

**DEAR SIRs AND MADAMS**

**SECRETARIAT FOR SUBMISSIONS ON ENVIRONMENTAL  
ENFORCEMENT MATTERS UNITED STATES—PERU TRADE  
PROMOTION AGREEMENT**

We, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], address  
you to file the following submission:

**I.- Submission**

We, the submitters, **assert the lack of effective enforcement of the Second Complementary Transitory Provision of the Environmental Management Regulation of the Agriculture Sector approved by Supreme Decree No.019-2012-AG**, which entered into force on November 15, 2012.

We make this submission within the framework of the provisions of Articles 18.8 and 18.9 of the Trade Promotion Agreement (TPA) between Peru and the United States,

The aforementioned legal norm states the following textually:

**ENVIRONMENTAL MANAGEMENT REGULATION OF THE  
AGRICULTURE SECTOR. SUPREME DECREE No.019-2012-AG.**

**COMPLEMENTARY TRANSITORY PROVISIONS**

**SECOND. - Environmental Adjustment<sup>1</sup>**

*Within a period of no more than one hundred and eighty (180) business days, the Ministry of Agriculture will approve, by means of a Ministerial Resolution, the Schedule for the Environmental Adjustment of the ongoing activities under the responsibility of the Agriculture Sector.*

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<sup>1</sup> Note from the translation: Environmental Adjustment refers to the establishment of a specific period of time applicable to the existent activities when a new environmental regulation is approved. Within this period of time it is expected that the responsible of the activity should do the required investments in order to achieve compliance with environmental regulations.

*Said Schedule will establish the deadlines for the presentation of the environmental management instrument (DAAC or PAMA), and for environmental adjustment.*

*If the owner of the activity in progress does not make the environmental adjustments according to the provisions of this Regulation and within the deadlines established in the Schedule, the owner will be subject to the administrative sanctioning procedure, in accordance with the current legal framework.*

This Submission is filed by the following people, nationals of the Republic of Peru: [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Under the scope of what is indicated in paragraph a) of article 8 of the Understanding for Implementing Article 18.8 of the USA-Peru Trade Promotion Agreement, we explicitly request that confidential information of our personal data not be disclosed to the Peruvian Government and the Government of the United States of America; in such a way that our identity in this document, as well as the communication sent to the Peruvian Government, including any other data or information from which our identity can be directly or indirectly known, remain confidential.

We indicate the following as the physical address: [REDACTED]  
[REDACTED]  
[REDACTED], where notifications of this case will be sent.

## **II.- COMPLIANCE WITH THE ADMISSIBILITY REQUIREMENT**

As submitters, we have asked the relevant institutions, as provided in paragraph e) of Article 18.8.2, of the US-Peru Trade Agreement, to comply with the environmental law whose lack of effective enforcement we assert.

Indeed, on October 17, 2022, we sent a communication to the Ministry of Agricultural Development and Irrigation (MIDAGRI) by means of a notarized letter, in which we requested the enforcement of the provisions of the Second Complementary Transitory Provision of the Environmental Management Regulation of the Agriculture Sector approved by Supreme Decree No.019-2012-AG, in force for 10 years and which has not been

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<sup>2</sup>DNI (Documento Nacional de Identidad) is translated as National Identification Document.

implemented to date. Likewise, a copy of the aforementioned notarized letter was sent to MINAM through the digital system of the Ministry of the Environment, (MINAM) called the Zero Paper Procedure, on October 14, 2022 at 7:04 p.m., having been registered with file 2022060085.

In turn, we note that the Agency for Environmental Assessment and Enforcement (OEFA), which is the entity in charge of supervising, auditing, and sanctioning these activities in environmental matters, has been closing administrative sanctioning procedures for the activities in progress at the time of approval of the previously indicated sectorial environmental management regulation, as the required adjustment schedule has not been approved as provided in the aforementioned Second Complementary Transitory Provision of the Environmental Management Regulation of the Agriculture Sector approved by Supreme Decree No.019-2012-AG.

This communication was answered by Letter No. ■■■-2022-MIDAGRI-DVDAFIR/DGAAA, dated October 27, 2022, sent by the General Director of the General Directorate of Agricultural Environmental Affairs (DGAAA) of MIDAGRI.

In said communication, the DGAAA indicates that Ministerial Resolution No. 141-2022-MIDAGRI (April 11, 2022) ordered the publication of the draft Environmental Management Regulation of the Agricultural and Irrigation Sector that contains the deadline for the presentation and the adjustment of corrective environmental management instruments. In turn, the DGAAA indicates that with General Directorate Resolution No. 663-2022-MIDAGRI-DVDAFIR-DGAAA-DGAA dated October 21, 2022, that is, **after receiving our notarized letter**, the timeline for the development of twenty-four (24) participatory workshops was approved, with the purpose of socializing the scope of the aforementioned draft regulation at the national level. From the review of the aforementioned resolution, it is observed that such a process will last 8 months, with which we estimate that the DGAAA will conclude the consultation of the indicated draft regulation around July 2023.

