REGARDING THE SUBMISSION
SACA-SEEM/PE/001/2024

POSITION OF THE PERUVIAN GOVERNMENT

Through this document, the Peruvian Government responds to the Submission SACA-SEEM/PE/001/2024 (hereinafter, the "Submission").

In this regard, in accordance with the provisions of Article 18.8 (5) of the Peru-United States Trade Promotion Agreement (TPA), we proceed to respond to the Submission within the period granted by the Secretariat for Submission on Environmental Enforcement Matters. (hereinafter, the "Secretariat"), pointing out that this should not have been processed because it does not comply with the requirements established in the APC for its admission, nor for the Peruvian Government to be required to respond, in response to the arguments that were set out below:

I. BACKGROUND

1.On April 12, 2006, Peru and the United States signed the TPA, which came into force on February 1, 2009. It should be noted that a Chapter on the Environment (Chapter 18) was negotiated in said trade agreement.

2. By email dated March 29, 2024, three (3) people (hereinafter, the "Submitters") presented the Submission to the Secretariat, pursuant to article 18.8 of the APC; in which they invoke the lack of effective application, by the Peruvian Government, of the legislation on the protection of wildlife, because in their opinion, the National Forestry and Wildlife Service (SERFOR) would not have complied with implement the wildlife submodule within the Control Module of the National Forestry and Wildlife Information System (also known as MC-SNIFFS).

3. On March 29, 2024, the Secretariat acknowledged receipt of the Submission, to which the code SACA-SEEM/PE/001/2024 was assigned, and notified it to the Peruvian Government, indicating that it will formulate a first Determination regarding the admissibility of the Submission and, subsequently, a second Determination in relation to whether the Submission warrants requiring a response from the Peruvian Government.

4.On July 12, 2024, the Secretariat issued the SACA Determination SEEM/PE/001/2024/D1, in which it indicated that the Submission complies with the provisions of Article 18.8 (1) of the TPA and with the requirements of admissibility contained in Article 18.8 (2) of the APC; proceeding to communicate it to the Submitters and the Environmental Affairs Council (hereinafter, EAC) by email on the same date.

5.On August 16, 2024, by Determination SACA/SEEM/PE/001/2024/D2, the Secretariat, after examining the Submission, and pursuant to Article 18.8 (4) of the APC, considered that the Submission merits a response from the Peruvian government.

6.Through electronic communication dated September 2, 2024, the Peruvian Government requested from the Secretariat an extension of the deadline for fifteen (15) additional days, until October 15, 2024, in order to respond to the SACA/SEEM Determination /PE/001/2024.

7. Next, we will rule on what was stated in the Submission, demonstrating that the arguments presented regarding the alleged lack of compliance with environmental legislation by the Peruvian Government are unsupported.

II. ON THE LINKAGE OF ENVIRONMENTAL COMMITMENTS TO TRADE OR INVESTMENT BETWEEN THE PARTIES

1. The Submission of March 29, 2024 does not present arguments that demonstrate the direct relationship between the alleged lack of effective application of environmental legislation and trade or investment between the Parties, nor does it explain how trade would be affected. and/or

the investment, in accordance with the provisions of the APC. The definition of environmental legislation contained in Chapter 18 of the APC, which aims to mutual support between trade and environmental policies, is framed in a trade agreement, which makes it clear the scope in which the submission presented in this forum must be limited.

2. In this regard, we must mention that the obligations assumed within the framework of "Chapter Eighteen Environment" of the APC with the United States have not been established in isolation from the trade obligations adopted in the aforementioned Agreement, since said Chapter does not regulate environmental aspects. by themselves, as if it were an international instrument of an exclusively environmental nature.

3. Likewise, it is pertinent to take into consideration that, in accordance with the provisions of Article 31 of the 1969 Vienna Convention on the Law of Treaties, treaties must be interpreted in "good faith", in accordance with the ordinary meaning of their provisions. terms in their context and taking into account their "object and purpose".

4. The Vienna Convention on the Law of Treaties is clear in determining that a treaty must be interpreted according to its specific context, and taking into account its purpose. Along the same lines, the International Court of Justice, in "Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad)", of 1994, reinforces this:

> "*41. The Court would recall that, in accordance with customary international law, reflected in Article 31 of the 1969 Vienna Convention on the Law of Treaties,* ***a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose****. Interpretation must be based above all upon the text of the treaty. As a supplementary measure recourse may be had to means of interpretation such as the preparatory work of the treaty and the circumstances of its conclusion".* (The highlighting and underlining is ours)

5. Thus, the TPA with the United States, in accordance with its "Preamble," expresses the common will of the Parties, among others, to "ENSURE a predictable legal and commercial framework for business and investment" (Emphasis added).

