

**Secretariat for Submissions on Environmental Enforcement Matters
United States - Peru Trade Promotion Agreement
Notification**

Submitters: Ángela Lucila Pautrat Oyarzún and Kené – Instituto de Estudios Forestales y Ambientales
Party: Peru
Reference: Submission on Environmental Enforcement Matters filed by the Submitters
Submission N°: SACA-SEEM/PE/002/2024
Subject: Law 31973, which amends the Peruvian Forest and Wildlife Law 29763
Date of receipt: May 06, 2024
Date of Notification: June 02, 2025

The Secretariat for Submissions on Environmental Enforcement Matters, after reviewing Submission SACA-SEEM/PE/002/2024, and the response provided by the Government of Peru dated January 31, 2025, and pursuant to Article 18.8 (5) (a) of the United States—Peru Trade Promotion Agreement, **considers that the processing of the Submission cannot continue.**

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. Two (2) Submitters filed a Submission, via email on May 6, 2024, under Article 18.8 of the APC; in which they invoke the lack of effective enforcement by the State of Peru of environmental legislation. The applicants allege that the approval of Law 31973 by the Congress of the Republic, which modifies the Forestry and Wildlife Law - Law 29763, violates the fundamental rights of Peruvian citizens, Peru's international commitments in the fight against climate change, and several international agreements and treaties on human rights, the environment, and trade. Likewise, the Submitters express their concern about the serious consequences of approving and implementing Law 31973, thereby generating non-compliance with various regulations.
9. The Secretariat registered the Submission as SACA-SEEM/PE/002/2024.
10. The Secretariat acknowledged receipt of the Submission via email dated July 05, 2024, through letter SACA-SEEM/PE/002/2024, addressed to the Submitters with a copy to the EAC.
11. The Secretariat determined that Submission SACA-SEEM/PE/002/2024 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/002/2024/D1, communicating it to the EAC and to the Submitters via email on October 29, 2024.
13. The Secretariat, through Determination SACA-SEEM/PE/002/2024/D2 dated December 05, 2024, indicated that Submission SACA-SEEM/PE/002/2024 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/002/2024/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/002/2024", sending it to the Secretariat on January 31, 2025, via email.

16. In this stage, it is the responsibility of the Secretariat to inform the EAC if Submission SACA-SEEM/PE/002/2024 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 (1) 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 (1) of the TPA, expressly mentioning that said article provides that “Any person of a Party may submit a Submission alleging that a Party is failing to effectively enforce its environmental legislation.”
32. In this regard, the Peruvian Government notes that the Submission on environmental enforcement matters is intended exclusively to warn that a Party to the Peru-US TPA is not effectively enforcing its environmental legislation; therefore, it would not be feasible to allege alleged violations of domestic environmental legal instruments and international treaties for the purpose of formulating a request of this nature.
33. Furthermore, the Peruvian Government states that the Submitters, in their submission, wrongly assert an alleged non-compliance with a broad list of national standards, treaties, and international conventions on human rights, the environment, and trade, as a result of the approval of Law No. 31973.
34. However, the Peruvian Government specifies that the Secretariat's scope of action is defined in Articles 18.8 and 18.9 of the Peru-US TPA; and the failure to effectively enforce environmental legislation, defined exclusively in the terms enshrined in Article 18.14 of the TPA (understood as a law or regulation of a Party, or provisions thereof, whose principal purpose is the protection of the environment or the prevention of a danger to human, animal, or plant life or health).
35. Furthermore, the Government of Peru mentions that the Submitters assert that, with the enactment of Law No. 31973, Peru violated the Peruvian Constitution. In this regard, the

Peruvian Government adds, the Peruvian Constitution is a legal norm distinct from the laws issued by the Congress of the Republic, just as it is distinct from the decrees and resolutions issued to regulate a law. In this regard, for the specific purposes of Submissions on Environmental Enforcement Matters provided for in Article 18.8 of the TPA, the Peruvian Political Constitution is not part of the environmental legislation that authorizes the filing of such submissions. Notwithstanding this, there are mechanisms within Peruvian domestic law that allow for the questioning of the possible existence of acts and measures that may contravene constitutional norms, such as amparo and unconstitutionality actions.

