

**Secretariat for Submissions on Environmental Enforcement Matters
United States - Peru Trade Promotion Agreement
Determination in accordance with Article 18.8 (1) and (2)**

Submitter: Native Federation of the Madre de Dios River and its Tributaries
Party: Peru
Reference: Submission on Environmental Enforcement Matters filed by the Native Federation of the Madre de Dios River and its Tributaries
Submission No.: SACA-SEEM/PE/002/2018
Date of receipt: July 9, 2018
Date of determination: December 28, 2018

The Secretariat for Submissions on Environmental Enforcement Matters after reviewing Submission SACA-SEEM/PE/002/2018, pursuant to Article 18.8 (1) and (2) of the US-Peru Trade Promotion Agreement, considers that **the Submission complies with the requirements** established in Article 18.8 (2), for the reasons stated in the following Determination.

Requirements under article 18.8 (2) of the US-Peru Trade Promotion Agreement	Fulfills		Justification
	Yes	No	
<i>The Secretariat may consider a submission under this Article if the Secretariat finds that the submission:</i>			
<i>a) is in writing in English or Spanish;</i>	X		Submission SACA-SEEM/PE/002/2018, as well as all additional documentation, is written in Spanish.
<i>b) clearly identifies the person making the submission;</i>	X		Submission SACA-SEEM/PE/002/2018 was submitted by the legal entity named Native Federation of the Madre de Dios River and its Tributaries (FENAMAD).
<i>c) provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based and on the identification of environmental laws of which the failure to enforce is asserted;</i>	X		Submission SACA-SEEM/PE/002/2018, includes documentary evidence of the alleged lack of effective environmental law enforcement, as well as the exhaustive identification of the laws that the Peruvian Government is not effectively enforcing.
<i>d) appears to be aimed at promoting enforcement rather than at harassing industry;</i>	X		Submission SACA-SEEM/PE/002/2018 appears to be aimed at promoting the Party's effective environmental law enforcement and does not indicate that it aims to harass industry.
<i>e) indicates that the matter has been communicated in writing to the</i>	X		Submission SACA-SEEM/PE/002/2018 provides information on the written

<i>relevant authorities of the Party and indicates the Party's response, if any; and</i>		communications by the Submitter to the relevant authorities of the Party.
f) <i>is filed by a person of a Party, except as provided in paragraph 3.</i>	X	Submission SACA-SEEM/PE/002/2018 is made by the Native Federation of the Madre de Dios River and its Tributaries (FENAMAD), an organization of indigenous peoples, registered as a legal entity with Electronic Certificate No. 11000655 in Peru's Registry of Legal Entities.

I. INTRODUCTION

1. Any person of a Party of the United States-Peru Trade Promotion Agreement (TPA) may file a submission to the Secretariat for Submissions on Environmental Enforcement Matters (hereinafter "Secretariat") asserting the lack of effective environmental law enforcement by a Party, in accordance with Article 18.8 (1) of the TPA.
2. In June 2015, the Parties signed the "Understanding for Implementing Article 18.8 of the United States-Peru Trade Promotion Agreement," with which the Secretariat was established. A Memorandum of Understanding was also signed with the Organization of American States (OAS) by which it is agreed that the OAS will house and provide administrative and technical support to the Secretariat in its Washington D.C. headquarters, in the United States.
3. The Secretariat, among its main functions, receives and considers submissions on Environmental Enforcement Matters (hereinafter "submissions") filed by any person of a Party, in accordance with the provisions of Article 18.8 of the TPA.
4. The Secretariat determines the admissibility of the submission, in accordance with the requirements set out in paragraph 2 of Article 18.8 of the TPA. If the submission meets these requirements, the Secretariat will determine whether these submissions merit a response from the Party, in accordance with paragraph 4 of Article 18.8 of the TPA.
5. The Secretariat will determine, once it has received a response provided by the Party or once the timeline set forth in Article 18.9 of the TPA to receive such response has been met, if the development of a Factual Record is warranted. If the Secretariat determines that the preparation of a Factual Record is not warranted, the process is terminated with respect to that submission.
6. If the Secretariat determines that the preparation of a Factual Record is warranted, the Environmental Affairs Council (EAC) of the TPA will be notified of this decision in accordance to Article 18.9 of the TPA.
7. The Secretariat prepares a Factual Record if any member of the EAC so orders. The Factual Record referred to in the above paragraph will be developed by the Secretariat if any member of the EAC so orders.