6. Along the same lines, it is pertinent to take into consideration that the FTA with the United States, in accordance with the objectives of Chapter Eighteen, recognizes that these must be framed in mutual support between trade and environmental policies:

> "Objectives:
> *(…), the objectives of this Chapter are to contribute to the efforts of the Parties to* ***ensure that trade and environmental policies are mutually supportive, (…), and to strive to strengthen the links between the trade and environmental policies and practices of the Parties****, which can take place through environmental cooperation and collaboration."* (emphasis added)

7. Similarly, article 18.10 (1) of the TPA with the United States establishes the following:

> *"The Parties recognize the importance of strengthening their capacities to protect the environment and promote sustainable development****, in harmony with the strengthening of their trade and investment relations****.*" (emphasis added)

8. As can be seen, the link between the obligations assumed in Chapter Eighteen of the TPA on environmental matters and trade and investment is irrefutable. In that sense, it is clear that only those aspects that meet this condition can be considered under said Chapter, and all those elements that do not have said connection must be rejected outright, since, otherwise, we would be acting outside the framework of the TPA that Both Parties agreed voluntarily and sovereignly.

9. On the other hand, in the TPA an international or supranational court or group of experts has not been established to study or evaluate environmental issues that arise autonomously within a country, since there will only be support to address an environmental issue if they exist. evidence on the impact on trade or investment between the Parties. In other words, it is a trade agreement that only deals with issues on trade and in the specific case of Chapter Eighteen with disciplines related to environmental issues related to trade and investment between the Parties.

10. In this context, the Submission does not prove an impact on trade or investment between the Parties, in accordance with the objectives of Chapter Eighteen of the TPA.

III. <u>ABOUT SUBMISSION SACA-SEEM/PE/001/2024</u>

1. The Submitters in their brief of March 29, 2024, allege without any basis an alleged *"(…) non-compliance with environmental regulations linked to the protection of wildlife by SERFOR, which is configured with the lack of implementation of the wildlife submodule within the Control Module of the National Forestry and Wildlife Information System (MC-SNIFFS), (…),* ***<u>constitutes a breach of environmental legislation</u>*** *under the terms of the Peru-United States Trade Promotion Agreement"* . They add that the Request is based on Chapter 18 of the TPA, in particular, cite articles 18 (8), 18, (11), 18 (14), and Annex 18 (3) (4) on the management of the forestry and wildlife sector.

2. Likewise, the Submitters point out that the fact that to date the wildlife submodule within the MC-SNIFFS is not operational represents a limitation to combat illicit wildlife trafficking, given that said tool aims to provide a systematized database for authorities to determine the legal origin of wildlife resources that are transported or traded. In this sense, the Submitters maintain that: *"(...) the Peruvian State* ***fails to comply with the commitment assumed in the Peru-United States Trade Promotion Agreement*** *in relation to the prevention of illicit wildlife trafficking."* (Emphasis added)

3. On the other hand, the Submitters make special reference that SERFOR has failed to comply with Peruvian environmental standards, such as article 12 of the Regulation for the Management of Wildlife, approved by **Supreme Decree No. 019-2015-MINAGRI** and article 5 , subsection b) of the Single Environmental Control Regime, approved by **Ministerial Resolution No. 247-2013-MINAM**, in accordance with article 17 of the Regulation for the Management of Wildlife, approved by **Supreme Decree No. 019-2015-MINAGRI**. This is because, to date, it has not fulfilled its duty to fully implement the National Forestry and Wildlife Information System (SNIFFS), within which the wildlife submodule of the Control Module is located.

4. Likewise, the Submitters maintain that the lack of operation of the wildlife submodule of the MC-SNIFFS generates difficulties in the effective compliance by SERFOR and the rest of the competent authorities of the environmental obligations contained in the following standards:

- Article 147 of the Regulations for the Management of Wildlife, approved by Supreme Decree No. 019-2015-MINAGRI, which establishes the duty of SERFOR to approve the instruments that ensure the traceability of wildlife products.

- Article 184 of the Regulations for the Management of Wildlife, approved by Supreme Decree No. 019-2015-MINAGRI, which establishes the duty of SERFOR to verify the legal origin of specimens, products and by-products of wildlife, subject to export, import or re-export.

- Article 13 of the Preliminary Title of Law 29763, Forestry and Wildlife Law, which, in accordance with article 12 of the Regulation for the Management of Wildlife, approved by Supreme Decree No. 019-2015-MINAGRI, establishes the duty of SERFOR (as a public entity) to make available to the population in a timely manner all public information related to wildlife management.