36. In this regard, it should be noted that the challenges to the Submission formulated by the Peruvian Government were already analyzed in Determination SACA-SEEM/PE/002/2024/D1 dated October 29, 2024.
37. Indeed, in paragraph 23 of the aforementioned Determination, in points (i) and (ii), it was expressly stated that, in accordance with the provisions of Chapter 18 of the TPA, *"it is not possible to allege non-compliance with provisions of the Political Constitution of Peru for the purposes of formulating a Submission on Environmental Enforcement Matters"* and that, likewise, for this purpose, *"it is not feasible to allege non-compliance with international conventions and treaties."*
38. In this regard, it should be noted that the evaluation of the Submission in this case is being conducted solely and exclusively with respect to the Organic Law for the Sustainable Development of Natural Resources – Law 26821, a law also alleged by the submitters as having been breached by the Government of Peru. Indeed, in point (iii) of section 23 of Determination SACA-SEEM/PE/002/2024/D1, it was explained that this law constitutes a law issued by the Peruvian Congress and therefore falls within the definition of "environmental legislation" referred to in Articles 18.8 and 18.14 of the TPA.
39. Consequently, according to the analysis of the Secretariat, the Submission is being processed exclusively on those points or aspects that strictly comply with the provisions of the TPA (having rejected those other points that do not coincide with the provisions of the TPA as detailed in section 37 of this Notification), which is why the in limine rejection of the Submission was not appropriate, as alleged by the Government of Peru.

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

40. On the other hand, the Peruvian Government, in its response document, indicates that the Submission did not meet the admissibility requirements established in Article 18.8 (2), of the TPA, expressly mentioning those established in sections (c) and (e) of said article. In particular, it notes that while the requirements established in the aforementioned article must be met concurrently in order for a Submission to be admitted for processing, it should have been rejected and declared inadmissible.
41. The following is an analysis of the objections raised by the Government of Peru:

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

42. 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.
43. 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 29 to 32 of the Determination SACA-SEEM/PE/002/2024/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.
44. 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.
45. It is noted that the Submission failed to sufficiently substantiate how each of the invoked laws was effectively violated, as it only presents arguments regarding Law No. 31973. Under this framework, the Government of Peru adds, information must be provided for each environmental legislation alleged to have been violated, to specify how the laws were allegedly violated, so that, as a whole, the Secretariat can review the alleged lack of effective enforcement. It adds that the Submission's lack of substantiation regarding the invoked laws prevents the Peruvian Government from fully exercising its right of defense, and therefore the Submission should have been rejected in limine.
46. In his regard, it should be noted that the analysis that the Secretariat must perform is related to whether the information presented in the Submission is sufficient to allow for its review. For this purpose, the presentation of documentary evidence as well as the identification of the applicable environmental legislation are evaluated.
47. As indicated in Determination SACA-SEEM/PE/002/2024/D1 (Determination 1), the Submission refers to the lack of effective enforcement by the Government of Peru of environmental legislation and, specifically, of the Organic Law for the Sustainable Development of Natural Resources – Law 26821, whose Article 2 establishes that said law “*aims to promote and regulate the sustainable use of natural resources, both renewable and non-renewable, establishing an adequate framework for the promotion of investment, seeking a dynamic balance between economic growth, the conservation of natural resources and the environment, and the integral development of the human person.*”. Indeed, the Submission states that the approval of Law 31973, amending the Forestry and Wildlife Law, results in the non-application of the provisions of the aforementioned Law 26821.

48. Additionally, and in accordance with the provisions of Sections 29 and 30 of Determination SACA-SEEM/PE/002/2024/D1 (Determination 1), the Submission includes various documents issued by official entities and members of civil society prior to and after the approval of Law 31973, which constitute sufficient information for the Submission to be reviewed.
49. 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 approval of Law 31973, amending the Forestry and Wildlife Law - Law 29763, which would have the effect of non-compliance with the Organic Law for the Sustainable Development of Natural Resources - Law 26821, thus violating the fundamental rights of Peruvian citizens related to the environment. This meets the admissibility requirement referred to in subsection c) of section 2 of article 18.8 of the TPA.

