

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

Submitters: [names are kept confidential in accordance with article 8 of the Understanding for Implementing Article 18.8 of the United States – Peru Trade Promotion Agreement]

Party: Peru

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

Submission No.: SACA-SEEM/PE/001/2023

Date of receipt: February 27, 2023

Date of Determination: March 21, 2023

The Secretariat for Submissions on Environmental Enforcement Matters, after reviewing Submission SACA-SEEM/PE/001/2023 pursuant to article 18.8 (1) and (2) of the United States--Peru Trade Promotion Agreement, considers **the submission does not meet the admissibility criteria** established in article 18.8(2), for the reasons stated in this Determination.

Criteria of Article 18.8 (2) of the United States– Peru Trade Promotion Agreement	Meets		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 either English or Spanish;</i>	X		Submission SACA-SEEM/PE/001/2023, 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/001/2023 was filed by the Asociación Interétnica de Desarrollo de la Selva Peruana – AIDSESEP, legal person registered in Record 11007275 of the Registry of Legal Entities of the Registry Office of Lima and Callao.

<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 identification of the environmental laws of which the failure to enforce is asserted;</i>		X	Submission SACA-SEEM/PE/001/2023, although it offers sufficient information that has allowed the Secretariat to review it, refers to the questioning of a bill that is not included within the concept of environmental law established in Article 18.14 of the TPA.
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I. INTRODUCTION

1. Any person of a Party of the United States-Peru Trade Promotion Agreement (TPA) may file a submission with the Secretariat for Submissions on Environmental Enforcement Matters (hereinafter “Secretariat”) asserting that a Party is failing to effectively enforce its environmental law, 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,” 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 Secretariat will prepare a Factual Record if any member of the EAC so orders.

8. The AIDSESEP organization presented a Submission under Article 18.8 of the TPA to the Secretariat, via email dated February 27, 2023, in which they assert the failure of the Peruvian Government to effectively enforce the current environmental law in the process of the drafting, deliberation, and the possible approval and promulgation of Bill No. 3518/2022-CR, "Law that Modifies Law 28736, Law for the Protection of Indigenous or Original Peoples in Situation of Isolation and in Situation of Initial Contact".
9. The Secretariat filed the Submission, assigning it the number SACA-SEEM/PE/001/2023.
10. The Secretariat acknowledged receipt of the Submission via email dated February 28, 2023, through communication SACA-SEEM/PE/001/2023, addressed to the Submitters with a copy to the EAC.
11. After examining the Submission, per paragraphs 1 and 2 of Article 18.8 of the TPA, the Secretariat considers that Submission SACA-SEEM/PE/001/2023 does not meet all the admissibility criteria, for the reasons set forth below.

II. ANALYSIS

A. **Regarding the environmental law that would have ceased to be effectively enforced, in accordance with article 18.8.**

12. Any person from a Party may file a submission with the Secretariat per paragraph 1 of Article 18.8 of the TPA asserting that a Party is failing to effectively enforce its environmental law.
13. The AIDSESEP organization filed Submission SACA-SEEM/PE/001/2023.
14. The Submitters assert that the Peruvian Government has not effectively enforced current environmental law in the process of the drafting, deliberation, and possible approval and promulgation of Bill No. 3518/2022-CR, "Law that Modifies the Law 28736, Law for the Protection of Indigenous or Native Peoples in Situation of Isolation and in Situation of Initial Contact".

B. **Regarding the environmental law asserted**

a) Regarding the concept of "environmental law" in the TPA

15. Article 18.14 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 or health, 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 any statute or regulation or provision thereof, directly related to worker safety or health.

16. Likewise, Article 18.14 of the TPA also establishes that the laws and regulations covered are:

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

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

b) Regarding the consideration of Bills as part of the concept of "environmental law"

17. The Submitters maintain that the Peruvian Government has failed to effectively enforce current environmental law in the process of process of the drafting, deliberation, and possible approval and promulgation of Bill of Law No. 3518/2022-CR, “Law that Modifies Law 28736, Law for the Protection of Indigenous or Native Peoples in Situation of Isolation and in Situation of Initial Contact”.
18. In this regard, it should be noted that, as indicated in Article 18.14 of the TPA, *environmental law* within the scope of the TPA includes laws, decrees or resolutions that have already been issued or approved, but not texts proposed or in process. approval but not yet approved, as is the case of Bills.
19. In turn, it should be noted that Article 107 of the Political Constitution of Peru establishes that the members of the Congress of the Republic have the right of legislative initiative. Therefore, the presentation of the Bill that is the object of the Submission is carried out under the aforementioned constitutional provision, which is subject to the parliamentary procedure established for the approval of laws.

20. Therefore, the Bill that is the object of the Submission under analysis is not included in the concept of “environmental law” established in the TPA.

C. Regarding meeting the admissibility criteria of Article 18.8 (2)

21. Article 18.8 (2) of the TPA establishes the criteria that must be met concurrently for Submissions to be considered by the Secretariat. Below is the evaluation of the aforementioned criteria:

a) *[if]* it is in writing in either English or Spanish

22. The Submission SACA-SEEM/PE/001/2023, as well as all the additional documentation submitted by the Submitters, is written in Spanish.

23. The Secretariat considers that the Submission meets the criteria of Article 18.8 (2) (a).

b) *[if]* it clearly identifies the person making the submission

24. Submission SACA-SEEM/PE/0021/2023 was filed by the AIDSESEP organization, which is constituted and registered in Peru.

