

**Secretariat for Submissions on Environmental Enforcement Matters of the
USA—Peru Trade Promotion Agreement
Determination in accordance with Articles 18.8 (1) y (2)**

Submitters: José César Remigio Santos Farfán, Michelle Sánchez del Carpio y Andrea Mariana Domínguez Noriega, in their capacity as members of Clínica Jurídica Ambiental de la Facultad de Derecho de la Pontificia Universidad Católica del Perú (PUCP)

Party: Perú

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

Submission N°: SACA-SEEM/PE/001/2024

Date of Receipt: March 29, 2024

Date of determination: July 12, 2024

The Secretariat for Submissions on Environmental Enforcement Matters, after reviewing Submission SACA-SEEM/PE/001/2024, pursuant to Article 18.8 (1) and (2) of the United States—Peru Trade Promotion Agreement, considers the **submission does 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/001/2024, 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/001/2024 was filed by three (3) natural persons. These submitters have identified themselves through their national identity document number.

<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/001/2024, offers sufficient information that has allowed the Secretariat to review it and identifies environmental law that is asserted as not being enforced.
<i>(d) appears to be aimed at promoting enforcement rather than at harassing industry;</i>	X		Submission SACA-SEEM/PE/001/2024 appears to be aimed at promoting the Party's effective enforcement of environmental law and does not indicate that it aims to harass industry.
<i>(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and</i>	X		Submission SACA-SEEM/PE/001/2024 attaches a copy of the written communication addressed to National Forestry and Wildlife Service (SERFOR) presented on February 09, 2024. The Submitters indicate that said communication was not responded to by SERFOR.
<i>(f) is filed by a person of a Party, except as provided in paragraph 3</i>	X		Submission SACA-SEEM/PE/001/2024 is submitted by three (3) submitters, which are persons from a Party.

I. INTRODUCCIÓN

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. Three (3) Submitters filed a submission under Article 18.8 of the TPA to the Secretariat via email dated march 29, 2024, in which they assert the lack of effective application, by the State of Peru, of the legislation on the protection of wildlife, due to the fact that, in their opinion, SERFOR had not complied with implementing the wildlife submodule within the System Control Module National Forestry and Wildlife Information, which would be non-compliance with provisions of the Regulation for the Management of Wildlife, approved by Supreme Decree No. 019-2015-MINAGRI as well as the Single Environmental Control Regime, approved by Ministerial Resolution No. 247-2013-MINAM.
9. The Secretariat filed the submission, assigning it the number SACA-SEEM/PE/001/2024.
10. The Secretariat acknowledged receipt of the Submission via email dated march 29, 2024, through communication SACA-SEEM/PE/001/2024, 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/001/2024 meets 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 (1)**

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. Three (3) submitters filed Submission SACA-SEEM/PE/001/2024.
14. The submitters allege that the Government of Peru would not have effectively applied the current environmental legislation regarding the protection of wildlife, because, in their opinion, SERFOR would not have complied with implementing the wildlife submodule within the Control Module of the National System of Forest and Wildlife Information, which would be non-compliance with provisions of the Regulation for the Management of Wildlife, approved by Supreme Decree No. 019-2015-MINAGRI as well as the Single Environmental Control Regime, approved by Ministerial Resolution No. 247-2013-MINAM.

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 areas¹; 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

¹ The Parties recognize that such protection or conservation may include the protection or conservation of biological diversity (foot note 12 of Chapter 18 of the TPA).

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 environmental law asserted

17. As indicated, the submitters assert that the Government of Peru has failed to effectively enforce environmental law regarding the protection of wildlife.

18. The submitters refer to the following legal regulations:

i. Regulations for the Management of Wildlife, approved by Supreme Decree N° 019-2015-MINAGRI

In this regard, it is noted that article 12 of said Regulation describes the content of the tool called the National Forestry and Wildlife Information System (SNIFFS), designed to systematize relevant information on forestry and wildlife matters, so that the authorities within this sector can use it to ensure the sustainable use of these resources.

