

**Secretariat for Submissions on Environmental Enforcement Matters
United States - Peru Trade Promotion Agreement
Notification in accordance to Article 18.9 (1)**

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Party: Peru

Reference: Submission on Environmental Enforcement Matters filed by the Submitters

Submission N°: SACA-SEEM/PE/001/2024

Subject: Implementation of the Wildlife Submodule in the Control Module of the National Forestry and Wildlife Information System

Date of receipt: March 29, 2024

Date of Notification: March 31, 2025

The Secretariat for Submissions on Environmental Enforcement Matters, after reviewing Submission SACA-SEEM/PE/001/2024, and the response provided by the Government of Peru dated October 14, 2024, and under Article 18.9 (1) of the United States—Peru Trade Promotion Agreement, **considers that the Submission merits the development of a Factual Record.**

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. 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 prepares a Factual Record if any member of the EAC so orders.
8. On March 29, 2024, three (3) Submitters filed a Submission, via email, under Article 18.8 of the TPA to the Secretariat, in which they assert the failure of the Peruvian Government to effectively enforce the law in matters of protection of wild fauna, because, in their opinion, the National Forestry and Wildlife Service (SERFOR) would not have complied with implementing the wildlife submodule within the Control Module of the National Forestry and Wildlife Information System (also known as MC-SNIFFS), which would be non-compliance with provisions of the Regulations 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 registered the Submission as SACA-SEEM/PE/001/2024.
10. The Secretariat acknowledged receipt of the Submission via email dated March 29, 2024, through letter SACA-SEEM/PE/001/2024, addressed to the Submitters with a copy to the EAC.
11. The Secretariat determined that Submission SACA-SEEM/PE/001/2024 complies with Article 18.8 (1) and with the criteria established in Article 18.8 (2).
12. Based on the above, the Secretariat issued Determination SACA-SEEM/PE/001/2024/D1, communicating it to the EAC and to the Submitters via email on July 12, 2024.
13. The Secretariat, through Determination SACA-SEEM/PE/001/2024/D2 dated August 16, 2024, indicated that Submission SACA-SEEM/PE/001/2024 merited a response from the Peruvian Government, notifying both the EAC and the Submitters via email on the same date.
14. The Peruvian Government requested an extension to the deadline to respond to Determination SACA-SEEM/PE/001/2024/D2, in accordance with the provisions of article 18.8 (5) of the TPA.
15. The Peruvian Government provided a response with the document named “Regarding the Submission on Environmental Enforcement Matters SACA-SEEM/PE/001/2024”, sending it to the Secretariat on October 14, 2024, via email.

16. In this stage, it is the responsibility of the Secretariat to inform the EAC if Submission SACA-SEEM/PE/001/2024 warrants the development of a Factual Record.

II. ANALYSIS

II.1. Previous allegations

A. Regarding the linking of environmental commitments to trade between the Parties:

17. The Peruvian Government points out, as a preliminary matter, aspects related to the scope of the Secretariat for Submissions on Environmental Enforcement Matters established in Chapter Eighteen of the USA-Peru Trade Promotion Agreement. In this regard, it is noted that the obligations assumed in that Chapter have not been established independently of the trade obligations adopted in this Agreement, as environmental matters are not regulated on their own as they would be in an instrument that is primarily environmental in nature.
18. It is noted that, under the Vienna Convention on the Law of Treaties (1969), treaties must be interpreted in good faith, in accordance with the ordinary meaning of their terms, their context, and taking into account their object and purpose. In this regard, the Peruvian Government notes that the Preamble of the Agreement indicates the commitment to ensure a predictable legal and commercial framework for business and investments, which should be taken into account. Furthermore, they emphasize that one of the objectives of Chapter Eighteen is to contribute to the efforts of the Parties to ensure that trade and environmental policies are mutually supportive and strive to strengthen the links between trade and environmental policies and practices of the Parties. Additionally, they cite Article 18.10 (1), which establishes that the Parties recognize the importance of strengthening their capacity to protect the environment and promote sustainable development, in harmony with the strengthening of their trade and investment relationships.
19. Based on the above, the Government of Peru maintains that the TPA regulates a voluntarily and sovereignly agreed-upon framework between the Parties that establishes an irrefutable link between the obligations assumed in Chapter Eighteen on environmental matters with trade and investment. In this sense, all elements that do not comply with being related to trade and investment must be rejected, as otherwise, the Secretariat would be acting outside the TPA.
20. In particular, the Government of Peru states that the Submission under review does not present elements that demonstrate the relationship between the alleged lack of effective enforcement of environmental legislation and trade or investment between the Parties, and that it does not explain how what is alleged by the Submitters would be affecting trade or investment. They also state that the concept of environmental law included in the TPA is framed within a trade agreement, which makes the scope of requests in this forum clear.

