld and those involved in illegal logging were held accountable.

Specifically, EIA requested USTR to audit concessions and verify shipments from exporters that were documented in the report for various illegalities. EIA limited the scope of its petition to a sub-set of the concessions (29) and shipments (77) identified in the report as the most egregious among a myriad of significant violations. EIA focused its evidence on illegalities related to the harvest and trade of CITES-listed species, as those are the only ones that are required to present detailed documentation about species and point of harvest, but noted that these were merely examples of much broader corruption and systemic illegal logging that was more difficult to document in non-CITES listed species due to the lack of documentation requirements.

USTR declined to pursue the innovative enforcement mechanisms created in the U.S.-Peru FTA to address the illegal logging crisis in Peru. Upon detailed review of the petition, USTR reported that 22 of the 29 concessions had been suspended or cancelled, and the remaining seven were under active investigation or renewed supervision by OSINFOR or had been investigated and penalized.⁵ Instead of using the enforcement mechanisms, they jointly agreed with Peru to a five-point action plan that served to merely further detail the necessary steps to fulfill key requirements that were already contained the Annex on Forest Sector Governance.

⁵ USTR's December 6, 2012 response letter to EIA's petition

Since this determination in December 2012, 18 of these 29 concessions that were listed as suspended or cancelled have been under appeal (see annex). This means that they could well have continued operating, even with all the demonstrated illegalities, until their appeal is heard. The body to which the concessionaires appealed, the OSINFOR Tribunal, which USTR told EIA in December 2012 had been established and was close to being composed, has instead been delayed for the past 2.5 years, and has just now begun recruiting the personnel needed to operate. As a result, the appeals have not been heard and many of those concessions may well not have stopped operations.

Neither have any exporters or importers been held accountable for perpetuating this multi-million dollar trade. In its 2012 petition, EIA and CIEL called for USTR, under section 7 of the Forestry Annex, to request that Peru verify all new export shipments from Maderera Bozovich SAC and Maderera Vulcano SAC because of their well documented history of exporting significant volumes of illegal timber to the United States. EIA identified at least 77 shipments arriving to the U.S. between January 2009 and June 2010 that (a) contained timber of either Spanish cedar (*Cedrela odorata*) or Big-leaf Mahogany (*Swietenia macrophylla*) – both CITES-listed species in Peru – directly linked to documents containing fabricated information in concession annual operating plans (POAs), and (b) were exported by Maderera Bozovich SAC or Maderera Vulcano SAC and/or originated in a concession then under temporary suspension. Despite the well-documented evidence of illegality, based on official Peruvian government data, USTR declined to request that these shipments be verified, meaning that there was in fact not even a formal US government evaluation of importers clearly linked to illegal timber trade at the time of the petition. Failures to address well documented instances of illegal timber coming into the US marketplace puts US consumers at risk of unwittingly financing this devastating black market trade and its related human rights violations.

Since the petition in 2012, both Maderera Bozovich SAC and Maderera Vulcano SAC have continued to export large volumes of high value cedar species into the US. Despite a small drop off in 2012, exports of cedar species have continued to date. According to US import data, between 2013 and the first quarter of 2015, Maderera Bozovich exported a minimum of 33 shipments containing cedar or mahogany species.⁶ In 2014 and the first quarter of 2015, Maderera Vulcano exported a minimum of 34 shipments of Peruvian timber.

⁶ These figures include both *cedrela odorata* which is listed on CITES and other *cedrela* species, namely *cedrela montana*, which are not listed on CITES despite being equally threatened and indistinguishable from CITES listed *cedrela species*. While different species of cedar (*Cedrela*) have been identified in the Peruvian forests, only one (*Cedrela odorata*) requires a CITES permit. According to a 2008 academic study (Evaluación de Existencias Comerciales de Cedro (*Cedrela spp.*) en el Perú”, conducted by the Forestry School of the UNALM and financed by ITTO), *Cedrela odorata* is the most abundant followed by *Cedrela fissili*, while *Cedrela montana* is scarce. It is not possible to differentiate among the different cedars in the form of logs and sawnwood just by visual inspection. It is possible the exporters could be misdeclaring the type of cedar to avoid CITES permitting requirements, therefore all cedar species should be subject to extra scrutiny.

