

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

**Submitters:** 53 Submitters (49 individual persons and 4 legal entities)  
**Party:** Peru  
**Reference:** Submission on Environmental Enforcement Matters filed by Submitters  
**Submission N°:** SACA-SEEM/PE/003/2023  
**Date of receipt:** May, 19 2023  
**Date of Determination:** August, 16 2023

The Secretariat for Submissions on Environmental Enforcement Matters, after reviewing Submission SACA-SEEM/PE/003/2023 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. 53 submitters filed a submission under Article 18.8 of the TPA to the Secretariat, via email dated May 19, 2023, in which they assert the failure of the Peruvian Government to effectively enforce the legislation on the protection of air quality, as well as with respect to the approved regulations on climate emergency.
9. The Secretariat registered the submission, assigning it the number SACA-SEEM/PE/003/2023.
10. The Secretariat acknowledged receipt of the submission via email dated May 20, 2023, through communication SACA-SEEM/PE/003/2023, addressed to the submitters with a copy to the EAC.
11. On June 16, 2023, the submitters, at the request of the Secretariat, submitted the response that they had received from the Government of Peru, and at the same time submitted their position on said response.
12. On June 27, 2023, and July 5, 2023, at the request of the Secretariat, the submitters who had signed the submission as legal persons, submitted information corresponding to their incorporation as a legal entity.
13. The Secretariat determined that Submission SACA-SEEM/PE/003/2023 complied with the provisions of Article 18.8 (1) and with the admissibility criteria contained in Article 18.8 (2).
14. Accordingly, the Secretariat issued Determination SACA-SEEM/PE/003/2023/D1, communicating it to the Environmental Affairs Council and to the submitters by email dated July 16, 2023.
15. Pursuant to the provisions of Article 18.8 (4) of the TPA, the Secretariat shall determine whether the filed submission merits a response from the Party.

## II. ANALYSIS

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

16. 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;***

17. The submitters in the Submission SACA-SEEM/PE/003/2023 assert the failure of the Peruvian Government to effectively enforce the legislation on the protection of air quality, as well as with respect to the approved regulations for climate emergency.
18. In particular, the submitters note that the Peruvian Government would not have complied with approving 4 Maximum Permissible Limits (LMP, in Spanish) and 3 Environmental Quality Standards (ECA, in Spanish) that were scheduled to be approved in various approval plans for standards that were officially established starting in 2005. Likewise, they indicate that the Peruvian Government must comply with the right of access to citizen environmental information regarding air quality in Lima and other cities of Peru in real time.
19. Additionally, the submitters note that the declaration of a national climate emergency was approved through Supreme Decree No.003-2022-MINAM of January 25, 2022, establishing a set of priority actions to be implemented by various authorities. 24 of said priority actions have not been fulfilled and the submitters point out that the same Supreme Decree indicates that it is the responsibility of the Ministry of the Environment (MINAM, in Spanish) to follow up on the matter.
20. Regarding the basis for the assertion of the non-compliance with environmental standards indicated above, the submitters point to the thesis titled "On the principle of gradualness: analysis of the process of adaptation of national environmental quality standards for water (ECA - agua) in the activity of large and medium-sized mining in progress from 2008 to 2016" prepared by Rocío del Pilar Torres Portilla for completion of the Master's degree in Environmental Development, and they note that it is found in the following link: <https://tesis.pucp.edu.pe/repositorio/handle/20.500.12404/9874>
21. Regarding the environmental harm derived from non-compliance with the aforementioned environmental regulations, the following sources are mentioned:
  - The list of the 10 most polluted places on Earth published by Livescience.com <https://www.livescience.com/30353-most-polluted-places-earth.html>
  - The article titled "Modelling Air Pollution using Partially Varying Coefficient Models

with Heavy Tails," by Nicole Jeldes, Germán Ibacache-Pulgar, Carolina Marchant and Javier Linkolk López-Gonzales, published in October 2022 in *Mathematics* 10(19), 3677, <https://doi.org/10.3390/math10193677>, that identifies Lima as one of the 10 most polluted cities in South America

- The National Air Quality Report prepared by the Ministry of the Environment, which can be found at <https://www.minam.gob.pe/wp-content/uploads/2016/07/Informe-Nacional-de-Calidad-del-Aire-2013-2014.pdf>
22. Based on what was previously mentioned, it is viable to argue that the submission under analysis is not frivolous, as it provides grounds for the assertion of the failure to effectively enforce the environmental legislation of a Party and substantiates, through the aforementioned documents, the existence of environmental harm resulting from it.
  23. Based on these reasons, this Secretariat considers that the Submission SACA-SEEM/PE/003/2023 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;**
  24. Submission SACA-SEEM/PE/003/2023 addresses issues related to air quality management, access to information on matters related to chemical substances and climate change.
  25. 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...”.
  26. 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.
  27. 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.
  28. The Secretariat considers that Submission SACA-SEEM/PE/003/2023 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;**

29. 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.
30. The Secretariat notes that Submission SACA-SEEM/PE/003/2023 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**

31. 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.
32. The Secretariat considers that Submission SACA-SEEM/PE/003/2023 is not taken exclusively from media reports, in accordance with the provisions of Article 18.8 (4) (d).

### **III. DETERMINATION**

33. For the reasons stated and in accordance with the provisions of Article 18.8 (4), the Secretariat considers that Submission SACA-SEEM/PE/003/2023 merits the response of the Peruvian Government, regarding the alleged failure of effective enforcement of the environmental law asserted by the Submitters.
34. 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.*

35. In accordance with the provisions of Article 18.5 (5) of the TPA, the Party may provide a response until September 30, 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: October 15, 2023.



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Secretariat for Environmental Enforcement Matters  
USA-Peru Trade Promotion Agreement