5. Likewise, the Submitters specify that *"(…)* ***<u>in this request we are not alleging non-compliance with these environmental standards by SERFOR</u>****, we are only pointing out that,*

from our point of view, they may not be being complied with in a manner effective as a consequence of the lack of implementation of the wildlife submodule of the MC-SNIFFS" (The highlighting and underlining is ours).

6. In this sense, the Submitters turn to the Secretariat, in accordance with the rules established in articles 18.8 and 18.9 of the TPA, to request that it generate a file of facts *as "(…) a consequence of the situation of regulatory non-compliance and negligence by the national forestry and wildlife authority (SERFOR) in relation to its duty to implement the wildlife submodule within the Control Module of the National Forestry and Wildlife Information System (MC-SNIFFS)",* provided for in Article 12 of the Regulations for the Management of Wildlife, approved by Supreme Decree No. 019-2015-MINAGRI; and article 5, paragraph b) of the Single Environmental Control Regime, approved by Ministerial Resolution No. 247-2013-MINAM, in accordance with article 17 Regulation for the Management of Wildlife, approved by Supreme Decree No. 019-2015-MINAGRI .

IV. <u>RESPONSE TO SUBMISSION</u>

We then go on to explain that the Submission does not meet the admissibility requirements or those that determine the need to request a response from the Peruvian Government, in accordance with the provisions of the TPA.

4.1. THE SUBMISSION DOES NOT MEET THE ADMISSIBILITY REQUIREMENTS

1. Pursuant to the provisions of Article 18.8 of the TPA, the Secretariat's functions are to receive and process submissions on environmental compliance matters presented by natural and legal persons of any of the Parties.

2. Likewise, in accordance with article 5 of the Understanding to implement article 18.8 of the TPA signed between Peru and the United States, the functions of the Secretariat are:

> "1. Perform the functions established in Articles 18.8 and 18.9 of the TPA. In particular, the Secretariat must:
> a) receive and consider submissions from the public, in accordance with paragraphs 1 and 2 of Article 18.8;
> b) request the Party to respond to public submissions and receive the Party's response, in accordance with paragraphs 4 and 5 of Article 18.8, respectively; and consider the requests and any response provided by the Party in accordance with paragraph 1 of Article 18.9.
> c) inform the Council, in light of any response provided by the Party, whether public submissions justify the development of a factual record, in accordance with paragraph 1 of Article 18.9;
> d) prepare factual records when ordered by any member of the Council, present the factual records to the Council and, if ordered by any of its members, make them available to the public, in accordance with Article 18.9; and may take additional measures as long as they are pertinent to perform the functions established in Articles 18.8 and 18.9 of the TPA.
> 2. For these purposes, <u>it is the responsibility of the Secretariat to apply the operating procedures and other procedures that the Council establishes to consider submissions from the public</u>, prepare factual records, consult experts, prepare reports to be presented to the Council, protect information confidential, making documents available to the public, or other matters related to their functions." (The emphasis is ours)

3. Under this legal framework, it should be noted that it is the interest of the Peruvian Government that the procedures processed by the Secretariat are carried out in accordance with the provisions of articles 18.8 and 18.9 of the APC; and, the Understanding to implement Article 18.8 of the APC, so that the Parties and the Secretariat act appropriately and do not affect or alter the provisions of said regulatory instruments.

4.1.1. THE SUBMISSION DOES NOT PROVIDE SUFFICIENT INFORMATION OR DOCUMENTARY EVIDENCE

1. Article 18.8 (2) (c) of the APC states that the Secretariat may consider an application if *"***sufficient information** *is provided to allow the Secretariat to review the application, including* ***documentary evidence*** *on which the application is based and identification of the environmental laws with respect to which non-compliance is invoked."* (Emphasis added).

2. Under this regulatory framework, we must mention that the Submission presented does not meet the aforementioned admissibility requirement, since the Submitters do not provide sufficient information to allow the Secretariat to review it nor do they include relevant documentary evidence.

2. This is because, although the Submission identifies the current environmental legislation regarding the conservation of wild fauna, with respect to which it alleges an **alleged situation of non-compliance** with the commitments assumed by TPA Peru-USA in relation to the prevention of illicit wildlife trafficking, does not provide sufficient information or documentary evidence, which is why it should have been rejected **in limine** at the time, considering that it does not comply with this important admissibility requirement.