Not only has no one been held accountable for past violations, but the U.S. is turning a blind eye to ongoing trade in timber that should be considered at high risk of illegality given uncontroverted documentation that past shipments from these companies contained illegally logged timber. The U.S. should be prioritizing its enforcement resources to ensure that high risk shipments from Peru are closely scrutinized to ensure that the timber being imported has been legally harvested and exported.

The accountability gap remains equally acute in Peru. According to publicly available information, there have been no investigations, much less prosecutions, of those engaged in the illegal timber trade. These actors not only have evaded criminal penalties for their actions but they also reap the massive proceeds of the trade. For example, a large volume of illegal timber, enough to fill six Olympic-size swimming pools, was recently seized in an Interpol supported mission, conducted by SUNAT, the Peruvian tax and custom authorities. However, unofficial reports suggest this valuable timber was returned by the Forest Authorities to the very timber companies from which it was taken. Nor have concessionaires or exporters been forced to comply with OSINFOR's sanctions. The fines it levies on illegal operators remains theoretical, with cases tied up in appeals to the aforementioned nonexistent Tribunal. Of the 21.5 million Peruvian soles (US\$6.8 million) owed, OSINFOR has received less than 5%.⁷

Forest engineers in Peru play a particularly important role in the systemic fraud that pervades the Peruvian forest sector. The Forest Authority (SERFOR) maintains a list of 309 officially recognized forest engineers who are the only ones authorized to generate the inventories of forest resources available for harvest in timber concessions. These forest inventories are submitted by the concession holders as part of their annual operating plans (POAs), and must be approved by the relevant forest authorities. As of December 2014, nearly half of all of the forest engineers in the official registry, 153 out of around 300, responsible for some 1,146 false annual operating plans, have been found to have falsified forest inventories to facilitate laundering of timber.

After multiple requests by officials and stakeholders, only three of these 153 forest engineers have been sanctioned in any way. Together, these three were responsible for 189 false forest inventories in which well over 65% of the approved volumes for extraction were fabricated. These inflated volumes (meaning they referred to trees that did not exist on the concession) allowed for the creation of official papers that could then be used to launder timber from elsewhere. The total volume of timber in the false inventories signed just by this three forest engineers measured approximately 500,000 cubic meters, with a value of over \$60 million dollars. After years of delay, the collective fines they received for enabling this illegal activity amounted to less than \$3,000 (see chart on next page). This is functionally a parking

⁷ Acosta 2015.

ticket for what amounts to egregious and ongoing fraud, worth millions of dollars. To date, they have not been removed from the official list of approved forest engineers and are still authorized to carry out forest inventories.

Forest Engineer	Number of POAs with at least 50% non-existent trees	Volume approved (m3)	Volume approved (board ft)	Value in soles (1.8 sole/brd ft)	Value in US\$	Number of sanctions	Total fine (US\$)	Percentage of fine to laundered timber value (%)
#1	126	211,808	46,597,789	83,876,019	26,627,308	3	1,528	0.57
#2	35	187,188	41,181,457	74,126,622	23,532,261	2	917	0.39
#3	28	101,209	22,265,940	40,078,693	12,723,395	1	306	0.24

Sources: SERFOR, Ucayali Regional Government, OSINFOR

OSINFOR: It's Successes and Current Limitations

In the midst of a forest sector still riddled with falsification, laundering, corruption, and violence against forest defenders, Peru has established a legitimately independent agency that not only effectively monitors and attempts to sanction illegal logging but is making its information public for companies, government officials and communities to access: OSINFOR, the Agency for Supervision of Forest Resources and Wildlife (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre*).

- The concept of an independent oversight body was embedded in Peruvian law in 2000 but put into action by legislative measures passed in 2009 to comply with the U.S.-Peru FTA Annex on Forest Sector Governance.
- Since 2009, OSINFOR has conducted 3,498 field supervision visits, covering an area of 42,471 square miles and verifying the presence or absence of 321,019 trees. 72% of these supervisions have produced evidence of false information or illegal activity meriting a sanction or cancelation of the logging permit.
- OSINFOR has launched two online databases, SISFOR and SIGO, to provide detailed, geo-referenced information to the public and enforcement agencies regarding the legal status of over 3,700 supervised logging operations in Peru.

Since 2009, OSINFOR has issued some 2,290 final Resolutions indicating an infraction serious enough to assign penalties – 65% of all supervisions it has initiated. However, Final Resolutions may be, and typically are, appealed to a secondary body called the Forestry Tribunal. We understand that OSINFOR has

determined that logging should not be carried out while the case is under appeal, though it is not clear if regional authorities are upholding this interpretation.

