

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

Submitters: AIDSESEP
Party: Peru
Reference: Submission on Matters of Environmental Enforcement filed by the Submitters.
Submission No.: SACA-SEEM/PE/002/2023
Date of receipt: March 10, 2023
Date of Determination: May 7, 2023

The Secretariat for Submissions on Environmental Enforcement Matters, after reviewing Submission SACA-SEEM/PE/002/2023 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 Secretariat prepares a Factual Record if any member of the EAC so orders.
8. On March 10, 2023 the organization AIDSESEP filed a Submission under Article 18.8 of the TPA to the Secretariat, via email, in which they assert the failure of the Peruvian Government to effectively enforce the Forest and Wildlife Law, Law No. 29763 and the Regulations for Forest Management and Wildlife in Native Communities and Peasant Communities with regard to the regulation of granting forest concessions in Indigenous Reserves, as well as other related forest regulations.
9. The Secretariat registered the Submission as SACA-SEEM/PE/002/2023.
10. The Secretariat acknowledged receipt of the Submission via email dated March 13, 2023, through letter SACA-SEEM/PE/002/2023, addressed to the Submitters with a copy to the EAC.
11. The Secretariat determined that Submission SACA-SEEM/PE/002/2023 complied with Article 18.8 (1) and with the criteria established in Article 18.8 (2).
12. In merit of the aforementioned, the Secretariat issued Determination SACA-SEEM/PE/002/2023/D1, communicating it to the Environmental Affairs Council and to the Submitter via email of April 10 and April 24, 2023, respectively.
13. 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.

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

14. 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;

15. In Submission SACA-SEEM/PE/002/2023, the Submitters allege that, as a result of the systematic violation of the Forest and Wildlife Law by the Regional Government of Loreto (GOREL) through the Regional Management for the Development of Forest and Wildlife (GERFOR), the deforestation of our Amazon is promoted through the indiscriminate and illegal exploitation of forest resources and the development of illegal activities (such as illegal logging) in territories that ancestrally belong to the Peoples in Isolation and Initial Contact (PIACI). The PIACI are peoples that are more vulnerable to the negative impact in natural ecosystems where they live due to their double and intertwined material and spiritual relationship.
16. According to the Submitters, GOREL-GERFOR has illegally granted forty-seven (47) illegal forest concessions in the Yavari Tapiche Indigenous Reserve and the Yavari Mirim Indigenous Reserve, Yavari Mirim Indigenous Reserve (which is in the process of formal approval). The illegal granting of these forest concessions infringes the explicit prohibition established in the Forest and Wildlife Law, Law No. 29763 and its Regulations as well as complementary norms.
17. In turn, the Submitters mention that the indicated illegal forest concessions, which had been approved over the last seven years, overlap approximately 300,000 hectares (3,000 square kilometers) of the critical territory for the survival of the Indigenous Peoples in Isolation.
18. The Submitters are a national organization that represent indigenous people from the peruvian Amazon (64 amazon indigenous peoples, 9 regional organizations, 109 federations and 2439 amazon communities) and consider themselves as the main forestry actor of Peru. AIDSESP has the goal to defend and promote respect of collective rights of indigenous people in the Amazon and also to protect the environment taking into consideration the worldview and good living of indigenous people.
19. 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.
20. Under these reasons, this Secretariat considers that the Submission SACA-SEEM/PE/002/2023 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;

21. Submission SACA-SEEM/PE/002/2023 addresses issues related to sustainable use of natural resources, deforestation and environmental harm.
22. 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...”.

23. 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.
24. 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.
25. The Secretariat considers that Submission SACA-SEEM/PE/002/2023 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;

26. 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.
27. The Secretariat notes that Submission SACA-SEEM/PE/002/2023 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).

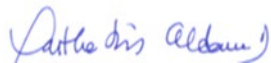
d) *[whether]* the Submission is drawn exclusively from mass media reports

28. 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.
29. The Secretariat considers that Submission SACA-SEEM/PE/002/2023 is not taken exclusively from media reports, in accordance with the provisions of Article 18.8 (4) (d).
30. For the reasons stated and in accordance with the provisions of Article 18.8 (4), the Secretariat considers that Submission SACA-SEEM/PE/002/2023 merits the response of the Peruvian Government, regarding the alleged failure of effective enforcement of the environmental law asserted by the Submitters.

31. 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.*

32. In accordance with the provisions of Article 18.5 (5) of the TPA, the Party may provide a response until June 21, 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: July 6, 2023.



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US- Peru Trade Promotion Agreement