8. FENAMAD (hereinafter, the "Submitter") filed a Submission with the Secretariat, via email dated July 9, 2018, under Article 18.8 of the TPA, in which it asserts the lack of effective environmental law enforcement by the Peruvian Government in the process of preparation, deliberation, approval and enactment of Law No. 30723, "Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as a national priority and interest."
9. The Secretariat registered the Submission and assigned the number SACA-SEEM/PE/002/2018 (hereinafter, the "Submission") to the Submission.
10. The Secretariat acknowledged receipt of the Submission via email dated July 19, 2018, through the Letter SACA-SEEM/PE/002/2018/01, addressed to the Submitter with a copy to the EAC.
11. After examining the Submission under paragraphs 1 and 2 of Article 18.8 of the TPA, the Secretariat considers that the Submission SACA-SEEM/PE/002/2018 meets all the admissibility requirements for the reasons stated below.

II. ANALYSIS

A. **On the environmental laws that would have not been effectively enforced, in accordance with Article 18.8 (1)**

12. Any person of a Party may file a submission to the Secretariat under paragraph 1 of Article 18.8 of the TPA asserting that a Party is not effectively enforcing its environmental laws.
13. The Submitter alleges that during the preparation, deliberation, approval and enactment of Law No. 30723, "Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as a national priority and interest," the Peruvian Government failed to effectively enforce the following environmental laws:
 - a) Articles 1, 4, 5 and 8 of Law No. 28736, "Law for the protection of indigenous or tribal peoples in a situation of isolation and in a situation of initial contact," (hereinafter, "PIACI Law" for its Spanish acronym);
 - b) Law No. 29785, "Law on the right to prior consultation with indigenous or tribal peoples, recognized by the International Organization of Labor (ILO) Convention 169," (hereinafter, "Law of Prior Consultation");
 - c) Article 70 of Law No. 28611, "General Environmental Law";
 - d) Paragraph 12 of Article II of the Preliminary Title of Law No. 29763, "Forest and Wildlife Law"; and
 - e) Paragraph 3 of Article 18.11 of the United States-Peru Trade Promotion Agreement
14. This Determination will now analyze whether the laws cited by the Submitter fits the definition of "environmental law" provided by the TPA.

B. On the asserted environmental laws

15. Article 18.14 of the TPA defines the term "environmental law" as follows:

"environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal or plant life, through:

- (a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;*
- (b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto;*
- (c) the protection or conservation of wild flora or fauna, including endangered species, their habitat and specially protected natural areas; or*
- (d) for Peru, the management of forest resources, in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include statute or regulation, or provision thereof, directly related to worker safety or health."*

16. Article 18.14 of the TPA also establishes that statutes and regulations are:

"Laws, regulations and any other measures to fulfill its obligations under a covered agreement means a Party's laws, regulations and other measures of a Party at the central level of government. (...)

For Peru, statute or regulation means a law of Congress or Decree or Resolution enacted by the central level of government to implement a law of Congress that is enforceable by the central level of government."

17. The Secretariat considers important to clarify that under Article 18.14 of the TPA, the definition of "environmental law," "(...) means any statute or regulation of a Party, or provisions thereof (...)", which is why it is not required that the standard with respect to which the lack of effective environmental law enforcement is asserted is a "Law of Congress," as it is mentioned in the Submission, since it may also be regulations or provisions thereof.

a) On the TPA

18. The Submitter maintains that the Peruvian Government failed to effectively enforce paragraph 3 of Article 18.11 of the TPA, according to which:

"3. The Parties recognize the importance of respecting and preserving traditional knowledge and practices of their indigenous and other communities that contribute to the conservation and sustainable use of biological diversity."

19. Article 18.8 of the TPA establishes a procedure available to any natural or legal person that considers that one of the Parties is failing to effectively enforce its environmental laws.