This Tribunal was defined by Supreme Decree 1085 in 2008, the same one that created today's OSINFOR. The decree mandates the creation of a secondary body to review and make final decisions regarding appeals by concessionaires or permit holders. However, seven years later, this secondary body – called the Forestry Tribunal – has still not been established. A combination of political resistance and difficult requirements for the three posts in the Tribunal has impeded its formation. As this brief was being written, modified requirements had finally been approved and a new call for candidates was being made. Without the existence of the Tribunal, arguably no one has been held to proper account for illegal activities documented by OSINFOR's fieldwork. This institutional vacuum has hobbled efforts to hold most illegal operators to account.

Over the past few years, OSINFOR has been notably proactive in providing information to other agencies in order to facilitate actions that it alone cannot take. For example, OSINFOR has sent dozens of formal communications to SERFOR⁸ and other institutions, such as the Colegio de Ingenieros, which is the professional body that can sanction and revoke professional operating licenses, including lists of private forestry engineers who have signed off on demonstrably falsified documents, as described above, and requested that these individuals be removed from approved lists and sanctioned in some form. Although such action appears as a high priority in the Forest Annex and again in the January 2013 Joint Action Plan under the US-Peru FTA as noted above, none of these individuals have been removed from the approved list or seriously sanctioned.

Operation Amazonas: new official evidence that illegal logging is systemic across all species

OSINFOR has also invested considerable effort in building alliances with Peruvian law enforcement bodies to improve their knowledge of and investigations into the mechanisms of fraud, laundering and illegality in the forest sector. The most visibly successful result of this coordination was 2014's "Operation Amazonas", a three-month operation led by SUNAT (Superintendencia Nacional de Aduanas y de Administración Tributaria), the Peruvian Tax and Customs authority, with cooperation from the World Customs Organization and INTERPOL. The Operation resulted in the seizure of some 6 million board feet of timber worth \$20 million or more. According to public information, no one has been prosecuted in connection to the seized timber.

At the core of Operation Amazonas was a 'simple' data analysis: cross-referencing OSINFOR's first-hand data from forest inspections with SUNAT's transport and

⁸ El Servicio Nacional Forestal y de Fauna Silvestre (SERFOR, for its acronym in Spanish) is the Peruvian National Forest and Wildlife Service.

export data. For the first time, SUNAT requested exporters to provide information about the source concession of any and all wood (not only mahogany and cedar, for which CITES permits require this information). Peruvian regulations do not currently require the presentation at export of transport documents for non-CITES timber species. This means that for the non-CITES timber species, the exporter does not have to declare the concession of origin, which makes it nearly impossible for the Peruvian government to monitor or verify the legality of these products. The exporter does not even have to declare the scientific name or the common name for the species being traded, regardless of the country of destination. During Operation Amazonas, when exporters were forced to submit to authorities information about the origin of the wood, OSINFOR found evidence of falsified information for at least 68% of the sources provided by exporters.⁹ The recently created Office of the High Commissioner to Fight Illegal Logging, as well as the re-activated Multi-Sectoral Commission to Fight Illegal Logging, have reiterated the importance of requiring the inclusion of the timber transport document, which includes reference to the concession of harvest, in the exports documentation for all timber products, regardless of the species or level of transformation of the log to sawnwood or manufactured product.

EIA has continually stated in its 2012 report, petition, and other communications since then that the CITES species it specifically identified as illegal were just the tip of the iceberg and that the illegalities were equally rampant with all commercial species, just much more difficult to definitively track for the reasons outlined above. In fact, the situation of illegal harvest and trade for the rest of the timber species is causing considerably more damage due to the volume involved: over a million cubic meters illegally harvested and traded according to OSINFOR's public data. The decision to focus almost exclusively on the CITES-listed species of cedar and mahogany in response to EIA's 2012 petition significantly diminished the scope of the response needed to address the rampant illegal logging situation in the country.