3. It should be noted that **it is not the function of the Secretariat to evaluate the alleged non-compliance with environmental legislation under the terms of the Peru-US TPA**, since it is only responsible for examining the effective application of the environmental legislation of the Party, in accordance with the article 18.8 of the TPA. The mechanisms for the resolution of disputes regarding the interpretation, application and compliance of the TPA are provided for in Chapter 21 of the same.

4. In this sense, it should be noted that, based on the review of the information provided by the Submitters, it does not prove the alleged lack of effective application of the legislation, as will be seen below:

Information provided by the Submitters	No relevant documents or information are available
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**.	It must be kept in mind that the regulations that declare the development of an activity of national interest do not generate legal effects, but rather seek to highlight the benefits that would be sought to be achieved with the development of the planned activity. From the above, it can be deduced that the regulations that contain categories of national interest and public need seek for the State to develop actions that allow achieving the objective outlined in said device, to the extent that its compliance is beneficial for society. From the above, it follows that these standards cited in the Request **do not demonstrate that there is a lack of effective application of the environmental legislation invoked.** <u>Reference</u>:

	- Ruling of the Constitutional Court 3283-2003-AA of June 15, 2004. - Pages 7 and 8 of Bulletin No. 02-2013-DGDOJ/MINJUS.
Article published by Ellen Andersen (2014) in which it is pointed out that the conservation of wildlife (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 dispersal of seeds in tropical humid forests.	The article contains information of a general nature, **which is not directly related to the object of the Submission**. Likewise, it contains outdated information dating back to 2005. It limits itself 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 species. dispersing vegetables.
National Conservation Plan for Endangered Primates of Peru (Period 2019 – 2029) approved by Resolution No. 237-2019-MIDAGRI-SERFOR-DE and located at the following link: https://www.gob.pe/institucion/serfor /publications-reports/1467153-national-plan-for-conservation-of-endangered-primates-in-peru. In this regard, the Requesters point out that said document indicates some ecosystem functions fulfilled by certain fauna species mentioned there (case of the yellow-tailed woolly monkey, the black woolly monkey, as well as the gray woolly monkey, among others).	It is a management and guidance document that only describes the activities to promote the conservation of threatened primates in Peru and recommends the adoption of measures that seek to preserve them and ensure their biological, social and cultural role in the spaces where they are found. As can be seen, this National Plan **is not directly related to the object of the Submission.**
National Plan for the Conservation of Suri (Rhea Pennata), period 2015-2020, approved by Resolution No. 139-2015-SERFOR and located at the following link: https://www.gob.pe/institucion/serfor/infor mes-. In this document, it is indicated that inadequate management for the conservation of the suri and its habitats can cause the loss of the diversity of high Andean ecosystems.	It is a **management and guidance** document that describes the conservation and recovery of the populations of this emblematic species of the high Andean zone of the country, given the valuable potential it has to offer goods and services to the Andean population. **It has no direct connection with the object of the Submission**. It should be noted that the effective date of this plan has already expired.
National Conservation Plan for the Andean Tapir in Peru, period 2018 – 2027, approved by Resolution No. 228-2018-MIDAGRI-SERFOR-DE and located at the following link: https://repositorio.serfor.gob.pe/bitstream	It is a management and guiding document, issued by said entity, by virtue of its powers. **It has no direct connection with the object of the Submission**.

/SERFOR/581/1/SERFOR%202018%20Plan-de-Conservacion-del-Tapir.pdf. In that document, the role of the tapir in seed dispersal is highlighted.	
Letter dated February 9, 2024 presented by the Submitters before SERFOR.	It should be kept in mind that the aforementioned letter is not a document that allows proving the alleged lack of effective application of Peruvian environmental legislation, but rather it contains mere subjective allegations, without further support or evidentiary support, formulated by the Submitters regarding the implementation of the wildlife submodule.

5. In conclusion, the Submission does not comply with the requirement provided for in Article 18.8 (2) (c) of the APC, since it does not include sufficient information to allow the Secretariat to examine the Submission nor does it provide documentary evidence regarding the allegations contained in the Submission.

4.1.2. THE SUBMISSION HAS NOT NEEN COMMUNICATED IN WRITING TO THE RELEVANT INSTITUTIONS OF THE PERUVIAN GOVERNMENT

1. Through Determination SACA-SEEM/PE/001/2024/D1, the Secretariat considered that the Submission meets the following admissibility requirements provided for in Article 18.8 (1) and (2) of the TPA:

> "1. Any person from a Party may submit a request claiming that a Party is failing to effectively apply its environmental legislation. Such requests must be submitted to a secretariat or other competent body (secretariat) that the Parties designate.
>
> 2. The secretary may consider a request under this Article if it finds that the request: (a) is written in English or Spanish (b) clearly identifies the person making the request; (c) provides sufficient information to allow the secretary to review the request, including documentary evidence on which the request is based and identification of the environmental laws with respect to which the non-compliance is invoked; (d) appears to be focused on promoting compliance rather than harassing the industry; (e) **indicates that the matter has been communicated in writing to the relevant institutions of the Party and indicates the Party's response, if any**; and (f) is submitted by a person of a Party, except as provided in paragraph 3." (Emphasis added).

