

**Secretariat for Submissions on Environmental Enforcement Matters  
United States - Peru Trade Promotion Agreement  
Determination in accordance with Article 18.8 (4)**

**Submitters:** [REDACTED] and Derecho, Ambiente y Recursos  
Naturales (DAR)

**Party:** Peru

**Reference:** Submission on Matters of Environmental Enforcement filed by the  
submitters.

**Submission No.:** SACA-SEEM/PE/001/2022

**Date of receipt:** November 27, 2022

**Date of Determination:** April 26, 2023

The Secretariat for Submissions on Environmental Enforcement Matters, after reviewing Submission SACA-SEEM/PE/001/2022 pursuant to Article 18.8 (4) of the United States - Peru Trade Promotion Agreement, considers **the submission merits a response from the Party.**

## **I. INTRODUCTION**

1. Any person of a Party of the United States-Peru Trade Promotion Agreement (TPA) may make 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. On June, 2015, the Parties signed the “Understanding for Implementing Article 18.8 of the United States—Peru Trade Promotion Agreement,” which established the Secretariat. 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 headquarters in Washington D.C., 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, natural or legal, of a Party, in accordance with the provisions of Article 18.8 of the TPA.
4. The Secretariat determines the eligibility of the Submission, in accordance with the criteria set out in paragraph 2 of Article 18.8 of the TPA. If the Submissions meet these criteria, 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 from the Party or once the timeline set forth in Article 18.9 of the TPA in which such response is received has been met, whether the preparation of a Factual Record is warranted. If the Secretariat determines that the preparation of a Factual Record is not warranted, the process is then 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 with Article 18.9 of the TPA.
7. The Secretary prepares a Factual Record if any member of the EAC so orders.
8. Seven submitters who identified their personal information as confidential (hereinafter, the "Submitters") filed a submission under Article 18.8 of the TPA to the Secretariat, via email dated November 27, 2022, in which they assert the failure 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. Likewise, the Submitters indicated that, under the provisions of literal a) of Article 8 of the Understanding, they request that the confidentiality of their personal data be granted before the Government of Peru and the Government of the United States of America.
9. The Secretariat registered the Submission as SACA-SEEM/PE/001/2022.
10. The Secretariat acknowledged receipt of the Submission via email dated November 28, 2022, through letter SACA-SEEM/PE/001/2022, addressed to the Submitters with a copy to the EAC. In said communication, the Secretariat granted the confidentiality requested by the Submitters.
11. On November 30, 2022, at the EAC meeting held in Washington D.C., the Secretariat informed the Council of the receipt of this Submission, including the reference to the requested confidentiality; pending the issuance of the opinion of the EAC regarding the scope of the interpretation of the aforementioned Article 8 of the Understanding.
12. On December 21, 2022, the Secretariat issued Determination SACA-SEEM/PE/001/2022/D1, where it was indicated that Submission SACA-SEEM/PE/002/2022 complies with the provisions of Article 18.8 (1) and with the admissibility requirements contained in Article 18.8 (2) communicating it to the Submitters and to the Environmental Affairs Council by email of the same date.
13. As of March 22, the Secretariat received a letter sent by Derecho, Ambiente y Recursos Naturales (DAR) through which that civil society organization adheres to all ends of the present Submission. On the same date, the Secretariat informed the EAC of the receipt of this communication.