21. The subject matter of this previous allegation is of utmost importance, given the importance of having a common understanding (between the Parties, this Secretariat and, above all, the general public) regarding the scope of the mechanism established by the Secretariat for Submissions on Environmental Enforcement Matters.
22. On this matter, it should be noted that the TPA, in its Article 18.8 (1), establishes that any person from a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. In this regard, a mechanism open to the public has been established to promote compliance with environmental law in both countries.
23. This is reinforced by the same treaty when, in Article 18.14, it defines the scope of the concept of *environmental law* as including “any statute or regulation of a Party” whose primary purpose is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health.
24. This same article contains two explicit exclusions that delimit the scope of the concept of environmental law. On one hand, it is noted that the concept of environmental law does not encompass legal regulations directly related to the safety or health of workers. On the other hand, the scope of the concept of environmental law is specified, indicating that it only includes the regulations issued by the central level of government, thereby excluding from its scope legal regulations issued by the decentralized levels of government in both countries.
25. If the restrictive interpretation pointed out by the Peruvian Government regarding the scope of environmental legislation within the framework of the TPA had been intended, said scope could have been explicitly stated in this same section; however, this was not done.
26. The indicated aligns with the objectives established in Chapter Eighteen of the TPA, which states that:

*“Objectives:
(...) the objectives of this Chapter are...to promote the optimal use of resources
in accordance with the objective of sustainable development (...)”*
27. In turn, within the content of the same Chapter, we find extensive references on the scope of the concept of environmental law:

Article 18.7: Opportunities for Public Participation

1. *Each Party shall promote public awareness of its environmental laws by ensuring that information is available to the public regarding its environmental laws, enforcement, and compliance procedures, including procedures for interested persons to request a Party’s competent authorities to investigate alleged violations of its environmental laws.*
2. *Each Party shall seek to accommodate requests from persons of any Party for information or to exchange views regarding the Party’s implementation of this Chapter.*

(...)

28. In addition to the above paragraphs, the TPA includes articles on matters unrelated to trade and investment between the Parties on matters of environmental cooperation, biological diversity, and environmental agreements, as can be verified below:

Article 18.10: Environmental Cooperation (...)

(...)

2. *The Parties are committed to expanding their cooperative relationship on environmental matters, recognizing it will help them achieve their shared environmental goals and objectives, including the development and improvement of environmental protection, practices, and technologies.*

(...)

Article 18.11: Biological Diversity

1. *The Parties recognize the importance of the conservation and sustainable use⁶ of biological diversity and their role in achieving sustainable development*.*
2. *Accordingly, the Parties remain committed to promoting and encouraging the conservation and sustainable use of biological diversity and all its components and levels, including plants, animals, and habitat, and reiterate their commitments in Article 18.1.*
3. *The Parties recognize the importance of respecting and preserving traditional knowledge and practices of indigenous and other communities that contribute to the conservation and sustainable use of biological diversity.*
4. *The Parties also recognize the importance of public participation and consultations, as provided by domestic law, on matters concerning the conservation and sustainable use of biological diversity. The Parties may make information publicly available about programs and activities, including cooperative programs, it undertakes related to the conservation and sustainable use of biological diversity.*
5. *To this end, the Parties will enhance their cooperative efforts on these matters, including through the ECA.*

** For purposes of this Chapter, sustainable use means non-consumptive or consumptive use in a sustainable manner.*

Article 18.13: Relationship to Environmental Agreements

1. *The Parties recognize that multilateral environmental agreements to which they are all party, play an important role globally and domestically in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives thereof. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness*

of multilateral environmental agreements to which they are all party and trade agreements to which they are all party.

29. As can be verified, Chapter Eighteen of the TPA itself includes commitments that allow us to confirm that the scope of the mechanism established in articles 18.8 and 18.9 of the TPA is comprehensive and not restrictive in nature, which is consistent with the ultimate goal of promoting the implementation of environmental law within the jurisdiction of each of the Parties.
30. Lastly, it is worth noting that it must be taken into consideration that the outcome that can be reached as a result of the presentation of a Submission is the preparation of a Factual Record, a document whose scope does not have any type of consequence in areas of trade and investment in both countries. This finding reaffirms that the nature of the Secretariat for Submissions on Environmental Enforcement Matters is that being a mechanism for citizen participation in environmental matters mutually agreed between the Parties. For this reason, the scope of its actions should not be restrictive, rather, and on the contrary, it should be understood in the sense of promoting the achievement of enhanced citizen participation through the implementation of this mechanism.