It is mentioned that the SNIFFS is made up of various modules, within which the Control Module (MC-SNIFFS) is of special relevance, because it is precisely this that allows authorities to verify the legal origin of forest resources. and wildlife that are transported within the national territory or abroad.

It is also indicated that, in the document called: “Content, Scope and Generalities of the Control Module of the National Forestry and Wildlife Information System”, approved by Executive Directorate Resolution No. D000033-2021-MIDAGRI-SERFOR-DE, It is established that the MC-SNIFFS is in turn composed of three submodules, one of them being the Wildlife Submodule, which is what should allow both SERFOR and the other authorities linked to wildlife management, determine whether specimens or wildlife products that are transported within the national territory or exported abroad have a legal origin or not. In this way, this submodule constitutes a fundamental tool to prevent illicit wildlife trafficking.

The applicants mention that the wildlife submodule of the MC-SNIFFS has not been fully implemented so far, since if the exercise is done to enter the MC-SNIFFS: <https://sniffs.serfor.gob.pe/control/> it can be seen that the wildlife submodule is not operational.

The applicants add that SERFOR is the entity that has the duty to design and implement the MC-SNIFFS, but would not have complied with doing so.

This omission, the applicants indicate, would imply a violation of article 12 of the Regulation for the Management of Wildlife, which establishes that the SNIFFS is an articulated information network of national scope, created to efficiently serve people linked to forestry activity, wildlife and related activities, for decision-making, and in accordance with said standard, SERFOR exercises a technical regulatory function and is responsible for designing, conducting and supervising the SNIFFS.

The applicants mention that the aforementioned standard dates back to September 2015, which means that more than eight (8) years have passed since SERFOR has the duty to implement the SNIFFS without this system being fully operational, especially in which refers to the wildlife submodule of MC-SNIFFS.

ii. Single Environmental Control Regime, approved by Ministerial Resolution N° 247-2013-MINAM

In this regard, it is indicated that article 5, paragraph b) of the Single Environmental Control Regime, establishes the duty of the Environmental Control Entities (EFA) to implement the necessary instruments for the fulfillment of their functions.

The applicants indicate that the wildlife submodule of the MC-SNIFFS would constitute a fundamental technical instrument for the exercise of environmental oversight functions in a broad sense that must be fulfilled by both SERFOR and other entities linked to wildlife management, because it allows them to corroborate, in a more accurate and effective manner, the information provided by those administered within the control posts or at the time of carrying out an intervention, and determine the possible non-compliance with an auditable environmental obligation.

Thus, SERFOR would need to have the implementation of the wildlife submodule of the MC-SNIFFS, since this tool will allow it to effectively supervise, in a broad sense, the environmental obligations established in article 17 of the Regulations for the Management of Wildlife, some of which are directly linked to the accreditation of the legal origin of wildlife resources.

The applicants mention that, with the absence of the wildlife submodule of the MC-SNIFFS, it is clear that effectively supervising compliance with the environmental obligations described by SERFOR and the other competent authorities is more complex, as a consequence of the absence of a systematized database that allows them to corroborate the information presented by those administered. In this way, there is a breach by SERFOR of its duty to establish the necessary technical instruments for the regular exercise of its environmental oversight functions, linked to the verification of the legal origin of the transported wildlife resources.

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

19. 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

20. The Submission SACA-SEEM/PE/001/2024, is written in Spanish.

21. The Secretariat considers that the Submission meets the criterion of Article 18.8 (2) (a).

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

22. Submission SACA-SEEM/PE/001/2024 was filed by the following natural persons listed below with their respective National Identity Document (DNI in Spanish) number:

#	NAME OF SUBMITTER	NATIONAL IDENTITY DOCUMENT (DNI)
1	José César Remigio Santos Farfán	70047880
2	Michelle Rosa de Jesús Sánchez del Carpio	71802865
3	Andrea Mariana Domínguez Noriega	43069827

23. Based on the aforementioned, the Secretariat considers that the Submission meets the criterion 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