14. As of March 28, upon request of the Secretariat, DAR sent, through email, information about the legal status of its organization.
15. On April 4, 2023, the Secretariat received instructions from the Environmental Affairs Council (EAC) regarding the scope of Article 8 of the Understanding. These instructions indicate that this rule does not establish the non-disclosure of confidential information to the Parties, but to the public, which is why the Secretariat, in this case, may not grant the confidentiality requested by the Applicants. At the same time, the EAC suggested that the Secretariat inform the Submitters about the scope of Article 8 of the Understanding, since in case the Submitters wish to continue with this Submission, their personal information will be protected from being disclosed under the aforementioned scope of Article 8 of the Understanding and that, alternatively, the Submitters could withdraw their Submission and explore other options such as working with a civil society organization to resubmit the Submission so as not to disclose their confidential information to the Parties.
16. On April 12, 2023, the Secretariat informed the EAC that on that same date it had held a virtual meeting with the Submitters in this case and that most of them expressed their oral consent to the disclosure of their personal information to the EAC. In turn, at that meeting a person had mentioned its decision to present a withdrawal on an individual basis, procedure which was consulted to the EAC, having received the acceptance by the representatives of the United States and Peru, through emails dated April 17 and April 18, respectively.
17. On April 18, 2023, the Secretariat sent a communication via email requesting a written expression of the names of the Submitters who express their consent to the disclosure of their personal data to the Parties.
18. On April 19, 2023, the Secretariat received a response from the Submitters indicating the full name of the 5 applicants who agree to the disclosure of their personal information, which was informed by the Secretariat to the Parties by email of the same date.
19. On April 20 and 25, 2023, the Secretariat received two documents with the withdrawal of 2 of the Submitters in this case.
20. Pursuant to the provisions of Article 18.8 (4) of the TPA, it rests on the Secretariat to determine whether the Submission merits a response from the Party.

## **II. ANALYSIS**

### **A. On the criteria established in Article 18.8 (4)**

21. Article 18.8 (4) of the TPA establishes four criteria the Secretariat must consider to determine if the Submission merits requiring a response from the Party. Below is the evaluation of the aforementioned criteria:

**a) [whether] the submission is not frivolous and alleges harm to the person making the Submission;**

22. In Submission SACA-SEEM/PE/001/2022, the submitters assert the generation of environmental harm as a result of the Ministry of Agriculture not enforcing the Second Complementary Transitory Provision of the Environmental Management Regulation of the Agriculture Sector approved by Supreme Decree No. 019 -2012-AG. This Provision established a period of no more than 180 days for the Ministry of Agriculture to approve the Schedule for the Environmental Adjustment for agricultural activities that had been ongoing before the Environmental Management Regulation had been approved. Said Schedule would have established the deadlines for the presentation of the environmental management instruments (DAAC or PAMA), which were required for an effective enforcement of the environmental regulations applicable to these activities. Therefore, as the Submitters assert, environmental harm was produced due to this lack of action from the environmental enforcement authority in charge of assuring compliance of environmental assessment regulations applicable to the aforementioned agricultural activities.
23. In particular, Submission SACA-SEEM/PE/001/2022 states that:
- a. The non compliance of this environmental law affects the proper exercise of environmental enforcement functions, which has a direct impact on the situation of environmental degradation in environmentally sensitive areas. In particular, it is noted that:
    - Repeatedly, the environmental enforcement authority has been forced to file administrative sanctioning procedures initiated against the owners of ongoing agricultural activities due to the lack of the Schedule for Environmental Adjustment.
    - Until said schedule is approved, OEFA will continue to be subject to this limitation in the exercise of the environmental enforcement functions under its responsibility.
  - b. This non-enforcement, in turn, means that environmental harm derived from agricultural activities prior to the approval of the Environmental Management Regulation of the Agriculture Sector cannot be prevented, managed or controlled. It is a serious matter that this occurs in ecosystems of greater ecological value, such as the Amazon ecosystem.
  - c. There is recent graphic information on the impact and environmental harm generated by agricultural activities in the Amazon region.
  - d. There is recent academic information on the impact and environmental harm of palm oil cultivation, that notes the need to limit deforestation due to the expansion of palm oil.