B. Regarding compliance with the requirements of Article 18.8 (2) of the TPA:

31. The Peruvian Government, in its response document, states that the Submission did not meet the admissibility criteria established in Article 18.8 (2), explicitly referring to those set out in subsections (c) and (e) of said article. In particular, it points out that while the requirements established in the aforementioned article must be verified concurrently in order to admit a Submission presented for processing, it should have been rejected and declared as inadmissible.
32. Next, the analysis of the objections raised by the Peruvian Government regarding the fulfillment with the mentioned criteria will be carried out.

B.1. Regarding the criteria established in Article 18.8 (2) (c):

33. Subsection (c) of Article 18.8 (2) states that it is the responsibility of the Secretariat to consider whether the Submission provides sufficient information to allow for its review, including documentary evidence on which the submission may be based and identification of the environmental laws of which the failure to enforce is asserted.
34. In this regard, we acknowledge that the Party has issued an opinion regarding the analysis conducted by the Secretariat regarding compliance with Article 18.8 (2) (c), as expressed in items 23 to 27 of the Determination SACA-SEEM/PE/001/2024/D1 (Determination 1), where it was noted that the information presented in the Submission does comply with the TPA as it constitutes sufficient information to enable the Secretariat to review the Submission.

35. In this regard, it should be noted that Chapter 18 of the TPA does not regulate a stage for forwarding a copy of the Submission to the Party for the purpose of receiving their considerations as a preliminary step to the issuance of Determination 1, which is the document in which the admissibility analysis of the Submission is conducted. Notwithstanding, and for explanatory purposes, we proceed to point out the arguments presented by the Peruvian Government in this regard.
36. The Peruvian Government notes that although the Submission identifies the environmental law for which it alleges a lack of effective enforcement, it does not provide sufficient information or documentary evidence, which is why it should have been rejected *in limine*. In particular, the Government of Peru points out that, with regard to Legislative Decrees 1220 and 1319 by which the Peruvian State declared the implementation of the MC-SNIFFS to be of national interest, said regulations do not generate legal effects, but only seek to highlight the benefits that would be sought to be achieved by implementing such an activity because it is considered beneficial for society, so the reference to said standards does not demonstrate that there is a lack of compliance with environmental legislation. On the other hand, regarding the article published by Ellen Andersen, the Peruvian Government mentions that it is an outdated article that dates back to 2005 and that it is limited to citing different authors, in order to affirm that primates are important primary dispersers of seeds in tropical humid forests around the world, and favor the regeneration of many of the plant species they disperse, which is not directly related to the object of the request; Finally, the Government of Peru refers to the National Plans for the Conservation of Primates, Suri and Andean Tapir, stating that these are only management and guidance documents, some of which are out of date and which have no direct relationship with the object of the submission.
37. In this regard, it should be noted that the analysis that the Secretariat is required to conduct pertains to whether the information presented in the Submission is sufficient to allow for its review. To this end, the presentation of documentary evidence and the identification of applicable environmental law are evaluated. Regarding the latter aspect, the Peruvian Government acknowledges that the Submitters have complied with the requirement. However, the Peruvian Government questions the sufficiency of the attached documentary information, coming to the conclusion that it is not relevant since said documentation does not reliably demonstrate the lack of environmental compliance alleged in the submission.
38. Concerning this aspect, it is necessary to clarify Subsection c) of numeral 2 of article 18.8 of the TPA under analysis does not establish, as the Peruvian Government has indicated, that the documentation attached to the Application must comply with demonstrating a certain level of proof of non-compliance with the environmental legislation. In effect, the Government of Peru requests that the Submission be rejected because, in its opinion, the information provided by the Submitters "does not prove the alleged lack of effective application of the legislation."
39. Based on the above, we can conclude that there is an interpretative discrepancy regarding the standard that the Secretariat should use to determine whether the documentation attached to a Submission is or is not sufficient for its review.
40. In the Secretariat's view, and considering that this is an admissibility criterion, the applicable requirement for evaluating the documentation attached to a Submission should be to identify

whether or not said information is related to the scope of the Submission presented.

41. However, the Peruvian Government considers that the Secretariat, in conducting this particular admissibility analysis, should evaluate the content of the documentary information provided and consider this requirement as not met with respect to information that does not comply with certain standards such as being updated, that its object and objective (in the case of national conservation plans and the scientific article) are strictly framed in the subject matter of the Submission, and that in the case of the regulations that declare the implementation of the MC-SNIFFS these would not have legal effects but would only be declarative and would only express an objective to be achieved.
42. In this order of ideas, in the opinion of the Secretariat, the Submission has provided sufficient information and documentary evidence related to the environmental legislation whose non-compliance has been invoked, since it refers to the implications of the impact on wildlife that could be generated by the lack of implementation of the wildlife submodule within the MC-SNIFFS. This meets the admissibility requirement referred to in subsection c) of section 2 of article 18.8 of the TPA.