"Garbage-in, garbage out" Timber Tracking System

The US has profiled the significance of a new timber control system designed to track illegal timber from stump to export, thereby helping to better identify illegal timber exports. This control system, called SNIC for its acronym in Spanish, relies on forest inventories submitted by the owners of the *títulos habilitantes*,¹⁰ which have been widely proven to include false information, such as reporting trees that do not exist within the property boundaries.¹¹ If the SNIC traceability system relies

⁹ OSINFOR. 2014. "Logros al 2014." Accessed at <http://osinfor.gob.pe/portal/logros2014/notalogro.html>

¹⁰ *Títulos habilitantes* is the term used to refer to the various modalities for accessing timber, for harvest, for commercial use. This includes concessions on public land, and permits on indigenous land and on private land.

¹¹ The Laundering Machine provided documentation for plenty of cases, while OSINFOR has continued to provide updated documentation in the same vein. In Operación Amazonas 2014, 68% of the cases showed false information.

http://www.osinfor.gob.pe/portal/data/destacado/adjunto/Presentacion_Plan%20Amazonas%202014-29%20octubre%202014.pdf

on information that reports “fake trees,” any additional checkpoints will not be able to detect illegal timber that is being laundered using the volume of those fake trees. The US government has spent considerable sums in supporting the development of a so-called state-of-the-art electronic timber tracking system that attempts to trace logs from stump to port in order to better detect illegal exports. While this system could be immensely valuable in the long term, this entire system is based on fraudulent inventories that are used by concessionaires to launder timber, resulting in a “garbage-in, garbage-out” tracking system. The US government has been repeatedly made aware of these weaknesses and yet the current design of the SNIC fails to address them.

Failure to Audit Timber Concessions

Although it has been part of the U.S.-Peru FTA from the beginning to conduct detailed audits of each concession at least every five years, the Peruvian government only just approved the “Manual de Auditoría Quinquenal a Concesiones Forestales con fines maderables¹²” (the manual to conduct audits of timber concessions every five years) on April 27th, 2015. Because the manual was just recently approved, none of these types of audits have ever been conducted in Peru by any Peruvian Government institutions.

These audits, referred to in Article 351 in Peru’s current Forest Law 27308 regulations as “*supervisiones con mérito de auditoría forestal*,” are very different from the supervisions conducted by OSINFOR. While the OSINFOR field visits and supervisory reports focus solely on one of the *título habilitante’s* Annual Operating Plans (known by the Spanish acronym POA), the *auditorías quinquenales* incorporate several additional components for a broader analysis, such as comparative analysis of many annual harvest plans within a concession (rather than just one), a financial audit of the *título habilitante*, an analysis of a concessions investments, a review of the efficiency of its activities, an evaluation of the relevant environmental risks and impacts, etc. These types of audits would provide a more full picture of how concessions are being operated that would complement the information contained in OSINFOR’s post harvest field verifications, but they still have yet to be implemented.

Conclusion

The Peruvian and US governments must significantly improve enforcement and actually stop illegal loggers and the related trade from operating with impunity. We have yet to see various commitments and programs of work lead to tangible enforcement results on the ground. The US government also bears a unique responsibility to act. In the past, well-documented instances of illegal timber shipments entering the US market have been provided to USTR. Despite the efforts

¹² To see the Resolución Presidencial 055-2015-OSINFOR that approves the manual and the manual itself, visit: <http://www.osinfor.gob.pe/portal/data/recurso/archivos/rp-055-2015-OSINFOR.pdf>

of a few courageous forest officials in Peru, illegal logging remains the status quo in Peru. The efforts of Peruvian officials to clamp down on this illicit trade are unlikely to be successful, if the international marketplace continues to traffic in stolen, illegal wood.