- e. The Submission quotes the document prepared by the Ombudsman's Office called "Deforestation due to agro-industrial crops of palm oil and cacao—Between the illegality and inefficiency of the Government" (Report N.001-2017-DP) where environmental problems related to the development of agro-industrial activities are addressed, noting that the development of large-scale agricultural activities requires, among other requirements, environmental certification (approval of the respective environmental management instrument) but, nevertheless, the sectoral authority has verified the deforestation of Amazonian forests due to agricultural activities that have not complied with said certification.
24. Based on the above, it is reasonable to hold that the Submission under analysis is not frivolous since it supports the failure of enforcement of the environmental law of a Party and substantiates the existence of environmental harm derived from it.
  25. Under these reasons, this Secretariat considers that the submission SACA-SEEM/PE/001/2022 is not frivolous and asserts harm to the submitters, in accordance with the provisions of Article 18.8 (4) (a) of the TPA.
    - b) *[whether]* the Submission, alone or in combination with other Submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;**
  26. Submission SACA-SEEM/PE/001/2022 addresses issues related to environmental management instruments, environmental impact management, pollution prevention, sustainable use of natural resources, deforestation, and environmental harm.
  27. These issues are linked to the objectives of Chapter Eighteen of the TPA regarding “...*promot[ing] the optimal use of resources in accordance with the objective of sustainable development...*”.
  28. Likewise, the matters related to the Submission in question are linked to the objectives of the Environmental Cooperation Agreement (ECA) signed by the Parties, which has the objective of “...enhancing bilateral and/or regional environmental cooperation between the Parties aimed at protecting, improving and preserving the environment, including the conservation and sustainable use of their natural resources,” in accordance with the provisions of Article 1 of the ECA.
  29. Article 4 of the ECA, on the Work Program and Cooperation Areas, establishes that this program may include projects and/or activities such as the strengthening of national and local environmental governance and management, as well as the capacity to develop, implement, monitor and enforce environmental and natural resource laws, regulations and policies.
  30. The Secretariat considers that Submission SACA-SEEM/PE/001/2022 addresses issues whose

study in this process would advance the goals of Chapter Eighteen and the ECA, in accordance with the provisions of Article 18.8 (4) (b) of the TPA.

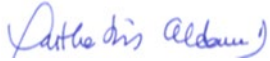
**c) *[whether]* private remedies available under the Party's law have been pursued;**

31. Based on the information presented in the Submission, there is no evidence that the Submitters have requested the remedies available under the Party's legislation or have asserted to date any type of remedy related to this Submission.
32. The Secretariat notes that Submission SACA-SEEM/PE/001/2022 does not indicate that remedies available under the Party's legislation have been requested, in accordance with the provisions of Article 18.8 (4) (c).

**d) *[whether]* the Submission is drawn exclusively from mass media reports**

33. Based on the information presented in the Submission, the Secretariat considers that it has not been taken exclusively from mass media reports but is based on the legal and technical arguments presented.
34. The Secretariat considers that Submission SACA-SEEM/PE/001/2022 is not taken exclusively from media reports, in accordance with the provisions of Article 18.8 (4) (d).
35. For the reasons stated and in accordance with the provisions of Article 18.8 (4), the Secretariat considers that Submission SACA-SEEM/PE/001/2022 merits the response of the Peruvian Government, regarding the alleged failure of effective enforcement of the environmental law asserted by the submitters.
36. In accordance with the provisions of Article 18.8 (5), the Party shall advise the Secretariat:
  - a. *whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the Secretariat shall proceed no further; and*
  - b. *of any other information the Party wishes to submit, such as:*
    - i. *whether the matter was previously the subject of a judicial or administrative proceeding,*
    - ii. *whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued, or*
    - iii. *information concerning relevant capacity-building activities under the ECA.*

37. In accordance with the provisions of Article 18.5 (5) of the TPA, the Party may provide a response until June 12, 2023. In exceptional circumstances, the Party may notify the Secretariat, in writing, of the extension of such date up to 60 days of delivery of this Determination, meaning: June 27, 2023.



Martha Inés Aldana D.

Executive Director

Secretariat for Submissions on Environmental Enforcement Matters

United States – Peru Trade Promotion Agreement