2. The Secretariat indicates that the Submission has complied with the requirement provided for in literal (e) of article 18.8 (2) of the TPA, since it has been sent to SERFOR.

3.In this regard, the TPA is clear regarding this requirement, so there is no room for a different interpretation than what the Agreement expressly establishes in that the communication must be directed to the relevant institutions.

4. The Submission addresses issues related to the monitoring and conservation of wildlife, which is why it should have been addressed to the various relevant entities of the Executive Branch, such as the Agency for the Supervision of Forestry 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, by virtue of the regulatory framework in force in Peru, which we will proceed to point out below:

OSINFOR	MINAM
Law 29763- Forestry and Wildlife Law **Article 18.-** Agency for the Supervision of Forestry and Wildlife Resources (OSINFOR) The Forest and Wildlife Resources Supervision Agency (OSINFOR) is responsible for **supervising and supervising** the sustainable use and **conservation** of forest and **wildlife resources**, and the services of forest ecosystems and other wild vegetation ecosystems, granted by the State through enabling titles regulated by this Law.	**Article 3.-** General Powers and Functions The Ministry of the Environment **exercises at the national level** within the scope of its powers, the following matters: **Conservation and Sustainable Use of Natural Resources, Biological Diversity** and Protected Natural Areas, Environmental Quality, Climate Change, Management and Management of Solid Waste, Soil Management, Environmental Governance and other matters established by law, in coordination with the competent sectors, as appropriate. (…) **3.1 Governing Functions:** a) Formulate, plan, direct, coordinate, execute, supervise and evaluate the **National Environmental Policy**, applicable to all levels of government. b) Guarantee compliance with environmental standards, carrying out inspection, supervision, evaluation and control functions, as well as exercising the sanctioning power in matters of its competence and **directing the environmental inspection and control regime** and the incentive regime within the framework of the law of matter. c) Coordinate **the implementation of the national environmental policy with the sectors**, regional governments and local governments. (…) Article 60.- Functions of the General Directorate of Biological Diversity The functions of the General Directorate of Biological Diversity are the following:

<u>Legislative Decree No. 1085- Law that creates the Agency for the Supervision of Forestry and Wildlife Resources.</u> **Article 1.- Creation and Purpose** The Forestry and Wildlife Resources Supervision Body, OSINFOR, is created as a Public Executing Body, with legal status under public law, **in charge of supervising the sustainable use and conservation of forestry and wildlife resources**, as well as as well as the environmental services coming from the forest. **Article 3.- About the Funciones** **3.2** Verify that the establishment of **the annual export quota for protected species** complies with the provisions of the domestic legal system and international conventions. must inform the competent control body if irregularities are determined.	

5. This being so, when applying the provisions of the TPA, the Secretariat has not taken into account one of the terms negotiated by the Parties in article 18.8 (2) (e), which establishes that the communication must be sent in writing to “the relevant institutions” in violation of the scope of application of the TPA and, thus maintaining that it would only be enough to send a communication to SERFOR and, therefore, the sending of said letter would be considered valid.

6. According to the above, it is clear that the Submission does not comply with the requirement regarding communication by the Submitters to the relevant institutions of the Peruvian Government. In this sense, and taking into consideration that article 18.8 (2) of the TPA provides for a list of requirements that must be verified concurrently to admit for processing an application submitted to the Secretariat, we can conclude that, by not verifying one of the requirements demanded in the aforementioned article, the Submission is not admissible, and should not have been admitted for processing by the Secretariat.

7. In this sense, taking into consideration that the Submission did not comply with all the requirements demanded in paragraph 2 of article 18.8 of the TPA, it should have been rejected, not proceeding to the next stage of requiring a response from the Peruvian Government. . Indeed, as expressly established by the TPA, namely*: “Article 18.8: Submissions on Compliance Matters (…) 4. When the secretariat determines that the request meets the criteria described in paragraph 2, the secretariat will determine whether the request warrants requiring a response from the Party. To decide whether a response is required, the secretariat will consider whether: (a) the request is not frivolous and invokes harm to the person making the request; (b) the application, independently, or in combination with other applications, addresses matters whose study in this process would contribute to achieving the objectives of this Chapter and the ACA, taking into account the guidance on those objectives offered by the Council and the Commission of Environmental Cooperation established in the ACA; (c) remedies available under the legislation of the Party have been requested; and (d) the request is taken exclusively from mass media reports.”*

8. In that sense, according to what is established in said provision, for the Submission to require the response of the Party, all the requirements established in paragraph 2 must have been met, which has not happened in the present case.