Likewise, the DGAAA indicates that this authority applies the provisions in article 40 of the Environmental Management Regulation of the Agriculture Sector, approved by Supreme Decree No. 019-2012-AG, for the assessment of environmental management instruments used in activities in operation or that have begun prior to the time the aforementioned Regulation came into force (that is, before November 15, 2012). This norm states that when significant negative environmental impacts are not generated, it is appropriate to present an Environmental Declaration of Activities in Progress - (DAAC) and that when significant environmental impacts are generated, it is appropriate to present an Environmental Adjustment and Management Program - (PAMA).

Lastly, it is noted that in accordance with the Resolution of the Directive Council No. 019-2019-OEFA/CD dated May 4, 2019, the Agency for Environmental Assessment and Enforcement - OEFA, assumed the functions of supervision, inspection, and sanctioning in environmental issues in the agricultural sector.

### **III.- GROUNDS FOR THE SUBMISSION**

The grounds for our submission are as follows:

- a) MIDAGRI has not complied with approving the adjustment schedule for ongoing agricultural activities.

As indicated, since the Environmental Management Regulation of the Agriculture Sector (D.S. No.019-2012-AG dated November 15, 2012) entered into force, a period of 180 business days was established in its Second Complementary Transitory Provision for the approval, by means of a Ministerial Resolution, of a Schedule for the Environmental Adjustment of the activities underway under the jurisdiction of the Agriculture Sector. In this regard, it should be noted that there is a set of at least 17 agricultural activities according to the inclusion list contained in annex 2 of the Regulation of the National System of Environmental Impact Assessment (D.S.019-2009-MINAM). To date, 10 years after the issuance of this regulatory mandate, said schedule has not been approved.

Therefore, the term in which the holders of agricultural activities existing before November 15, 2012, must comply with presenting the corresponding environmental management instrument to the competent environmental authority has not been established, in order to achieve the approval and enforcement of said instrument; that is, the term for the obligatory environmental adjustment of these activities has not been established.

With the reply to our communication of last October 17, the DGAAA of MIDAGRI confirms that the date from which environmental adjustment is required for ongoing activities has not been determined yet. Likewise, the draft of the new "Agricultural and Irrigation Environmental Management Regulations", which is in the process of public consultation, has incorporated a provision (the First Complementary Transitory Provision) that regulates the environmental adjustment of ongoing activities initiated before the approval of the Environmental Management Regulation of the Agriculture Sector (Supreme Decree No.019-2012-AG), where it is indicated that non-compliance with the environmental adjustment period constitutes an administrative infraction.

We must indicate that the regulation that we are pointing out as not being applied by the authorities is the one referring to the enforceability of environmental adjustment for agricultural activities that were being developed before the approval of the first sectoral environmental regulation (2012); therefore, our submission does not include the reference DGAAA made in relation to the applicable regulations for the environmental assessment of the activities in progress, nor does it include the reference DGAAA made to the powers of OEFA in matters of environmental control of agricultural activities.

- b) This non-compliance affects the proper exercise of environmental supervision of agricultural activities, which has a direct impact on the situation of environmental degradation in environmentally sensitive areas.

Non-compliance with the provisions of the Second Complementary Transitory Provision of the Environmental Management Regulation of the Agriculture Sector has a negative impact on the exercise of environmental control functions; as is explicitly recognized in the supporting information report of Ministerial Resolution No.141-2022-MIDRAGRI that orders the pre-publication of the new sectoral environmental regulation.

Indeed, said document cites an OEFA Report that states the following:

***“ REPORT N° 00090-2020-OEFA/DPED-SMER***

***Point 1: How many sanctioning administrative procedures have been closed because the administrator of the Agricultural Sector does not have the Adjustment Schedule indicated in the Second Complementary Transitory Provision of the Environmental Management Regulation of the Agricultural Sector, approved by Supreme Decree No. 019-2012-AG.***

*To date, **fifty-one (51) files** of administrative sanctioning procedures (hereinafter, **PAS**) have been closed, due to the lack of the Adjustment Schedule indicated in the Second Complementary Transitory Provision of the Environmental Management Regulation of the Agriculture Sector, approved by Supreme Decree No. 019 -2012-AG.*

*It should be noted that the Directorate of Environmental Supervision in Productive Activities (DSAP) has closed eighty-two (82) files in the period from May 2019 to November 2020 because of the lack of said Adjustment Schedule, that is, the owners are in the process of adjustment in accordance with the provisions of the Second Complementary Transitory Provision of Supreme Decree No. 019-2012-AG.”*

(the highlighting is from the original document)

Therefore, it is clearly established that the environmental control authority has, repeatedly, been forced to close the administrative sanctioning procedures initiated against the owners of agricultural activities due to the lack of the Adjustment Schedule indicated in the Second Complementary Transitory Provision of Environmental Management of the Agricultural Sector, approved by Supreme Decree No. 019 -2012-AG. Until said schedule is approved, OEFA will continue to be subject to this limitation in the exercise of environmental control functions under its responsibility.