C.2 Regarding the criteria established in Article 18.8 (2) (e):

50. 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.
51. 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 35 and 36 of Determination SACA-SEEM/PE/002/2024/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.
52. 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.
53. Despite the above, and for explanatory purposes, we proceed to point out the arguments presented by the Peruvian Government in this regard. It is noted that the Submission does not meet this requirement, insofar as the Submitters filed a petition for amparo before the Third Constitutional Chamber of the Superior Court of Justice of Lima against the Congress of the Republic of Peru, seeking to prevent the Congress from approving regulatory projects to amend the Forestry and Wildlife Law (Law 29763), attaching for this purpose the written complaint and the admissibility resolution of the Judiciary. Furthermore, the Peruvian Government states that the Applicants reported that various public and private entities issued several communications questioning the approval of Law 31973.
54. In this regard, the Peruvian Government points out that the TPA is completely clear regarding this sine qua non requirement, so there is no room for interpretation other than

what is expressly established in the Agreement, which states that the communication must be addressed to the relevant institutions, a fact that was not met by the Submitters.

55. The Peruvian Government asserts that the Submission addresses issues related to forest zoning in the different regions of the country, and therefore should have been addressed to the various relevant entities of the Executive Branch, such as the National Forestry and Wildlife Service (SERFOR by its acronym in spanish), the Forest and Wildlife Resources Supervisory Agency (OSINFOR by its acronym in spanish), the Ministry of the Environment (MINAM by its acronym in spanish), and the Ministry of Agrarian Development and Irrigation (MIDAGRI by its acronym in spanish). This is because forestry matters fall under the jurisdiction of all of the aforementioned entities.
56. The Government of Peru adds that, pursuant to Article 18.8 (2) (e) of the TPA, when reference is made to the need for the Submitters to have sent a prior communication to the relevant institutions, this necessarily implies that such communication was addressed to all relevant institutions and not just to some of them.
57. Similarly, the Government of Peru considers that communications issued by third parties other than the Submitters also do not satisfy the requirement of the aforementioned Article of the TPA.
58. Consequently, the Government of Peru asserts that, in the specific case of the Submission, one of the admissibility requirements has not been adequately met, and therefore the Secretariat should not have admitted the Submission for processing.
59. In this regard, it should be noted that, prior to filing the Submission, the Submitters presented a petition for amparo to the Judiciary, which was admitted and notified to the Congress of the Republic of Peru, the entity under whose jurisdiction Law 31973 was debated and approved. This is the regulatory provision that, according to the terms expressed in the Submission, is allegedly causing the lack of effective enforcement of environmental legislation in Peru.
60. Therefore, prior to filing the Submission, the Submitters contacted the Congress of the Republic of Peru, in its capacity as the Peruvian state entity responsible for approving the regulations that are causing the lack of effective enforcement of environmental legislation in Peru. The fact that the Submitters have not sent the indicated communication to other entities of the Peruvian state with jurisdiction in environmental matters, such as SERFOR, OSINFOR, MINAM and MIDAGRI, does not invalidate the fact that the Submitters have complied with the requirement provided for in section 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 related to a matter that was the direct jurisdiction of the Congress of the Republic.
61. In addition, the Peruvian Government has stated that it would not be appropriate to consider communications prepared by third parties other than the submitters for the purposes of Article 18.8, paragraph 2, e) of the TPA.

62. In this regard, it is necessary to clarify that the submitters actually participated in some of the communications to which the Peruvian Government refers. This is indeed the case with the document addressed by Ms. Ángela Lucila Pautrat Oyarzún (one of the submitters) to the Congressional Agrarian Commission requesting that it refrain from supporting the ruling due to its insistence on the autograph of the law issued by Congress to amend the Forestry and Wildlife Law, as well as the criminal complaint filed by Ms. Oyarzún herself against the heads of MIDAGRI, MINAM, and SERFOR (entities relevant for the purposes of the Submission, as stated by the Government of Peru).
63. Consequently, the Submission has met the requirement established in section e) of paragraph 2 of Article 18.8 of the TPA.