9. Without prejudice to the foregoing, the following sections will proceed to refute the allegations included in the Submission in the sense that the Peruvian Government had not complied with effectively applying the legislation on wildlife conservation.

4.2. THE SECRETARIAT SHOULD NOT REQUIRE A RESPONSE TO THE SUBMISSION FROM THE PERUVIAN GOVERNMENT

4.2.1. DAMAGES INVOKED BY THE SUBMITTERS

1. The Secretariat, without further analysis or documentary evidence, has considered that the Submission meets the requirement established in subsection (a) of article 18.8 (4) of the APC, since the Submitters invoke "*harm to the person"* asserting *that "by lacking the aforementioned instrument (that is, the wildlife submodule) in Peru, there is a limitation to confront illicit wildlife trafficking."* He goes on to add that *"illicit wildlife trafficking constitutes a crime that generates very serious harm to our Society."* These subjective statements lack legal basis in light of the provisions of the TPA.

2. The Submission presented does not invoke any harm to the people who make it. The Submitters have not presented information that demonstrates that they have suffered any damage and only mention **three (03) national plans issued by SERFOR**[1] on the conservation of wildlife and biological diversity, which constitute only management and guidance documents[2] these are neither adequate nor applicable to demonstrate the existence of **real harm to the submitters**. Likewise, their respective contents are not **directly linked** to the wildlife submodule of the MC-SNIFFS nor does it establish a causal relationship between it and the damage alleged by the Submitters.

3. Likewise, in article 18.8. 4 (a) of the TPA, it is clearly established that one of the requirements to request a response from the Party is that damage must be invoked to the Submitters, which is not demonstrated with the information obtained, so said allegation would not be supported. The Submitters make a **general, subjective and imprecise mention of damage** that has not been duly supported and that does not affect the Submitters directly, which would not fall within the provisions of 18.8.4 a) of the TPA. Notwithstanding this, the Secretariat considers that the Submission is "supported by the **legal and technical arguments presented**," and then concludes that the Submitters have invoked damage under the terms of article 18.8. 4 (a) of the TPA.

4. In Determination SACA-SEEM/PE/001/2024/D2, the Secretariat indicates that, as the Submitters point out, the environmental damage occurs due to the lack of implementation of the submodule since *"it would imply an impact on the environment and the life of various species."* This assertion is absolutely subjective and lacking any basis. This, since it is not accurate to the extent that the alleged lack of implementation of the submodule would not produce, per se, personal and real harm to the Submitters, as established by the requirement provided for in article 18.8.4 (a). of the TPA.

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[1] Page 3 of Determination SACA-SEEM/PE/001/2024/D2.

[2] According to the Royal Spanish Academy (RAE), Plan is understood as: "project, program, purpose, intention, idea, objective, end." Systematic model of a public or private action, which is prepared in advance to direct and channel it. Likewise, at this point what is pointed out by Parejo Luciano stands out: "(...) the plan reflexively establishes a specific relationship between the starting situation, the means to be used and the ends to be achieved and also articulates - overlapping them with each other - the relevant means (measures). to that end." Journal of Public Law: Theory and Method Vol. 1 | Year 2020.

5. It should be noted that the Secretariat has not carried out a proper analysis in order to determine whether damage has occurred under the terms of the TPA. In this case, the Secretariat has not correctly applied the provisions of article 18.8 (4) of the TPA, along the same lines as what was discussed in the previous section; and furthermore, it wrongly values the documents presented by the Submitters as true and irrefutable proof **that damage is being generated**, without any type of analysis; despite the fact that the TPA provides as a sine qua non requirement for the admission of a submission before the Secretariat, the invocation of damage to the person who submits the latter. In this sense, the TPA refers to **real damage**.