B.2. Regarding the criterion established in Article 18.8 (2) (e):

43. Subsection e) of Section 2 of Article 18.8.2 states that it is the responsibility of the Secretariat to analyze whether the Submission indicates that the matter has been communicated in writing to the relevant institutions of the Party, attaching the response, if available.
44. In this regard, we acknowledge that the Party has issued an opinion regarding the analysis carried out by the Secretariat concerning compliance with Article 18.8 (2) (e), as expressed in items 30 and 31 of Determination SACA-SEEM/PE/001/2024/D1 (Determination 1), where it was noted that the information presented in the Submission does comply with the TPA regarding the communication to the relevant institutions of the Party, including their response, if any.
45. On this matter, it should be noted that Chapter 18 of the TPA does not regulate a stage for forwarding a copy of the Submission and any supporting information provided with the Submission to the Party for the purpose of receiving the Party's considerations as a preliminary step to the issuance of Determination 1, which is the document in which the admissibility analysis of the Submission is conducted.
46. Despite the above, and for explanatory purposes, we proceed to point out the arguments presented by the Peruvian Government in this regard. The Peruvian Government notes that the Submission does not meet this requirement since, given that it addresses issues related to the monitoring and conservation of wildlife, it should therefore have been directed to the various relevant entities of the Executive Branch, such as the Supervision Agency for Forest and Wildlife Resources (OSINFOR) and the Ministry of the Environment (MINAM). This is because the protection of wildlife is the responsibility of various entities of the Peruvian Government other than SERFOR, under the regulatory framework in force in Peru.

47. In this regard, the Peruvian Government states that according to article 18 of Law 29763, Forestry and Wildlife Law, OSINFOR is responsible for supervising and supervising the conservation of wildlife, while in accordance with its creation rule, Legislative Decree 1085, its function is the supervision and supervision of the sustainable use and conservation of wildlife resources. On the other hand, in the case of MINAM, according to article 3 of Law 29763, said entity has the role of governing national environmental policy, and is responsible for directing the environmental inspection and control regime.
48. The question raised by the Peruvian Government focuses on pointing out that the communication was not directed to authorities other than SERFOR, as is the case of MINAM and OSINFOR, which are relevant institutions of the Party.
49. In this regard, it should be noted that, on February 9, 2024, the submitters sent an administrative request to SERFOR inquiring about the lack of implementation of the wildlife submodule within the MC-SNIFFS. The aforementioned communication was not responded to by SERFOR.
50. Without prejudice to this, it should be noted that according to article 13 of Law 29763, SERFOR is the governing entity of the National Forestry and Wildlife Management System, while in literal f) of article 14 of said law it is establishes that among its functions are those related to supervising and evaluating the operation of the National Forestry and Wildlife Management System.
51. In addition to this, within the regulatory basis invoked in the communication sent by the submitters to SERFOR is found in articles 12 and 147 of Supreme Decree No. 019-2015-MINAGRI, Regulations for the Management of Wildlife, in which respectively expressly provides that "SERFOR exercises the normative technical function, designs, conducts and supervises the SNIFFS" and that "SERFOR establishes the instruments that allow ensuring the traceability of wildlife products from their origin in each of the stages of the production chain". Likewise, in article 21 of Supreme Decree No. 018-2015-MINAGRI, Regulations for Forest Management, it is established that "SERFOR conducts the SNIFFS modules."
52. Therefore, the Submitters addressed to SERFOR in their capacity as the Peruvian state entity responsible for implementing the submodules of the MC – SNIFFS, which is consistent with the regulatory framework in force in Peru that refers to said issue.
53. The fact that the Submitters have not sent the indicated communication to other entities of the Peruvian state with powers in environmental matters, such as MINAM and OSINFOR, does not undermine the fact that the Submitters have complied with the requirement provided for in subsection e) of numeral 2 of article 18.8 of the TPA, to the extent that the non-compliance with environmental legislation to which they refer in their Submission is directly referred to a matter that was the direct responsibility of SERFOR (to which they did send a communication prior to formulating their Submission), such as the implementation of the wildlife submodule within the MC-SNIFFS.