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

64. 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.
65. 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 24 to 29 of the Determination SACA-SEEM/PE/002/2024/D2 (Determination 2) where it was noted that the Submission under analysis is not frivolous and asserts harm to the Submitters.
66. 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.
67. Notwithstanding the above, and for illustrative purposes, we proceed to point out the arguments presented by the Peruvian Government on this matter.
68. Firstly, the Peruvian Government indicates that the Secretariat has considered that the Submitters invoke “harm to the person” asserting that the harm (damage) caused by Law 31973 is that it unduly allows the deforestation of forests, protected natural areas, as well as territories belonging to indigenous peoples, to unduly make way for the development of agricultural activities on said lands, affecting biodiversity, wildlife, as well as indigenous peoples.
69. 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 demonstrating that they have suffered any damage and only make reference to documents issued by public and private entities prior to and after the approval of Law 31973, which modifies the Forestry and Wildlife Law, which constitute only opinions and non-binding administrative acts, and are not suitable to demonstrate the existence of real damage, nor do they reliably prove how the Submitters have been harmed.

70. 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.
71. In relation to the harm asserted, indeed, this Secretariat considers that the information presented is sufficient to prove the existence of environmental harm.
72. 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).

73. 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.
74. 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.*

75. 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.

76. 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 26 and 27 of the SACA Determination. SEEM/PE/002/2024/D2 December 05, 2024.

77. 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.

78. 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.”*

79. 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.

80. 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.

81. 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.
82. 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.
83. 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.

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

84. 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.”*
85. In this regard, the Peruvian Government has informed the Secretariat that the specific matter in question is the subject of various judicial proceedings, including those of a criminal and constitutional nature. The Peruvian Government added that even such information regarding the existence of judicial proceedings has been expressly referred to by the Submitters in their Submission.
86. First, the Government of Perú refers to the amparo action filed by Ms. Ángela Lucila Pautrat Oyarzún (one of the Submitters) against the Congress of the Republic of Peru seeking to prevent the defendant entity from approving amendments to the Forestry and Wildlife Law, a process followed under File No. 05654-2022-0-1801-JR-DC-03. This process is currently pending before the First Constitutional Chamber of the Superior Court of Justice of Lima.
87. Likewise, the Peruvian Government mentions the claim of unconstitutionality filed by the College of Sociologists of Peru against Law 31973, which was admitted for processing on

May 27, 2024 (File No. 0002-2024-PI/TC) and is currently pending resolution by the Constitutional Court.

88. In addition, the Government of Peru refers to the claim of unconstitutionality filed by the Regional Government of San Martin against Law 31973, in which the Constitutional Court issued the admissibility of the claim on February 20, 2024 (File No. 0003-2024-PI/TC), and said process is also still pending resolution.
89. The Peruvian Government also referred to the claim of unconstitutionality filed by the Lambayeque Bar Association against Law 31973, which was admitted on May 27, 2024 (File No. 0005-2024-PI/TC) by the Constitutional Court, although no resolution has yet been issued regarding it.
90. The Government of Peru adds that the cases mentioned in paragraphs 88 and 89, due to their thematic connection, were accumulated in File No. 0002-2024-PI/TC mentioned in paragraph 87.
91. The Peruvian Government indicates that it is concerned that the Secretariat has not taken into account the information provided in the Submission regarding the existence of judicial proceedings related to the matters raised by the Submitters, and has continued with the processing of the Submission, despite having been aware from the outset that the Submitters had resorted to the Peruvian national jurisdiction through amparo and unconstitutionality actions, in which they challenge Law 31973, which is the subject of this Submission. The Government of Peru states that, in accordance with the provisions of the TPA, the ultimate purpose of every Submission is to ensure the correct application of environmental law, which is guaranteed under domestic judicial procedures in Peru.
92. Likewise, the Government of Peru indicated that the Secretariat should not have admitted the Submission for processing and, therefore, should immediately terminate this procedure, in accordance with the provisions of paragraph (5) of Article 18.8 of the TPA. This is because, at the time of its submission, the amparo and unconstitutionality proceedings had been initiated and are still pending.
93. In this regard, the Peruvian Government adds that the Secretariat, by admitting and determining that the Submission merits a response from a Party, without having verified the status of the judicial proceedings mentioned in the Submission, would not be complying with the provisions established in the TPA for the processing of the Submission. In this context, the Peruvian Government reaffirms that the Submission should have been rejected outright when it was submitted to the Secretariat, because the matter at issue in the Submission is still pending before the Peruvian judicial authorities.
94. Therefore, the Peruvian Government requests the Secretariat not to continue processing the Submission.
95. With regard to the Government of Peru's allegation mentioned in paragraphs 91 to 93 above, that the Secretariat, having learned of the existence of various jurisdictional proceedings due to the express references made to them in the Submission, should have rejected the Submission outright and not admitted it for processing, it should be noted that, although this argument might seem reasonable, the Secretariat's actions are governed by

the provisions of the TPA, which is an international agreement negotiated by the parties (in this case, the governments of the United States of America and Peru).