20. The Secretariat is not the competent authority to evaluate the effective enforcement of the provisions set out in the TPA itself in accordance with the provisions of Article 18.8. The mechanisms for dispute resolution over the interpretation, application and compliance of the TPA are described in Chapter 21 therein.
21. The Secretariat considers that the provisions of the TPA may be asserted by the Submitter as long as the matter with which they are concerned is contained in the internal regulations of the Party. In such a case, the Secretariat will only evaluate the effective enforcement of the internal regulations of the Party, in accordance with Article 18.8 of the TPA.
22. That which was stated in the previous paragraph should not be interpreted as an impediment of the Secretariat to be guided by the provisions of the TPA when evaluating the Submission.
23. The Secretariat considers that the matter to which paragraph 3 of Article 18.11 of the TPA refers is related to the environmental laws of the Party asserted in the Submission. Accordingly, the Secretariat will limit itself to analyze the effective enforcement of domestic laws and regulations of the Party.

b) On Law No. 28736, PIACI Law

24. To begin the analysis of the PIACI Law, it is important to establish if it is framed within the definition of "environmental law" of the TPA, starting with the assumption mentioned in the definition of Article 18.14 of the TPA.
25. The Submission invokes Article 1 of the PIACI Law¹ that establishes the special legal and cross-sectoral framework for the rights of the PIACIs, particularly guaranteeing their rights to life and to health, safeguarding their existence and integrity.
26. Article 4 of the PIACI Law², cited in the Submission, establishes the rights of members of the PIACI. With this article, the Peruvian State is committed, among others, to protect the life and health of the PIACI, their traditional ways of life and recognizes the spiritual relationship these peoples have with their habitat as a core element of their identity.

¹Article 1.- Purpose of the Law.- The purpose of this Law is to establish the special cross-sectoral legal framework for the protection of the rights of the Indigenous Peoples of the Peruvian Amazon that are in a situation of isolation and a situation of initial contact, guaranteeing their rights to life and health in particular, safeguarding their existence and integrity.

² Article 4.- Rights of the members of the peoples in a situation of isolation or initial contact.- The State guarantees the rights of the indigenous peoples in a situation of isolation and in a situation of initial contact, committing to providing them with the following:

a) Protect their life and health by prioritizing the development of preventive actions and policies, given their possible vulnerability to communicable diseases; b) Respect their decision regarding the form and process of their relationship with the rest of the nation's society and with the State; c) Protect their culture and their traditional ways of life, recognizing the particular spiritual relationship of these peoples with their habitat, as a core element of their identity;

d) Recognize their right to own the lands they occupy, restricting the entry of foreigners to them; the property of the populations on the land they possess is guaranteed when they adopt a sedentary lifestyle; e) Guarantee free access and extensive use of their lands and natural resources for their traditional subsistence activities; and, f) Establish indigenous reserves, which will be determined on the basis of the areas they occupy and to which they have had traditional access, until they voluntarily make a decision regarding the titling of their land..

27. Article 5 of the PIACI Law³, asserted in the Submission, establishes the intangible nature of the Indigenous Reserves, prohibiting the performance of any activity other than that of ancestral uses and customs of the PIACI within said reserves.
28. The Submission also cites Article 8 of the PIACI⁴ Law, which establishes that the PIACI benefit from the rights of the Native Communities recognized in the Political Constitution of Peru and pertinent laws on the matter.
29. The PIACI Law is framed within the definition of "law or regulation" considered in Article 18.14 of the TPA, as it is a law enacted by Congress: "(...) In Peru, a law or regulation means a law of Congress (...)." ."
30. Articles 1, 4, 5 and 8 of the PIACI Law, cited by the Submitter, qualify as environmental laws in accordance with the definition of "environmental law" provided by Article 18.14 of the TPA, in particular subparagraph (c), in reference to the protection of wild flora and fauna, species in danger of extinction, their habitat and natural areas under special protection.