On the other hand, as can be seen on the website <https://www.maaproject.org/palma-aceitera/>

recent information regarding deforestation due to agricultural activities in the Amazon can be analyzed.

Likewise, there is recent information on the environmental impact and environmental damage of palm oil cultivation, described in the academic article, *Deforestation risks posed by oil palm expansion in the Peruvian Amazon*<sup>3</sup>. This article concludes with the need to limit deforestation due to the expansion of palm oil with real-time monitoring systems of areas at risk, for which creating new protected areas, consulting indigenous communities, including the need for regulation of the construction of communication routes to reduce the loss of biodiversity are proposed.

It is important to highlight that the Ombudsman's Office in 2017 published Report N.001-2017-DP "*Deforestation due to agro-industrial crops of palm oil and cacao - Between the illegality and inefficiency of the Government*" where the environmental problems related to the development of agro-industrial activities are addressed.

In said report it is stated that:

*25. Our legal system states that in order to start the execution of large-scale agricultural activities, which imply the removal of forest cover on a private property, the classification of lands according to their capacity for greater use is required, in addition to authorizations of environmental certification, land use change, and forest clearing.*

*Consequently, prior to the start of agricultural activities in the Tamshiyacu (Loreto), Zanja Seca (Ucayali), and Tibecocha (Ucayali) Fundos, properties of the companies that are part of the Melka Group: Cacao del Perú Norte S.A.C., Plantaciones Ucayali S.A.C. and Plantaciones Pucallpa S.A.C., respectively; These companies*

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<sup>3</sup> Ver, Varsha Vijay et al 2018 Environ. Res. Lett. 13 114010 <https://iopscience.iop.org/article/10.1088/1748-9326/aae540/pdf>

*that are mentioned were supposed to obtain the classification of lands according to their capacity of greater use that demonstrates the natural aptitude for permanent crops or in clearing the lands that would be allocated to the cultivation of palm oil and cacao. Subsequently, they had to obtain the corresponding environmental certification, and then the change of land use and clearing to remove the forest cover that was on said soils. Nevertheless, the General Directorate of Agriculture Environmental Affairs of the Ministry of Agriculture and Irrigation, verified that, during the years 2014 and 2015, the aforementioned companies deforested 13,366.75 ha of Amazonian forests to start their agricultural activities, without having obtained the classification of lands or the authorizations mentioned above.*

- c) This non-compliance, in turn, by limiting the exercise of environmental control, means that environmental damage derived from agricultural activities prior to the approval of the Environmental Management Regulation of the Agriculture Sector cannot be prevented, managed, or controlled.

We, the submitters, are very concerned that non-compliance with the provisions of the Second Complementary Transitory Provision of the Environmental Management Regulation of the Agriculture Sector, approved by Supreme Decree No. 019 -2012-AG, generates impunity as it prevents the environmental control authority from performing its functions regarding agricultural activities initiated before the approval of said regulation, which has generated and generates environmental damage (deforestation and pollution). It is serious that this occurs in ecosystems of greater ecological value, such as the Amazon ecosystem, and that environmental damages are not being prevented, managed neither controlled.

- d) Failure to comply with environmental law collides with article 118.1 of the Political Constitution of Peru, which expressly states that it is the responsibility of the President of the Republic to comply with and enforce the laws. Likewise, according to the Organic Law of the Executive Power, Law 29158 article 8.1, the President of the Republic is responsible for the compliance and enforcement of the Political Constitution of Peru, treaties, laws, and other legal provisions.

**BASED ON THE AFOREMENTIONED POINTS:**

We ask that this submission be considered as admitted and that the corresponding procedures be followed within the framework of the rules established in Articles 18.8 and 18.9 of the USA-Peru Trade Promotion Agreement.

**ANNEXES:**

1. Notarized letter sent to MIDAGRI and MINAM and the reply received.
2. Draft Environmental Management Regulation of the Agricultural and Irrigation Sector in consultation (R.M.0141-2022 MIDAGRI)
3. Regulation of the Law of the National System of Environmental Impact Assessment (D.S.019-2009-MINAM).
4. Report of the Ombudsman's Office N.001-2017-DP "*Deforestation due to agro-industrial crops of palm oil and cacao- Between illegality and inefficiency of the Government*"  
[https://repositorio.spda.org.pe/bitstream/20.500.12823/231/1/Deforestacion\\_Cultivos\\_Agroindustriales\\_2017.pdf](https://repositorio.spda.org.pe/bitstream/20.500.12823/231/1/Deforestacion_Cultivos_Agroindustriales_2017.pdf)

Lima, November 18, 2022

[REDACTED]