ANNEX: The situation of the 29 concessions included in the Petition to USTR

						USTR response to EIA (December 2012)	
	Concession	Contract Number	OSINFOR's sanction	Under appeal in OSINFOR	At the judiciary	Status at time of petition	Status at time of response to petition
1	Agroindustrial Victoria S.A.C.	17-TAH/C-J-038-02	Archivar I.S.			In operation	In operation/OSINFOR supervision conducted and report pending
2	Agrupación Maderera Anidolly S.A.C.	16-IQU/C-J-226-04	Caducado y multado	1		Suspended	Suspended/results of PAU pending
3	Artemio Becerril Navarro	16-REQ/C-J-021-04	Caducado y multado			Suspended	Suspended/OSINFOR supervision scheduled
4	Aserradero y Carpintería Don Pepe E.I.R.L.	16-IQU/C-J-030-04	Caducado y multado	1		In operation	Cancelled
5	Elicio Pereyra Pereyra	25-PUC/C-J-030-03	Caducado y multado			Suspended	Cancelled
6	Empresa Forestal San Juan Bosco S.A.C.	16-IQU/C-J-098-04	Caducado y multado	1		Suspended	Cancelled
7	Forestal El Mana S.A.C.	16-IQU/C-J-194-04	Caducado y multado	1		Suspended	Cancelled
8	Forestal San Pedro de Chambirillo S.A.C.	16-IQU/C-J-225-04	Caducado y multado	1		Suspended	Cancelled
9	Forestal Valera S.A.C.	16-IQU/C-J-090-04	Caducado y multado	1		Suspended	Cancelled
10	Gérman Gómez Vásquez	25-PUC/C-J-004-03	En PAU; Exp. Adm. Judicializado	1	1	Suspended	In operation/court review of OSINFOR decision to initiate PAU and suspend concession pending; court enjoined suspension pending review
11	Hector Murayari Macaya	16-IQU/C-J-022-04	Caducado y multado	1		Suspended	Cancelled
12	Hugo Atilio Sánchez Zegarra	16-IQU/C-J-044-04	Caducado y multado			Suspended	Cancelled
13	Ilter Villacorta Grandez	16-IQU/C-J-089-04	Caducado y multado			In operation	Cancelled
14	Inversiones la Oroza S.R.L.	16-IQU/C-J-050-04	Sancionado	1		In operation	In operation/preliminary investigation underway
15	Jaime Perez Garcia	16-IQU/C-J-047-04	Caducado y multado	1		Suspended	Cancelled
16	Jesús Dionisio Villagaray Gutiérrez	17-TAM/C-J-024-03	Caducado y multado	1		Suspended	Cancelled
17	Jose Zumaeta Ramirez	16-IQU/C-J-072-04	Sancionado	1		In operation	Suspended/results of PAU pending

18	Juan Teobaldo Becerril Navarro	16-REQ/C-J-019-04	Caducado y multado			In operation	Suspended/results of PAU pending
19	Lombardo Villacorta Perez	16-IQU/C-J-204-04	Caducado y multado	1		In operation	Suspended/results of PAU pending
20	Maderera Kalinowski E.I.R.L.	17-TAM/C-J-022-03	Caducado y multado	1		Suspended	Cancelled
21	Maderera Boleo - Madebol	17-TAM/C-J-002-02	Caducado y multado	1		In operation	Cancelled
22	Maderera La Foresta S.R.L.	16-IQU/C-J-007-04	Sancionado			Suspended	In operation, fined
23	Manuel Gatica Grandez	16-IQU/C-J-046-04	Archivar PAU			Suspended	In operation/OSINFOR supervision scheduled
24	María Del Carmen Pariona Coz	25-ATA/C-J-046-03	Caducado y multado	1	1	Suspended	Cancelled
25	Marlon Ibarra Riveiro	16-REQ/C-J-138-04	Sancionado			In operation	In operation/results of PAU pending
26	Operaciones y Exportaciones Amazonicas S.A.C. (OPEXA)	16-REQ/C-J-039-04	Caducado y multado			In operation	In operation/preliminary investigation underway
27	Oroza Wood S.A.C.	16-IQU/C-J-228-04	Caducado y multado			Suspended	Cancelled
28	Productores Forestales Uranias S.A.C.	16-IQU/C-J-192-04	Caducado y multado	1		Suspended	Cancelled
29	Productos Forestales Atacuari S.A.C.	16-IQU/C-J-207-04	Caducado y multado	1		Suspended	Cancelled
Total				18	2		

Sources: USTR, OSINFOR

Glossary for chart:

Archivar I.S.: after reviewing the supervisory report, OSINFOR finds that there is no evidence of infractions that could merit starting a PAU.

Caducado y multado: the level of violation of the law and the *título habilitante* conditions endangers the forest resources and therefore the *título habilitante* is cancelled.

En PAU: when the *título habilitante* is still undergoing OSINFOR's administrative investigative process called PAU.

Exp. Adm. Judicializado: when the holder of the *título habilitante* with a PAU (in process or concluded) starts a precautionary measure at the judiciary.

Sancionado: when the holder of a *título habilitante* is sanctioned, after the infractions to the forest and wildlife law have been verified. It can be a fine and/or complementary sanctions.

Archivar PAU: when the initial indications about an infraction to the forest and wildlife law that started a PAU, are found to be inconsistent.