c) On Law N ° 29785, Law of Prior Consultation

31. The Submitter does not refer to any particular article of Law No. 29785, Law of Prior Consultation. It is important to point out that Article 18.8 of the TPA does not establish that the identification of articles is a requirement for a Submission.. However, the identification of specific articles provides the Secretariat greater clarity for the analysis of each particular case.
32. The Law of Prior Consultation⁵, in Article 1, establishes that the objective of this law is to develop the content, principles and procedure of the right to prior consultation with indigenous or tribal peoples regarding legislative or administrative measures that directly affect them.
33. Article 2 of the Law of Prior Consultation⁶ establishes that it is a right of indigenous or tribal peoples to be consulted beforehand on legislative or administrative measures that directly

³ Article 5.- Intangible nature of indigenous reserves. - Indigenous reserves for indigenous peoples in a situation of isolation or situation of initial contact are intangible insofar as they maintain their quality. In them: a) Population settlements different from those inhabited by the indigenous peoples cannot be established; b) The performance of any activity different from that of the ancestral customs and practices of the indigenous inhabitants is prohibited; c) No rights shall be granted that imply the use of natural resources, except for subsistence purposes of the peoples that inhabit them and those that use methods that do not affect the rights of indigenous peoples in a situation of isolation and situation of initial contact, and whenever the corresponding environmental assessment allows. If a natural resource susceptible of exploitation is located as a result of the State's public need, matters will proceed according to the law; and, d) The indigenous peoples that inhabit them are the sole and joint beneficiaries of the aforementioned lands.

⁴ Article 8.- Enforceable rights of members of Native Communities. - Indigenous peoples in a situation of isolation and a situation of initial contact benefit from all the rights that the Constitution and the law establish in favor of the Native Communities.

⁵ Article 1. Object of the Law. - This Law develops the content, principles and procedure of the right to prior consultation of indigenous or tribal peoples with respect to legislative or administrative measures that directly affect them. It is interpreted in accordance with the obligations established in Convention 169 of the International Labor Organization (ILO), ratified by the Peruvian State through Legislative Resolution 26253.

⁶ Article 2. Right to consultation. - It is the right of indigenous or tribal peoples to be consulted beforehand on

affect their collective rights, in particular their physical existence, cultural identity, quality of life or development.

34. Article 3 of the Law of Prior Consultation⁷ establishes that the purpose of the consultation is to guarantee the inclusion of indigenous peoples in the decision-making processes of the State and the adoption of measures that respect their collective rights.
35. The Law of Prior Consultation falls within the definition of "law or regulation" considered in Article 18.14 of the TPA, as it is a law enacted by Congress: "(...) In Peru, law or regulation means a law of Congress (...)."
36. The Submission asserts the lack of enforcement of the Law of Prior Consultation against possible risks that Law No. 30723 would generate in relation to the indigenous population, in particular to the PIACI in the Ucayali region, since the right of prior consultation has not been enforced throughout the different phases and stages of the legislative process for the enactment of the Law No. 30723, which includes the preparation, deliberation, approval and enactment of Law No. 30723.
37. The possible violation asserted by the Submitter refers to the risks faced by the indigenous peoples of the Ucayali region and in particular by the PIACI, mainly in the border zones, because of their vulnerability.
38. The main purpose of the Law of Prior Consultation is to guarantee the right to prior consultation of indigenous peoples as a mechanism of participation to safeguard their rights to physical integrity, life and health, and against legislative or administrative measures that could put them at risk.
39. The collective rights of indigenous peoples, referred to in the Law on Prior Consultation, in accordance with the international treaties signed by the Peruvian State and its internal regulations on the matter, include the rights to land and territory, which in turn includes the use of natural resources found in their geographical range and that are traditionally used within the current legal framework⁸.

legislative or administrative measures that directly affect their collective rights, their physical existence, cultural identity, quality of life or development. It also calls for carrying out the consultation regarding the plans, programs and projects of national and regional development that directly affect these rights.

The consultation referred to in this Law is implemented only by the State.

⁷ Article 3. Purpose of the consultation. - The purpose of the consultation is to reach an agreement or consent between the State and the indigenous or tribal peoples with respect to the legislative or administrative measure that directly affects them, through an intercultural dialogue that guarantees their inclusion in the decision-making processes of the State and the adoption of measures respectful of their collective rights.