25. The Secretariat considers that the Submission meets the criteria of Article 18.8 (2) (b).

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

26. The Submission under analysis offers the following information¹:

- Letter No. 441-2022-AIDSESEP (November 29, 2022), sent by AIDSESEP to the Congress of the Republic.
- Letter No. 453-2022-AIDSESEP (December 12, 2022), sent by AIDSESEP to the Congress of the Republic.
- Letter No. 001-2023-AIDSESEP (January 3, 2023), sent by AIDSESEP to the Congress of the Republic.
- Multiple letters No. 036-2023-AIDSESEP (January 30, 2023), sent by AIDSESEP to the Congress of the Republic.
- Letter No. 392 – CD – ORPIO – 2022 (December 12, 2023), sent by ORPIO to the Congress of the Republic.
- Judicial Report Constitutional Analysis of Bill No. 3518-2022-CR (November, 2022), sent

¹These documents have been presented in Annex 4 attached to the Submission.

- by ORPIO to the Congress of the Republic.
- Letter No. 206-2022-ORAU/P-BDR (December 16, 2022), sent by ORAU to the Congress of the Republic.
 - Letter No. 207-2022-ORAU/P-BDR (December 16, 2022), sent by ORAU to the Congress of the Republic.
 - Letter No. 512 -2022-FENAMAD (December 16, 2022), sent by FENAMAD to the Congress of the Republic.
 - Multiple Official Letters No.000146-2022-VMI/MC (December 19, 2022), sent by the Ministry of Culture to the Congress of the Republic.
 - Official Letter No.000388-2022-VMI/MC (December 19, 2022), sent by the Ministry of Culture to the Congress of the Republic.
 - Official Letter No.008 -2023-DP/PAD (January 5, 2023), sent by the Ombudsman to the Congress of the Republic.
 - Specialized Judicial Report No.014-2022-DP/AMASPPI (January 17, 2023), sent by the Ombudsman to the Congress of the Republic.
 - Official Letter No.00106-2023-MINAM/DM (January 20, 2023), sent by the Ministry of the Environment to the Congress of the Republic.
 - Report No.00021-2023-MINAM/SG/OGAJ (January 19, 2023), sent by the Ministry of the Environment to the Congress of the Republic.
 - Legal Opinion on Bill N° 3518/2022-CR (December 21, 2022), sent by SPDA to the Congress of the Republic.
27. These 16 documents refer, in their entirety, to Bill No. 3518/2022-CR, “Law that Modifies Law 28736, Law for the Protection of Indigenous or Native Peoples in Situation of Isolation and in Situation of Initial Contact”.
28. This finding is corroborated by the Submitter itself, stating the following:

“In summary, since the beginning of the processing of Bill No. 3518/2022-CR in November 2022, AIDSESEP has presented more than 9 communications before the Congress of the Republic. Likewise, several entities of the same Government have also submitted numerous communications to the Congress of the Republic, such as the Ministry of Culture (MINCU), the Ombudsman's Office (DP) and the Ministry of the Environment (MINAM), among others.” (Page 7 of the Submission).”

29. At the same time, the Submitter, when identifying the facts that comprise the failure to effectively enforce the environmental law, makes specific mention of the presentation of the Bill as an initiative of a parliamentarian of the Congress of the Republic, focusing on indicating the negative consequences that the approval that this Bill would entail for the protection of Indigenous Peoples in Isolation and Initial Contact (PIACI) and their environment, noting that²:

"... if this disastrous bill 3518/2022-CR is approved, it will directly affect approximately 9,067,327 hectares of the Amazon forest (approximately 13.5% of the entire Peruvian

² Page 8 of the Submission.

Amazon), which are the survival territories of the PIACI..."

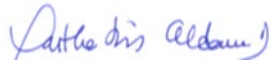
30. The Submission maintains that Bill No. 3518/2022-CR represents a breach of various environmental regulations at the national and international level. In particular, the following list of regulatory provisions is indicated³:
- WTO Agreement 169,
 - Law No. 28736 (Law for the protection of indigenous or native peoples in isolation and in a situation of initial contact - "PIACI Law"),
 - Law No. 29763 (Forest and Wildlife Law - LFFS),
 - Law No. 29785 (Law of Prior Consultation),
 - Law No. 28611 General Environmental Law (LGA),
 - Law No. 26834 Law for Natural Protected Areas (LANP);
- among others."
31. In turn, it is asserted that the Peruvian Government would have failed to effectively enforce environmental law during the process of the drafting and current deliberation of Bill No. 3518/2022-CR which, according to what is indicated, intends to modify to weaken Law No. 28736, Law for the protection of the rights of indigenous or native peoples in situations of isolation and initial contact (PIACI Law). Likewise, it is mentioned, the aforementioned Bill contains false environmental information in its explanatory statement.
32. However, since the subject matter of the Submission is the questioning of a Bill, it should be noted that the scope of environmental law in the scope defined in Article 18.14 of the TPA refers to laws, decrees or resolutions that already exist. issued or approved, but not to proposed texts such as Bills.
33. Due to the aforementioned points, Submission SACA-SEEM/PE/001/2023, in accordance with the analysis in this Determination, does not meet this admissibility criteria established in Article 18.8 (2) (c).
34. Taking into account the above analysis, and given the substantive nature of this criteria, there is no purpose of ruling on the other admissibility criteria established in Article 18.8 (2).

III. DETERMINATION

35. For the reasons stated, the Secretariat considers that Submission SACA-SEEM/PE/001/2023 does not assert the failure to effectively enforce the environmental law of a Party, in accordance with the provisions of Article 18.8 (1) of the TPA, since it asserts the lack of effective enforcement of a Bill which is not included within the concept of environmental law established in Article 18.14 of the TPA.

³ Page 9 of the Submission.

36. Therefore, the Secretariat determines that the Submission does not meet the provisions of paragraphs 1 and 2 of Article 18.8 of the TPA, and consequently, the process described in Article 18.8 of the TPA will not proceed.



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United States - Peru Trade Promotion Agreement