96. In this regard, the TPA has expressly identified a series of stages that must be completed by the Secretariat when analyzing a Submission.
97. Indeed, the first thing the Secretariat must assess is compliance with the admissibility requirements set forth in paragraphs 1 and 2 of Article 18.8 of the TPA, which is reflected in the first Determination issued by the Secretariat in each case. None of the aforementioned admissibility requirements refers to the existence of judicial proceedings that may impact the processing of the Submission.
98. The next step for the Secretariat to analyze is whether the Submission meets the requirements set forth in paragraph 4 of Article 18.8 of the TPA, in order to determine whether the Submission merits a request for a response from the Party identified as being in violation of certain provisions of its environmental legislation, which is the subject of the second Determination issued by the Secretariat. At this stage, the TPA also does not provide for an analysis of the impact of judicial proceedings on the progress of the Submission.
99. Only after the Party has been requested to respond and the deadline for that Party to respond has expired, the TPA allows the Secretariat to review whether the specific matter addressed in the Submission is the subject of a pending judicial or administrative proceeding, in which case the Secretariat may not continue with the process. This is established in paragraph 5 of Article 18.8 of the TPA.
100. Consequently, contrary to the Party's argument, it was not possible for the Secretariat to outright reject the Submission based on the information regarding judicial proceedings provided by the Submitters from the outset, since, in accordance with the express provisions of the TPA, such an assessment can only be carried out at the stage in which the deadline for the designated Party to exercise its right to submit a response regarding the allegation made against it regarding noncompliance with its environmental legislation has expired.
101. Now, without prejudice to the previous paragraph, given that in the present case the Government of Peru has already submitted its response to the Submission, it is necessary to analyze (now and in accordance with the provisions of the TPA) whether the existence of judicial proceedings affects the possibility of continuing with the process.
102. The purpose of the provision contained in paragraph 5 of Article 18.8 of the TPA is that the Submission mechanism for environmental enforcement matters provided for in said international instrument may only be used when no judicial or administrative proceedings are underway before the national authorities of one of the parties. This is because, in the opinion of the states that negotiated the treaty, the domestic jurisdiction of said parties has appropriate tools to guarantee the correct application of the corresponding environmental legislation. The Submission mechanism may only be used when national proceedings have not been activated for such purposes.

103. In this regard, based on the information presented by both, the Submitters and the Government of Peru, the existence of an amparo proceeding and three (3) unconstitutionality actions have been identified, challenging Law 31973, a legal norm that, according to the Submitters, is the one that causes the Government of Peru to fail to comply with its environmental legislation.
104. Given that all of the aforementioned jurisdictional proceedings are still pending and awaiting resolution by the competent national authorities in Peru (the Judiciary and the Constitutional Court, respectively), the assumption established in section 5 of Article 18.8 of the TPA arises.
105. Therefore, the Secretariat cannot continue processing the Submission, since the TPA has established that the existence of ongoing judicial proceedings before the competent bodies of one of the parties determines the completion of the evaluation of the Submission.
106. It is very important to clarify that the provisions set forth in the previous paragraph do not constitute a pronouncement or assessment regarding the existence (or non existence) of the problem presented in the Submission, but rather merely represent the identification of an objective circumstance established in the TPA that does not allow the continuation of the analysis of the Submission and, rather, determines the completion of its processing.

III. FINAL NOTE

107. Pursuant to Article 18.8 (5) (a) of the TPA, the existence of ongoing judicial proceedings before the domestic court of one of the parties in which the specific matter of the Submission is being discussed will determine that the Secretariat cannot continue with the process.
108. Consequently, having verified that there are currently judicial proceedings in Peru that challenge Law 31973, a legal norm that, according to the Submitters, is causing the Government of Peru to fail to comply with its environmental legislation, the Secretariat cannot continue with the processing of Submission No. SACA-SEEM/PE/002/2024.
109. This Notification will be made known to the Environmental Affairs Council and the Submitters.



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Secretariat for Submissions on Environmental Enforcement Matters
U.S.— Peru Trade Promotion Agreement