⁸ f) Collective Rights. - Rights that concern indigenous peoples, recognized in the Constitution, in ILO Convention 169, as well as by international treaties ratified by Peru and national law. It includes, among others, the rights to cultural identity; to the participation of indigenous peoples; to consultation; to choose their development priorities; to preserve their customs, provided that they are not incompatible with the fundamental rights defined by the national legal system or with internationally recognized human rights; to special jurisdiction; to the land and territory, that is to say to the use of the natural resources that are in their geographic scope and that they traditionally use within the framework of the current law; to health with an intercultural approach; and intercultural education. Article 3 (f) of the Regulation of Law No. 29785, Law on the Right to Prior Consultation of Indigenous or Tribal Peoples recognized in International Labor Organization Convention 169.

40. The Secretariat considers that the provisions of the Law of Prior Consultation are framed within the definition of "environmental law" of subparagraph (c) of Article 18.14 of the TPA, to the extent that they refer to the collective rights of indigenous peoples and the impact of their participation in the prior consultation process regarding the protection of biodiversity, natural resources, habitats and natural areas under special protection that are within their geographical range.
41. Additionally, the Secretariat highlights the importance of participation and public consultation, in general, as covered in Article 18.11 of the TPA.

d) On Law N ° 28611, General Environmental Law

42. Article 70 of the General Environmental Law⁹, cited by the Submitter, establishes that in the environmental territorial planning process, citizen rights of indigenous peoples must be safeguarded and that their participation and integration in environmental management should be promoted.
43. The General Environmental Law is framed within the definition of "law or regulation" considered in Article 18.14 of the TPA, as it is a law enacted by Congress: "(...) In Peru, law or regulation means a law of Congress (...)" .
44. The General Environmental Law aims¹⁰ to establish the basic principles and standards to ensure the effective exercise of the right to a healthy, balanced and adequate environment for the development of life. Specifically, Article 70 refers to the need to safeguard the rights of indigenous peoples, which fall under the definition of environmental law provided by the TPA in Article 18.14.

e) On Law N ° 29763, Forestry and Wildlife Law

45. Paragraph 12 of Article II of the Preliminary Title of the Forestry and Wildlife Law¹¹ asserted by the Submitter, is intended to establish the integration with other standards relating to other

⁹Article 70.- On indigenous peoples, peasant and indigenous communities.- In the design and enforcement of environmental policy and, in particular, in the environmental territorial planning process, the rights of indigenous peoples, peasant and indigenous communities must be safeguarded in the Political Constitution and in international treaties ratified by the State. Public authorities promote their participation and integration in environmental management.

¹⁰Article 1.- On the objective.- This Law is the norm that regulates the legal regulatory framework for environmental management in Peru. It establishes the basic principles and norms to ensure the effective exercise of the right to a healthy, balanced and adequate environment for the full development of life, as well as compliance with the duty to contribute to an effective environmental management and to protect the environment, as well as its components, with the aim of improving the quality of life of the population and achieving the sustainable development of the country.

¹¹2. Integration with other regulatory frameworks. The norms relative to other natural resources or economic activities or of any nature that could directly or indirectly affect the integrity, conservation and security of the forest and wildlife patrimony of the Nation are governed by and in accordance with the current legislation in this matter, including the recognition and respect for the rights of indigenous peoples in accordance with ILO Convention 169. The implementation of this Law, its regulations and any other related measure comply with the obligations stipulated in the international treaties of which the country is a party and are in effect.

natural resources or economic activities that could affect the forest and wildlife patrimony, including the recognition and respect of the rights of the indigenous peoples.

46. The Forestry and Wildlife Law is framed within the definition of "law or regulation" considered in Article 18.14 of the TPA, as it is a law promulgated by Congress: "(...). In Peru, law or regulation means a law of Congress (...)".
47. The purpose of the Forestry and Wildlife Law¹² is to promote the conservation, protection, increase and sustainable use of forest and wildlife patrimony within the national territory of the Peruvian State, which is linked to the definition of environmental law provided by the TPA in Article 18.14.