6. It is worrying that the Secretariat interprets the provisions of the TPA (literal (a) of article 18.8 (4) of the APC), without this being part of its functions, and does so even in a sense contrary to what is expressly stated. has been established by the Parties to the Agreement as a result of a negotiation process, in which each term represents not only the balance of said process, but also, literally, the will of the Parties. The interpretation of the Secretariat regarding harm to the person is reproduced below:

> "*In this order of ideas, when literal a) of Article 18.8 (4) of the TPA refers to the fact that when analyzing a request, it is evaluated whether "damage is invoked to the person who makes the Submission",* ***said concept includes both individual interests, as well as collective interests and diffuse interests****. This means that the damage does not necessarily have to be individualized exclusively to the applicants, since in matters of an environmental nature, the typical and usual thing is that* ***the impact is diffuse****, reaching an indeterminate universe of people (within which they may be including, of course, those people who have assumed the role of applicants)."* (emphasis added)

7. Likewise, 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 collective and diffuse interests, based on jurisprudence of the Constitutional Court of one of the Parties, which is not applicable to this procedure, which is regulated by a Treaty. The actions of the Environmental Secretariat must be strictly limited to applying what was agreed upon by the Parties in the TPA.

8. On the other hand, 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 frivolous applications that do not have legal merit and that 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.

9. It should be noted that the function of the Secretariat is not to interpret the provisions of the TPA, but rather to apply them, verifying that the requirements established therein or in the complementary procedures established by the EAC, within the framework of Article 5 of the Understanding for implement Article 18.8 of the TPA, are complied with by the Submitters. Therefore, the evaluation of a Submission by the Secretariat must limit itself to applying only the provisions of the Treaty, as well as the procedures approved by the EAC.

10. We must highlight that the TPA reflects the understanding reached between two sovereign States that ensures a predictable legal and commercial framework for business and investments, which is being distorted by the Secretariat, by making interpretations that are not consistent with the result of what was negotiated and agreed between the Parties. Furthermore, it is relevant to note that the **Secretariat is not a jurisdictional body, much less of a supranational nature**, in which differences regarding the incompatibility of obligations or the nullification and impairment of the advantages resulting from the TPA are resolved; Rather, its actions are under the sole leadership and direction of the EAC, made up of representatives of both sovereign States.

11. In light of the above, we must point out that the only body that could issue an interpretation of any provision of the TPA or resolve any divergence of interpretation between the Parties is the Free Trade Commission, in accordance with the provisions of paragraphs 2 (c) and 3 (c) of article 20.1 of the APC, which provide the following:

"2. The Commission must:
(…)
(c) seek to resolve disputes that may arise regarding the **interpretation or application of this Agreement;**
(…)
3. The Commission may:
(…)
(c) **issue interpretations on the provisions of this Agreement**;
(…)". (emphasis added)

12. Likewise, the treatment that the Secretariat is giving to the Submitters brief is striking, without taking into consideration the procedures established in the TPA; in such a way that the functions of the Secretariat are being distorted, which is not a jurisdictional or supranational body, which is why it has not complied with the provisions of the TPA and distorts what was agreed upon by the Parties to said Treaty. In this sense, we are surprised by this interpretation of the scope of the concept of damage, which is not consistent with the objective that should characterize this type of procedures.

13. It should be remembered that the Royal Spanish Academy defines the term "damage" as follows*: "Damage: Effect of damaging." "Damage: cause detriment, harm, impairment, pain or annoyance."* It is clear that, in this case, the Secretariat has not required a justification of how harm has occurred to the Submitters, it has only indicated that it is a diffuse harm.

14. In that sense, this requirement was not met in light of the APC by the Submitters, which should have been taken into account in Determination SACA-SEEM/PE/001/2024/D2 in which a response from the Party is required. In addition to this, the Submission must invoke real damage in which it is justified how harm has been caused to the Submitters; ignoring this sine qua non requirement in the initial admission phase violates the minimum essential formalities of this procedure. Therefore, it is of utmost importance that the Submission be evaluated in accordance with what was agreed by the Parties in the TPA.

4.3. ABOUT THE BACKGROUND ARGUMENTS

a) <u>Purpose of the wildlife control sub-module.-</u>

1. In relation to this, we must state that the wildlife sub-module is aimed at managing the productive chain of wildlife at the national level, an action that translates into registering the granting of the right, planning, use and trade. from its origin, with information on the management of the resource from the management areas; action that would also contribute to the control actions of the aforementioned resource.

2. Likewise, we must indicate 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 management actions. and control (supervision) that can be carried out to protect wildlife resources.

3. On the other hand, we must point out that the wildlife submodule is planned to be developed, within the framework of the progressive implementation of the SNIFFS.

b) Of the actions adopted to improve the management of wildlife

4. Within the framework of the SNIFFS Control Module, which includes the wildlife management submodule, the Breeding Centers Platform (PCC) has been developed, carried out with the support of the PREVENIR Project – USAID during the year 2023. .

5. 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.

6. Thus, this year, the functionality practices were closed, and are currently in the final validation stage to later move on to production.