C. Regarding meeting the criteria of article 18.8 (4) (a) of the TPA:

54. The Peruvian Government states that the Submission, in turn, does not meet the criteria established in literal a) of paragraph 4 of Article 18.8.4 of the TPA in relation to the Submission alleging harm to the person filing it.
55. In this regard, we acknowledge that the Party has issued an opinion in relation to the analysis carried out by the Secretariat regarding compliance with Article 18.8 (4) (a), as expressed in items 19 to 28 of the Determination SACA-SEEM/PE/001/2024/D2 (Determination 2) where it was noted that the Submission under analysis is not frivolous and asserts harm to the Submitters.
56. In this regard, it should be noted that Chapter 18 of the TPA does not regulate a stage for forwarding a copy of the Submission to the Party in order to receive its considerations as a preliminary step before the issuance of Determination 2, which is the document in which the analysis is conducted as to whether or not it is appropriate to request the Party's response.
57. Notwithstanding the above, and for illustrative purposes, we proceed to point out the arguments presented by the Peruvian Government on this matter.
58. Firstly, the Peruvian Government indicates that the Secretariat has considered that the Submitters invoke “harm to the person” asserting that the lack of the wildlife submodule of the MC-SNIFFS produces a limitation to confront the illicit trafficking of wildlife. Being that the illicit trafficking of wildlife constitutes a crime that generates very serious harm to society. However, the Peruvian Government considers that these statements are subjective and lack legal basis in light of the provisions of the TPA.
59. Likewise, the Peruvian Government points out that the Submission presented does not invoke any damage to the people who formulated it, since the Submitters have not presented information that demonstrates that they have suffered any damage and only mentions three (03) national plans issued by SERFOR on the conservation of wildlife and biological diversity, which constitute only management and guidance documents, these being neither adequate nor applicable to demonstrate the existence of real harm to the Submitters.
60. Additionally, the Government of Peru considers that the Secretariat has exceeded its functions by interpreting article 18.8 (4) of the TPA in the sense that the invocation of harm to the person making the Submission includes individual interests, as well as such as collective interests and diffuse interests, since, according to the opinion of said Party, the reference to damage referred to in the TPA refers to the existence of a detriment to the submitters themselves.
61. In relation to the harm asserted, indeed, this Secretariat considers that the information presented is sufficient to prove the existence of environmental harm.
62. In this regard, it is relevant to note the concept of environmental harm included in Law 28611, General Environmental Law:

“Article 142 – On the responsibility for environmental harm

...

*142.2 Environmental damage is defined as any material harm suffered by the environment and/or any of its components, which can be caused in compliance or non-compliance with legal provisions, **and which generates current or potential negative effects.**"*

(emphasis added).

63. Regarding the scope of environmental harm, under Peruvian environmental legislation, the Environmental Assessment and Enforcement Agency (OEFA), an organization attached to the Ministry of the Environment of Peru, points out that environmental harm violates the fundamental right of every person to live in a healthy, balanced and suitable environment for their full development. This is because it affects the health of people individually and collectively, the conservation of biological diversity, and the sustainable use of natural resources².
64. Additionally, OEFA in its Guidelines for the application of the corrective measures referred to in literal d) of section 22.2 of article 22 of Law No. 29325 - Law of the National System of Environmental Assessment and Control (approved by Resolution of the Board of Directors No. ° 010- 2013-OEFA/CD, of March 23, 2013) states that environmental damage can be real or potential, and includes the following concepts:
- **Real harm:** *Detrimental impact, loss, negative impact or current and proven damage caused to the environment or its components as a consequence of the development of human activities.*
 - **Potential harm:** *Environmental contingency, proximity to environmental hazards, environmental events causing any type of detriment, loss, negative impact or damage to the environment or any of its components as a result of phenomena, incidents, or circumstances with the sufficient capacity to cause them and which originate from the development of human activities.*
65. Therefore, when the TPA mentions harm to the person making the Submission, it is not necessarily referring to real harm but rather this concept can also include potential harm.
66. In addition to this, environmental damage is usually diffuse in nature, due to the complexity and difficulty of identifying the people affected by the negative impact on the environment who are entitled to initiate judicial or administrative actions before the competent bodies, as well as those who may receive possible compensation. In response to this, the Constitutional Court of Peru, in its capacity as the highest interpreter of fundamental rights in Peru, has ruled in repeated jurisprudence about the diffuse nature of environmental rights to the extent that no one specific is the exclusive owner of such rights and at the same time all members of a group or category (in an indeterminate manner) are their holders, as indicated in the rulings of said court mentioned in paragraphs 22 and 23 of the SACA Determination. SEEM/PE/001/2024/D2 of August 16, 2024.