C. On the compliance with the admissibility requirements of Article 18.8 (2)

48. Article 18.8 (2) of the TPA establishes six requirements that any Submission must meet concurrently to be considered by the Secretariat. The evaluation of the aforementioned requirements is listed below:

a) [Whether the submission] is written in English or Spanish

49. Submission SACA-SEEM/PE/002/2018, as well as all additional documentation filed by the Submitter is written in Spanish.
50. The Secretariat considers that the Submission meets the requirements of Article 18.8 (2) (a).

b) [Whether the submission] clearly identifies the person filing the Submission

51. The Submission SACA-SEEM/PE/002/2018 was presented by the legal entity named FENAMAD.
52. The Submitter has provided information on its legal constitution in Peru under the Electronic Certificate No. 11000655 of the Public Registries of Peru, with legal address in Jirón 26 de diciembre 276, Puerto Maldonado, Department of Madre de Dios, Peru and with e-mail fenamad@fenamad.com.pe
53. Likewise, the Submission is signed by its president Mr. Julio Cusurichi Palacios, identified with National Identity Document No. 04826553, as the legal representative of the Submitter.
54. The Secretariat considers that the Submission meets the requirement of Article 18.8 (2) (b).

¹² Article 1. Purpose and objective of the Law.- The purpose of this Law is to promote the conservation, protection, increase and sustainable use of forest and wildlife patrimony within the national territory, integrating its management with maintenance and improvement of the services of the forest ecosystems and other ecosystems of wild vegetation, in harmony with the social, economic and environmental interest of the Nation; as well as promoting forest development, improving its competitiveness, generating and increasing forest and wildlife resources and their value to society. The purpose of this Law is to establish the legal framework to regulate, promote and supervise forestry and wildlife activity to achieve its purpose.

c) *[Whether the submission]* provides sufficient information to allow the Secretariat to review the Submission, including any documentary evidence on which the Submission may be based and on the identification of environmental laws of which the failure to enforce is asserted

55. The Submission SACA-SEEM/PE/002/2018, in accordance with what is analyzed in this Determination, includes documentary evidence of the alleged lack of environmental law enforcement, as well as an exhaustive identification of the laws that the Peruvian Government may have failed to effectively enforce.

56. The Submitter attaches the following to the Submission:

- a) Copy of Supreme Decree No. 001-2014-MC, "To declare the recognition of the Indigenous or Tribal Peoples in Situation of Isolation and Situation of Initial Contact located in Territorial Reserves called "Madre de Dios," located in the department of Madre de Dios; "Isconahua," "Murunahua" and "Mashco Piro" located in the department of Ucayali, and the Territorial Reserve "Kugapakori, Nahua, Nanti and others," located in the departments of Ucayali and Cusco".
- b) Copy of Official Letter No. 000345-2016/VMI/MC, dated October 24, 2016, sent by the Vice Ministry of Interculturality of the Ministry of Culture to Congressman Guillermo Bocangel Weydert of the Committee on Transport and Communications of the Congress of the Republic, containing the Report No. 000084-016/DGPI/VMI/MC.
- c) Copy of Official Letter No. 214-2016-MINAM/DM, dated November 7, 2016, of the Ministry of the Environment addressed to Congresswoman María Elena Foronda Farro, President of the Commission of Andean, Amazonian, and Afro-Peruvian Peoples, Environment and Ecology of the Congress of the Republic, containing the Report No. 355-2016- MINAM/SG/OAJ and the Legal Technical Report No. 002-2016-SERNANP/DDE/DGANP/OAJ.
- d) Copy of the "Ruling made on the Bill 1123/2016-CR, which declares border zones and the maintenance of dirt roads in the Department of Ucayali a priority¹³," dated May 23, 2017.
- e) Copy of the letter sent by Survival International to Congressman Ushñahua Huasanga, dated August 23, 2017.
- f) Copy of Official Letter No. 0934-2017-JUS/CDJE-PPES, dated August 25, 2017, of the Ministry of Justice and Human Rights, addressed to Congressman Luis Galarreta Velarde, President of the Congress of the Republic.
- g) Copy of Official Letter No. 347-2017-DP/AMASPPI, dated September 13, 2017, of the Ombudsman's Office, addressed to Congressman Marco Arana Zegarra, President of

¹³ Bill 1123/2016-CR, was called "Bill that declares that the construction of roads in border zones and the maintenance of dirt roads in the Department of Ucayali is of national priority and interest."

the Commission of Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Congress of the Republic.