7. On the other hand, it is appropriate to mention that we have 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 is subsequently audited. 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.

8. It should be noted that this tool is used by the aforementioned Regional Authorities, who are responsible for entering information from the "control sheets" and generating the corresponding Capture and Shearing Records, an application that is also used by the Forestry and Technical Administrations. of Wildlife and the Directorate of Sustainable Management of Wildlife Heritage.

c) Of the alleged impact on Inspection actions due to the absence of the wildlife control sub-module

9. In relation to this, we must specify that the development of the wildlife sub-module application does not constitute a limitation for environmental control actions in the broad sense, since SERFOR has issued the following regulations related to the granting 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.

10. Along these lines, 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 wild fauna 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.

11. Likewise, within the framework of Legislative Decree 1085, through which the Supervision Body for Forest and Wildlife Resources (OSINFOR) is created, the function of said entity is established to "Supervise and supervise compliance with the titles authorizations granted by the State, as well 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.

12. Likewise, we must remember that said regional authorities also carry out inspection actions with respect to those rights granted by themselves, as long as they do not constitute the enabling titles mentioned in Law No. 29763, Forest Law. and Wildlife and its Regulations.

13. Likewise, it is appropriate to highlight 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 Endangered Species of Wild Fauna and Flora (CITES) and those that are not found there. It is within the framework of this work that "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.

14. This being so, **it is clear that the lack of implementation of the aforementioned submodule does not constitute a limitation for the authority empowered to carry out the inspection tasks - regardless of whether they carry out such tasks in the broad or strict sense**; as there is a regulatory framework that enables their development.

15. Now, in addition to the above, it must 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 linked 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 contributes significantly to developing administrative and/or criminal control actions by the competent authorities, that is, OSINFOR, Regional Forestry and Wildlife Authorities, Forestry and Wildlife Technical Administrations and the SERFOR.

V. CONCLUSIONS

The Submission does not meet the requirement of providing sufficient information, including documentary evidence that allows the Secretariat to review it, nor does it show that this alleged non-application of the legislation has affected trade or investment between the Parties, so there should have been been rejected in limine at the time, considering that it does not comply with this important admissibility requirement.

The Submission addresses issues related to the monitoring and conservation of wildlife, which is why it should have been addressed to the various relevant entities of the Executive Branch, such as the Forestry and Wildlife Resources Supervision Agency (OSINFOR) and the Ministry of the Environment (MINAM). This is because wildlife matters are the responsibility of various entities of the Peruvian Government other than SERFOR, by virtue of their respective regulatory frameworks.

The Secretariat has, among its functions, to receive and process requests on environmental compliance matters presented by natural and legal persons of any of the Parties, so its function is not to interpret the provisions of the TPA, but to apply them, verifying compliance. of the requirements established therein.

There is no evidence of the damage alleged in the Submission. Pursuant to the terms provided in the TPA, actual damage must be invoked; in the present case, such damage is not proven.

The Secretariat does not have the function of evaluating the allegations of the Submitters regarding an alleged non-compliance with the environmental commitments provided for in Chapter 18 of the APC.

The non-completion of the automated management processes involved in the Control Module and the submodules does not imply a lack of exercise of the management and control actions (supervision) that can be carried out to safeguard wildlife resources. In this context, the Government of Peru plans to develop the wildlife submodule within the framework of the progressive implementation of the SNIFFS.

Within the framework of the protection of wildlife, various mechanisms have been implemented such as the Platform of Breeding Centers (PCC) in 2023, and the Application for wild South American camelids since 2015. Likewise, SERFOR has issued various regulations related to the granting of rights and guarantee of the legality and traceability of the management and productive use of wildlife resources, between the years 2014 and 2023.

There are mechanisms for citizens to file complaints for alleged impact on wildlife, which contributes to developing administrative and/or criminal control actions by the competent authorities: SERFOR, OSINFOR, regional forestry and forestry authorities. wildlife, and technical forestry and wildlife administrations.

VI. PETITION

Taking into consideration the arguments presented by the Peruvian Government through this response document, we request that you, Mr. Executive Director of the Secretariat, please archive the Submission SACA-SEEM/PE/001/2024, because it does not comply with the requirements established in article 18.8 (2) and (4) of the TPA, so it should not have been processed, and therefore, the Peruvian Government should not have been required to respond.

Finally, in accordance with the provisions of article 18.8 (5) of the TPA and what was reported by the sectors concerned, the Peruvian Government informs the Secretariat that the specific matter in question is not the subject of a pending judicial or administrative process and which has not previously been the subject of a judicial or administrative process.

Lima, October 14, 2024