67. It should be noted that in accordance with the provisions of Article 31 of the Vienna Convention on the Law of Treaties, treaties shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
68. In this regard, it should be noted that the same article of the Vienna Convention states that “the context for the purpose of the interpretation of a treaty shall comprise...its preamble...” In this sense, it is relevant to refer to the content of the Preamble of the TPA where, on environmental matters, the following is stated:

“The Government of the United States of America and the Government of the Republic of Peru, resolved to:

*...
IMPLEMENT this Treaty in a manner consistent with the environmental protection and conservation, promote sustainable development, and strengthen their cooperation on environmental matters.”*

69. In this sense, the application of the contents of the TPA in the context of addressing Submissions under the responsibility of this Secretariat is in compliance with the provisions of Article 31 of the Vienna Convention; taking into consideration, in relation to the context, the scope of the Preamble of the TPA, which includes the commitment (of both countries) to implement this Treaty in a manner consistent with the environmental protection and conservation, and to promote sustainable development.
70. Based on the aspects mentioned above in relation to the alleged lack of evidence of harm under the scope of article 18.8 (4) (a) of the TPA, in the view of the Secretariat, the concept of harm to the person should be understood in the context provided by the Preamble of this Treaty. Therefore, interpreting that the Submitters are required to present information that demonstrates that they have suffered some real and direct harm is not consistent with Peruvian environmental law, peruvian jurisprudence and the Preamble of the TPA; therefore, the aforementioned article should be understood in the context of environmental harm (real or potential, as well as individual, collective or diffuse), included in environmental legislation and Peruvian jurisprudence.
71. Consequently, in the present case the submitters have complied with proving the requirement of damage referred to in literal a) of paragraph 4 of article 18.8 of the TPA.
72. Finally, the Peruvian Government mentions that the Secretariat has exceeded its functions by citing previous pronouncements, such as the case of Determination SACA-SEEM/PE/002/2018/D2, in order to characterize those applications that are frivolous and that They do not have legal merit and are presented in bad faith with the purpose of harassing one of the parties. This is due to the fact that the determinations issued by the Secretariat in a specific procedure do not apply to future procedures as they do not constitute precedents or binding criteria.

73. In this regard, it is necessary to point out that although past determinations issued by the Secretariat in relation to previous submissions do not constitute precedents or binding criteria, they serve as a reference for the way in which attention has been given to cases of a similar nature and furthermore, they demonstrate a coherent line of action in the procedure under the jurisdiction of the Secretariat, so their mention for purely illustrative purposes, to the extent that it supports the procedure that has been followed, does not affect the validity of the determinations issued in the specific case.

D. Regarding the information provided by the Party under Article 18.8 (5) of the TPA:

74. In accordance to the provisions of Article 18.8 (5) of the TPA, the Secretariat requested a response from the Party regarding:

*“(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.”*

75. In this regard, the Peruvian Government has informed the Secretariat that the specific matter in question is not the subject of a pending judicial or administrative proceeding and that it has not previously been the subject of a judicial or administrative proceeding.

II.1. Substantive issues

A. Purpose of the Wildlife Control Submodule

76. The Government of Peru states that the wildlife sub-module is aimed at managing the productive chain of wildlife at the national level, an action that translates into recording the granting of the right, planning, use and trade from its origin, with information on resource management from the management areas; action that would also contribute to the control actions of the aforementioned resource.
77. Likewise, the Peruvian Government expresses that, although the systematization of information to which the Control Module and the submodules are oriented, constitute tools of the control systems, not having automated management processes does not limit the actions. of management and control (supervision) that can be carried out to protect wildlife resources.
78. Finally, the Government of Peru indicates that “it is planned to develop the wildlife submodule, within the framework of the progressive implementation of the SNIFFS.”
79. In this order of ideas, the response sent by the Party shows that the wildlife submodule of the MC SNIFFS has not yet been implemented.

B. Of the actions adopted to improve the management of wildlife

80. The Government of Peru indicates that within the framework of the SNIFFS Control Module, it contemplates the wildlife management submodule within which the Breeding Centers Platform (PCC by its acronym in spanish) has been developed, carried out with the support of the Project PREVENIR – USAID during the year 2023.
81. Adds that this application has been conceptualized to function as a digital operations book, in such a way that users can upload information about their occurrences and it can be viewed by regional governments and national entities in real time; Likewise, it is worth mentioning that its development faced different challenges such as: i) Starting its construction at the same time as the Control Module itself, therefore, there were delays in the inclusion of security devices and; ii) Integration into the SNIFFS, for which different meetings were held to achieve its adjustment with different areas of SERFOR; however, the platform was completed.
82. Thus, in 2024 the functionality practices were closed, and are currently in the final validation stage to later move on to production.
83. On the other hand, the Peruvian Government mentions that it has had an Application for wild South American camelids since 2015, which contains annual information on the volume of vicuña fiber sheared at the national level, which, subsequently, are supervised by the Regional Forestry and Wildlife Authorities; technological tool that also houses information contained in the vicuña Management Declarations approved by SERFOR outside the natural areas protected by the Peruvian Government.