- h) Copy of the Report of the "Roundtable: Situation of Indigenous Peoples in Isolation and Initial Contact in the Geographical Scope of the Departments of Ucayali and Madre de Dios," dated October 4, 2017, held at the Congress of the Republic.
- i) Digital document containing a map called "Pueblo Mashco Piro" (Mashco Piro Town).

57. The laws identified in the Submission upon which the lack of effective environmental law enforcement is asserted are the following:

- a) Law No. 28736, Law for the protection of indigenous or native peoples in situation of isolation and in situation of initial contact, Articles 1, 4, 5 and 8;
- b) Law No. 29785, Law of the right to prior consultation of indigenous and tribal peoples, recognized in Convention 169 of the International Organization of Labor (ILO), hereinafter Law of prior consultation;
- c) Law No. 28611, General Environmental Law, Article 70;
- d) Law No. 29763: Forestry and Wildlife Law, paragraph 12 of Article II of the Preliminary Title of this Law; and
- e) United States-Peru Trade Promotion Agreement, paragraph 3, Article 18.11.

58. The Submission complies with containing sufficient information to allow the Secretariat to review it, including documentary evidence upon which the Submission is based and the identification of laws with respect to which the lack of enforcement is asserted.

59. The Secretariat considers that the Submission meets the requirement of Article 18.8 (2) (c).

d) *[Whether the submission]* appears to be aimed at promoting enforcement rather than at harassing industry;

60. The Submission SACA-SEEM/PE/002/2018 seems to be focused on promoting the effective law enforcement. The Secretariat considers that the Submission does not indicate that it aims to harass industry.

61. The Secretariat considers that the Submission meets the requirement of Article 18.8 (2) (d).

e) *[Whether the submission]* indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any

62. Submission SACA-SEEM/PE/002/2018 provides information on communications, in writing, by the Submitter and addressed to relevant authorities of the Party.

63. The Submitter has attached the communications sent on the matter to relevant authorities of the Party as Annex 5, which is included in the email through which the Submission is made. Said Annex 5 begins with a table called "Documentation of Bill 1123/2016-CR" in which some of the enclosed communications are listed. The details of the written communications of the Submitter to the institutions of the Party, which were attached to the Submission, are presented below:

- a) Copy of Official Letter No. 146-2017-FENAMAD dated August 9, 2017, addressed to the Ombudsman's Office. In this Office, FENAMAD requests that the Ombudsman's Office take action against the risks that would arise from the approval of the ruling of Bill No. 1123-2016-CR (subsequently Law No. 30723) before the possible impact of Protected Natural Areas, Indigenous Communities and in particular to the PIACI in the regions of Ucayali, Madre de Dios and Cusco.
- b) Copy of Official Letter No. 147-2017-FENAMAD dated August 9, 2017, addressed to the Commission of Andean, Amazonian, Afro-Peruvian Peoples, Environment and Ecology of the Congress of the Republic (hereinafter, CPAAAAE), in which the Submitter requires the CPAAAAE to exercise political control and guarantee the right of the PIACI through the creation of a Roundtable and issuance of an opinion of the CPAAAAE before the plenary session of the Congress of the Republic. Likewise, the Letter contains a request for the expansion of the study, analysis and debate of the Bill No. 1123-2016-CR with respect to the possible impact of the Protected Natural Areas, Indigenous Communities, in particular the PIACI in the regions of Ucayali, Madre de Dios and Cusco.
- c) Copy of the Official Letter No. 148-2017-FENAMAD, dated August 9, 2017, addressed to the Vice Ministry of Inter-Culturality of the Ministry of Culture. In the aforementioned Letter, the Submitter provides information on the Bill No. 1123-2016-CR and requests the coordination and introduction of opinion, since this would affect Protected Natural Areas, Indigenous Communities and, in particular, PIACI, vulnerable.
- d) Copy of Official Letter No. 150-2017-FENAMAD, dated August 9, 2017, addressed to the Office of the Supranational Specialized Attorney General of the Ministry of Justice, in which the Submitter communicates that the approval of Bill No. 1123-2016 -CR would suggest an impact to the Protected Natural Areas, Indigenous Communities and in particular to the PIACI, in addition to requesting the Attorney General's Office to notify the Presidency of the Congress of the Republic about this matter.
- e) Copy of Official Letter No. 151-2017-FENAMAD, dated August 9, 2017, addressed to the President of the Congress of the Republic. Through this Official Letter, the Submitter notifies the President of the Congress of the Republic of its request to verify Bill No. 1123-2016-CR so that it does not affect Protected Natural Areas, Indigenous Communities and in particular to the PIACI.
- f) Copy of the Official Letter No. 163-2017-FENAMAD, dated September 19, 2017, addressed to Congresswoman Tania Edith Pariona Tarqui, in which it is requested that

