REGARDING THE SUBMISSION ON ENVIRONMENTAL ENFORCEMENT MATTERS-SACA-SEEM/PE/002/2024

POSTION OF THE PERUVIAN GOVERNMENT

By means of this document, the Peruvian Government responds to the Submission SACA-SEEM/PE/002/2024 (hereinafter, the "Submission"). In this regard, and 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"), indicating that it should not have been processed since it does not comply with the requirements established in the TPA for its admission, nor for the Peruvian Government to be required to respond, in light of the arguments set forth below:

I. BACKGROUND. –

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

On the other hand, Law No. 26821 - "Organic Law for the Sustainable Use of Natural Resources", published in the official newspaper El Peruano on June 26, 1997, aims to promote and regulate the sustainable use of natural resources, renewable and non-renewable, establishing an appropriate framework for promoting investment, seeking a balance between economic growth, conservation of natural resources and the environment.

Likewise, Law No. 29763 - "Forest and Wildlife Law" approved by the Congress of the Republic was published in the official newspaper El Peruano on July 22, 2011, which establishes the fundamental rights and duties related to forest and wildlife heritage.

On January 11, 2024, the Congress of the Republic of Peru published Law No. 31973 in the official gazette El Peruano, by which: (i) articles 29 and 33 of Law 29763, the aforementioned Forestry and Wildlife Law, were amended, referring to the procedure and jurisdiction to establish permanent production forests and to approve forest zoning; and, (ii) the mandatory nature of technical-legal instruments that prevent change of land use in forest lands and prevent deforestation (these are: forest zoning, the classification of lands for change by their capacity and greatest use) was suspended with respect to areas occupied by private properties that do not contain forest mass and that carry out agricultural activity, considering them exceptionally as exclusion areas for agricultural purposes.

By email dated May 6, 2024, two (2) Submitters[1] (hereinafter, the “Submitters”) submitted the Application to the Secretariat, pursuant to Article 18.8 of the APC; in which they invoke the lack of effective implementation, by the Peruvian Government, of environmental legislation. The Applicants allege that with the approval of Law 31973 by the Congress of the Republic, which modifies the Forestry and Wildlife Law – Law 29763, the Political Constitution of Peru, the fundamental rights of Peruvian citizens, Peru's international commitments in the fight against climate change, and various international agreements and treaties on human rights, the environment and trade are violated. Likewise, the Submitters express their concern about the serious consequences of Law 31973, which generates non-compliance with national and international standards. It should be noted that the Submission does not explain how the contested Law violates said regulations and even refers to regulations that are not applicable to the present procedure.

On July 5, 2024, the Secretariat acknowledged receipt of the Submission, which was assigned the code SACA-SEEM/PE/002/2024, and notified the Peruvian Government, stating that it will issue a first Determination regarding the admissibility of the Submission and, subsequently, a second Determination regarding whether the Submission merits requiring a response from the Peruvian Government.

On October 29, 2024, the Secretariat issued Determination SACA SEEM/PE/002/2024/D1, in which it noted that the Submission complies with the provisions of Article 18.8 (1) of the TPA and with the admissibility requirements contained in Article 18.8 (2) of the TPA, proceeding to communicate it to the Submitters and the Environmental Affairs Council (hereinafter, EAC) by email on the same date.

On December 5, 2024, through Determination SACA/SEEM/PE/002/2024/D2, the Secretariat, after examining the Submission, and pursuant to Article 18.8 (4) of the APC, considered that the Submission

[1] Names of the Submitters: Ángela Lucila Pautrat Oyarzún, identifed with DNI N° 09670957 (natural person) and Kené – Instituto de Estudios Forestales y Ambientales, identifed with registration number 13554515 (from the Lima Legal Entities Registry).

merited a response from the Peruvian Government. In particular, it was identified that the Submission met these requirements in the point referring to the allegation that the issuance of Law 31973 would be generating non-compliance with the Organic Law for the Sustainable Development of Natural Resources – Law 26821.

By electronic communication dated January 17, 2025, the Peruvian Government requested from the Secretariat an extension of the deadline for an additional fifteen (15) days, until February 3, 2025, in order to respond to Determination SACA/SEEM/PE/002/2024.

II. ON THE LINKING BETWEEN ENVIRONMENTAL COMMITMENTS WITH TRADE OR INVESTMENTS BETWEEN THE PARTIES

The Submission of May 6, 2024, does not present elements 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 and/or investment would be affected, as established in the TPA. The definition of environmental legislation included in Chapter 18 of the TPA, which aims at mutual support between trade and environmental policies, is framed in a trade agreement, which makes clear the scope within which the submissions presented in this forum must be limited.

In the Notification, the Secretariat states that Article 18.14 of the TPA conceptualizes that the scope of the concept of environmental legislation includes “any law or regulation of a Party” whose main purpose is environmental protection or the prevention or endangerment of human, animal or plant life or health.

With respect to the Secretariat's statement, we must mention that the obligations assumed within the framework of “Chapter Eighteen Environment” of the TPA 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 per se, as if it were an international instrument of an exclusively environmental nature.

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”.

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 interpretes 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)

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).

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)

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)

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.

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.