C. Of the alleged impact on inspection actions due to the absence of the wildlife control submodule

84. The Government of Peru points out that the lack of implementation of the wildlife submodule does not constitute a limitation for environmental control actions in the broad sense, since SERFOR has issued the following seventeen (17) related regulations to the granting of rights and guaranteeing the legality and traceability of the management and productive use of wildlife resources:
- Update of the classification and categorization list of legally protected threatened species of wildlife, approved by Supreme Decree No. 004-2014-MINAGRI.
 - Regulations on Infractions and Sanctions in Forestry and Wildlife Matters, approved by Supreme Decree No. 007-2021-MIDAGRI.
 - Guidelines for granting the License for sport hunting, approved Executive Directorate Resolution No. 176 -2016-MIDAGRI-SERFOR-DE.
 - Guidelines for the suspension of rights and obligations in enabling titles, approved by Executive Directorate Resolution No. 189 -2016-MIDAGRI-SERFOR-DE.
 - Guidelines for granting the License for certified sport hunting drivers, approved by Executive Directorate Resolution No. 239-2016-MIDAGRI-SERFOR-DE.
 - Guidelines for the authorization of hunting operators, approved by Executive Directorate Resolution No. 242-2016-MIDAGRI-SERFOR-DE.
 - Guidelines for the authorization of commercial capture of wildlife, approved by Executive

Directorate Resolution No. 282-2016-MIDAGRI-SERFOR-DE.

- Guidelines for granting permits for wildlife management on private properties, approved by Executive Directorate Resolution No. 146 -2017-MIDAGRI-SERFOR-DE.
- Guidelines for granting project authorization and operating authorization for the captive breeding center, approved by Executive Directorate Resolution No. 147 -2017-MIDAGRI-SERFOR-DE.
- Guidelines for the preparation and implementation of closure plans for forestry concessions and wildlife concessions, approved by Executive Directorate Resolution No. 125-2021-MIDAGRI-SERFOR-DE.
- Guidelines for the preparation of wildlife management plans applicable to zoos, approved by Executive Directorate Resolution No. 017-2022-MIDAGRI-SERFOR-DE.
- Guidelines for extending the validity of forestry concession contracts and wildlife concession contracts, approved by Executive Directorate Resolution No. 175-2022-MIDAGRI-SERFOR-DE.
- Guidelines for the preparation of wildlife management declarations for rescue centers, approved by Executive Directorate Resolution No. 081-2023-MIDAGRI-SERFOR-DE.
- Guidelines for the preparation of the wildlife management declaration for conservation centers, approved by Executive Directorate Resolution No. 125-2023-MIDAGRI-SERFOR-DE.
- Guidelines for the preparation of genealogical record books of endangered species of wildlife, approved by Executive Directorate Resolution No. 167-2023-MIDAGRI-SERFOR-DE.
- Guidelines for granting authorization to possess birds of prey from farms for the practice of falconry, approved by Executive Directorate Resolution No. 209-2023-MIDAGRI-SERFOR-DE.
- List of native species susceptible to being managed for commercial purposes in farms, approved by Executive Directorate Resolution No. 028-2023-MIDAGRI-SERFOR-DE.

85. Along these lines, adds the Peruvian Government, it must be taken into consideration that, within the framework of what is stated in the national legislation on forestry and wildlife resources, the management of wildlife and the granting of rights (concessions, permits) and authorizations), are in charge of the Regional Forestry and Wildlife Authorities and Forestry and Wildlife Technical Administrations.
86. Likewise, the Peruvian Government adds that, within the framework of Legislative Decree 1085, through which OSINFOR was created, the function of said entity is established “To supervise and supervise compliance with the enabling titles granted by the State, as well as as the obligations and conditions contained in them and in the respective management plans. For the purposes of this Law, concession contracts, permits, authorizations and others, which have as their objective the sustainable use and conservation of forestry and wildlife resources, are considered to be enabling titles (...);” Thus, said entity permanently develops inspection actions on the aforementioned rights.
87. The Government of Peru points out that said regional authorities also carry out inspection actions with respect to those rights granted by themselves, provided that they do not constitute the enabling titles mentioned in Law No. 29763, Forestry and Wildlife Law and its Regulations.
88. Likewise, the Peruvian Government adds that the granting of rights issued by SERFOR is also subject to supervision, with a greater number in international trade of the species

contained in the appendices of the Convention on International Trade in Species Endangered Wild Fauna and Flora (CITES by its acronym in Spanish) and those that are not found in them. It is within the framework of this work that, according to what it states, “environmental oversight” actions (control/supervision) in commerce have been strengthened; work that has materialized, through the increase in human resources of the Technical Forestry and Wildlife Administration of Lima and the Directorate of Control of the Management of Forestry and Wildlife Heritage in the region of Loreto and Lima, respectively.