she intervene and exercise political control over the approval by the Ministry of Transport and Communications (MTC) on the Classification of Routes of the National Road System (SINAC for its acronym in Spanish) approved by Supreme Decree No. 011-2016-MTC, which includes route MD-104 and UC-106, which runs between the regions of Madre de Dios and Ucayali, and which would cross territories ancestrally inhabited by indigenous peoples in a situation of isolation when crossing the Territorial Reserve created in favor of the peoples in isolation Mashco Piro, Yora, Amahuaca and others; as well as the Alto Purús National Park

64. It is important to note that the aforementioned "Documentation of Bill 1123/2016-CR" mentions the following communications that the Submitter has addressed to relevant institutions of the Party, but they are not attached to the email through which the Submission was filed:

- a) Official Letter No. 149-2017-FENAMAD, dated August 9, 2017, addressed to the Head of the National Service of Natural Areas Protected by the State (SERNANP).
- b) Official Letter No. 200-2017-FENAMAD, dated October 31, 2017, addressed to Congressman Marco Arana, President of the CPAAAAE of the Congress of the Republic.
- c) Official Letter No. 202-2017-FENAMAD, dated October 31, 2017, addressed to Congressman Víctor Andrés García Belaunde, Spokesperson of the political party Acción Popular.
- d) Official Letter No. 203-2017-FENAMAD, dated October 31, 2017, addressed to Congressman Daniel Salaverry, Spokesperson of the political party Fuerza Popular.
- e) Official Letter No. 204-2017-FENAMAD, dated October 31, 2017, addressed to Congressman César Villanueva, Spokesperson for the political party Alianza Para el Progreso.

65. The Secretariat considers that the Request meets the requirement of Article 18.8 (2) (e).

f) [Whether the submission] is presented by a person of a Party, except as set forth in paragraph 3.

66. The Submission SACA-SEEM/PE/002/2018 is submitted by FENAMAD, an organization of indigenous peoples registered as a legal entity with Electronic Certificate No. 11000655 of the Registry of Legal Entities of Peru, in the book on Rural and Native Communities, of the Registration Zone No. X Headquarters Cusco, Registry Office of Madre de Dios, with legal address in Jiron 26 de Diciembre 276, Puerto Maldonado, Madre de Dios Peru.

67. The Submission is signed by Peruvian citizen Mr. Julio Ricardo Cusurichi Palacios, identified with National Identity Document No. 04826553, in his capacity as President of FENAMAD.

68. The Secretariat considers that the Submission meets the requirement of Article 18.8 (2) (f).

III. DETERMINATION

69. For the aforementioned reasons, the Secretariat considers that Submission SACA-SEEM/PE/002/2018 asserts the lack of environmental law enforcement of a Party, in accordance with what is established in Article 18.8 (1) of the TPA. Likewise, it complies with the admissibility requirements set out in Article 18.8 (2) of the TPA.
70. Therefore, the Secretariat determines that the Submission complies with the provisions of paragraphs 1 and 2 of Article 18.8 of the TPA.
71. In accordance with Article 18.8 (4), the Secretariat will determine whether the Submission merits a response from the Party.

(original signed)

Dino Delgado Gutiérrez

Executive Director

Secretariat for Submissions on Environmental Enforcement Matters

U.S.- Peru Trade Promotion Agreement