24. The submission under analysis and its annexed documents offer the following information:

- a) Reference to Legislative Decrees numbers 1220 and 1319, issued in 2015 and 2017, respectively, through which the Peruvian State declared the implementation of the MC-SNIFFS of national interest
- b) Reference to the article published by Ellen Andersen in which it is pointed out that the conservation of wild fauna (in the case of primates) is essential for the protection of the environment (specifically, it refers to the role played by these members of the fauna in the seed dispersal in humid tropical forests), sending the link to the following publication: <https://www.redalyc.org/articulo.oa?id=15421208>

- c) National Conservation Plan for Endangered Primates of Perú (Period 2019 – 2029) located at the following link: <https://www.gob.pe/institucion/serfor/informes-publicaciones/1467153-plan-nacional-de-conservacion-de-primates-amenazados-en-el-peru>. In this regard, they point out that this document indicates some ecosystem functions fulfilled by some of the fauna species mentioned there (case of the yellow-tailed woolly monkey, the black woolly monkey, as well as the gray woolly monkey, among others).
- d) National Plan for the Conservation of Suri (Rhea Pennata), period 2015- 2020, located at the following link: <https://www.gob.pe/institucion/serfor/informes->. This document indicates that inadequate management for the conservation of the suri and its habitats can cause the loss of the diversity of high Andean ecosystems.
- e) National Conservation Plan for the Andean Tapir in Perú, period 2018 – 2027, located at the following link: <https://repositorio.serfor.gob.pe/bitstream/SERFOR/581/1/SERFOR%202018%20Plan-de-Conservacion-del-Tapir.pdf>. This document highlights the role of the tapir in the seed dispersal.
25. Taking into consideration the nature of the submission filed, the documentation sent by the submitters constitutes sufficient information to allow the Secretariat to review the submission.
26. Regarding the identification of the environmental law whose failure to be effectively enforced is asserted, this analysis has been carried out in item II B of this Determination; having concluded that the submission does include the assertion of environmental law that is not being effectively enforced, under the scope of the concept of environmental law established in the TPA.
27. Based on the above, the submission SACA-SEEM/PE/001/2024, in accordance with the analysis in this Determination, complies with this admissibility requirement established in Article 18.8 (2) (c).
- d) [if] appears to be aimed at promoting enforcement rather than at harassing industry;**
28. Submission SACA-SEEM/PE/001/2024 appears to be aimed at promoting the effective enforcement of the law. The Secretariat considers that the Submission does not give indications of seeking to harass industry.
29. The Secretariat considers that the Submission meets the criterion of Article 18.8 (2) (d).
- e) [if] indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any;**
30. The Submitters attached the communication that they sent to SERFOR as an administrative request on February 9, 2024 via the virtual parties table of that public entity.

31. Likewise, the Requesters reported that, after thirty (30) business days from the presentation of the aforementioned communication, SERFOR had not responded.
32. Based on the above, the submission SACA-SEEM/PE/001/2024, complies with this admissibility requirement established in Article 18.8 (2) (e).

f) [if] is filed by a person of a Party, except as provided in paragraph 3.

33. As detailed in item II.C.b of this Determination, Request SACA-SEEM/PE/001/2024 has been presented by three (3) natural persons, who are persons of one of the Parties.
34. The Secretariat considers that the Submission meets the requirement of Article 18.8 (2) (f).

DETERMINATION

35. For the reasons stated, the Secretariat considers that Submission SACA-SEEM/PE/001/2024 asserts a Party's failure to effectively enforce the environmental law, pursuant to what is established in Article 18.8 (1) of the TPA. Likewise, the Submission meets the admissibility criteria established in Article 18.8 (2) of the TPA.
36. Therefore, the Secretariat determines that the Submission complies with paragraphs 1 and 2 of Article 18.8 of the TPA.
37. Pursuant to Article 18.8 (4), the Secretariat will determine whether the Submission merits a response from the Party.



Daniel Schmerler Vainstein
Executive Director
Secretariat for Submissions on Environmental Enforcement Matters
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