89. That being so, the Government of Peru concludes, it is clear that the lack of implementation of the aforementioned submodule does not constitute a limitation for the authority empowered to carry out inspection tasks - regardless of whether they are in the broad or strict sense - to develop such tasks- do them; as there is a regulatory framework that enables their development.
90. Now, in addition to the above, the Peruvian Government mentions that it should be considered that SERFOR, in its role as national focal point for complaints of infractions and crimes in forestry and wildlife matters, through the “Directive for the reception, channeling and monitoring of complaints related to infractions in forestry and wildlife matters in the National Forestry and Wildlife Service” approved by General Management Resolution No. D000026-2021-MIDAGRI-SERFOR-GG established the mechanisms so that citizens can file complaints for alleged impact, among others, of wildlife; work that, according to what it states, contributes significantly to developing control actions in administrative and/or criminal channels, by the competent authorities, that is, OSINFOR, Regional Forestry and Wildlife Authorities, Forestry and Wildlife Technical Administrations and SERFOR.

D. Analysis of the arguments of the Government of Perú

91. As stated in Determination SACA-SEEM/PE/001/2024/D1 of July 12, 2024, it was identified that the submission in the present case aimed at the following:
 - According to article 12 of the Wildlife Management Regulations approved by Supreme Decree N 019-2015-MINAGRI and 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, the MC-SNIFFS is made up of three (3) submodules, one of them being the Wildlife Submodule, which is what should allow both SERFOR and the other authorities linked to wildlife management to determine whether the wildlife specimens or products are transported within the national territory or exported abroad, whether they have a legal origin or not. In this way, this submodule constitutes a fundamental tool to prevent illicit wildlife trafficking; However, this submodule has not been implemented by SERFOR since 2015.
 - Likewise, article 5, paragraph b) of the Single Environmental Control Regime, approved by Resolution No. 247-2013-MINAM, establishes the duty of the Control Entities to implement the necessary instruments for the fulfillment of their functions. According to this, the wildlife submodule of the MC-SNIFFS would constitute an essential 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

would allow 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; According to the applicants, the inspection activity becomes 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, as explained by the submitters, the failure by SERFOR to comply with its duty to establish the necessary technical instruments for the regular exercise of its environmental oversight functions, as is the case of the lack of implementation of the sub wildlife module, makes it difficult to verify the legal origin of transported wildlife resources.

92. In this order of ideas and considering what is recognized by the Government of Peru itself, as referred to in item II.2.A of this document, the wildlife submodule of the MC-SNIFFS has not yet been implemented.
93. Although the Government of Peru has developed in its response various actions that it has adopted to improve the management of wildlife (item II.2.B), as well as the actions for effective control of wildlife that it has deployed (item II.2.C), they are different from those that must be implemented in accordance with the environmental legislation alleged by the submitters and referred to in section 91 of this document.
94. Taking into account the above, this Secretariat considers it necessary to prepare a Factual Record where the scope of the environmental and health benefits that would be expected to be achieved with the approval and implementation of the wildlife sub-module of the MC – SNIFFS.

III. REGARDING THE DEVELOPMENT OF A FACTUAL RECORD

95. According to article 18.9 (1) of the TPA, “If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.
96. Having taken into account the response from the Government of Peru, and based on the reasons previously mentioned, this Secretariat considers that there are key issues of the Submission that need to be addressed and developed in further detail.
97. In this regard, the Secretariat recommends the development of a Factual Record regarding the effective enforcement of current environmental law in relation to the fulfillment of the functions in charge of SERFOR in terms of implementation of the wildlife submodule of the MC-SNIFFS.

IV. NOTIFICATION

98. The Secretariat, based on the reasons stated above and in accordance with the provisions of Article 18.9 (1) of the TPA, considers that Submission SACA-SEEM/PE/001/2024 justifies the development of a Factual Record, specifically considering the points mentioned in paragraphs 91 to 94 of this Notification.
99. In accordance with the provisions of Article 18.9 (1) of the TPA, the Secretariat forwards this Notification to the Environmental Affairs Council of the TPA for its consideration.
100. In accordance with the provisions of article 18.9 (2) of the TPA, “The secretariat shall prepare a factual record if any member of the Council instructs it to do so.”



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U.S.— Peru Trade Promotion Agreement