III. ON THE ARGUMENTS OF SUBMISSION SACA-SEEM/PE/002/2024

The Submitters, in their submission of May 6, 2024, assert, without any basis, that with the approval of Law No. 31973, "Law that modifies Law 29763, Forestry and Wildlife Law, and approves complementary provisions aimed at promoting forest zoning", various national and international norms (binding bilateral and multilateral) that regulate the fundamental rights of Peruvian citizens, Peru's international commitments in the fight against climate change, and various international agreements or treaties on human rights, the environment and trade would be violated.

Specifically, the Submitters' brief argues, without any basis, that the Peruvian Government has breached Articles 18.1, 18.2, 18.3, 18.4, 18.7, 18.11, 18.12, 18.13 of the Peru-US TPA. and its Annexes 18.2 and 18.3.4, as well as the Understanding Regarding Biodiversity and Traditional Knowledge, dated April 12, 2006; according to what they indicate, the approval of the aforementioned Law No. 31973 will facilitate the granting of property titles on plots that overlap with indigenous territory, permanent production forests and protected natural areas, which will potentially exacerbate social conflicts in these regions of Peru, favoring a small group of national and foreign agro-industrial cocoa and palm oil companies, thus weakening forest protection and environmental regulation.

As a result, the Submitters consider that the Peruvian Government has also breached the following legal instruments:

- The Political Constitution of Perú;
- The Organic Law for the Sustainable Development of Natural Resources – Law 26821
- The Understanding on Biodiversity and Traditional Knowledge (April 12, 2006);
- Objectives 2, 3 and 4 of Peru – United States Integrated National Strategy 2022-2026; APC – State Department Declaration on Investment Climate (2023); Agreement on Narcotics Control and Law Enforcement between the Government of the United States of America and the Government of the Republic of Peru (1996);
- Inter-American Convention against Corruption (1996);
- Convention to combat bribery of foreign public officials in international business - OECD (1997);
- International Convention for the Suppression of the Financing of Terrorism (1999); United Nations Convention against Transnational Organized Crime (2000); Paris Agreement of the United Nations Framework Convention on Climate Change - UNFCCC (2015); United Nations Convention against Corruption (2003); United Nations Convention against Transnational Organized Crime (2000);
- International Convention for the Suppression of the Financing of Terrorism (1999); Convention on Combating Bribery of Foreign Public Officials in International Business - OECD (1997);
- International Convention for the Suppression of the Financing of Terrorism (1999); United Nations Convention against Transnational Organized Crime (2000); Paris Agreement of the United Nations Framework Convention on Climate Change - UNFCCC (2015); United Nations Convention against Corruption (2003); United Nations Convention against Transnational Organized Crime (2000);
- International Convention for the Suppression of the Financing of Terrorism (1999); Convention on Combating Bribery of Foreign Public Officials in International Business - OECD (1997);
- International Labour Organization (ILO) Convention on Indigenous and Tribal Rights in Independent Countries, No. 169 (1989);
- Montreal Protocol on Substances that Deplete the Ozone Layer (1987); and, Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973).

In this regard, the Submitters request that a Factual Record be prepared due to the severe consequences of implementing Law No. 31973; and in turn, they request the European Union (sic) to issue a public statement on the aforementioned Law, given the breaches it has caused to the Political Constitution of Peru, to national regulations, and to the well-being of forests and inhabitants. In addition, they point out that the Peruvian Government must assume responsibility for the violations of international trade and environmental agreements resulting from Law No. 31973.

In this regard, we must reiterate that the Request does not explain how, through the approval of Law No. 31973, the national and international regulations invoked would be violated; given that most of these have no relation to the environmental commitments assumed by Peru in the TPA.

IV. ON COMPLIANCE WITH THE ADMISSIBILITY REQUIREMENTS CONTEMPLATED IN ARTICLE 18.8 (1) (2) OF THE TPA

4.1. <u>The Submission does not comply with provisions of artícle 18.8 (1) y (2) of the Perú– US TPA, and the Secretaríat should Therefore reject it in limine</u>. -

By Determination SACA-SEEM/PE/002/2024/D1, the Secretariat wrongly considered that the Submission complies with the following admissibility requirement provided for in Article 18.8 (1) (2) of the Peru-US TPA. In this regard, the aforementioned provision states the following:

> *"**<u>1. Any person of a Party may submit a request alleging that a Party is failing to effectively enforcé its environmental laws</u>**. Such submissions shall be submitted to a Secretariat or other competent body (Secretariat) designated by the Parties. (…)"*

Under this provision, we must clarify that the mechanism for submission on environmental enforcement matters is intended exclusively to warn that a Party to the Peru-US TPA is not effectively applying the provisions of its environmental legislation; therefore, it would not be feasible to allege alleged violations due to **non-compliance** with internal environmental legal instruments and international treaties (which are not linked to the Environmental Chapter of the TPA), for the purposes of formulating a request of this nature. The mechanisms for the resolution of disputes on the interpretation, application and compliance of the TPA are provided for in Chapter 21 of the same.

It is important to clarify that the Secretariat receives and evaluates submissions for environmental compliance in accordance with the provisions of Article 18.8 of the Peru-US TPA, in order to promote joint efforts to strengthen the **effective application of environmental legislation** and the optimal use of resources in accordance with sustainable development, in accordance with the Preamble of Chapter 18, consistent with Article 18.8 of the Peru-US TPA.

In this regard, the Submitters in their brief wrongly assert an alleged non-compliance with a broad list of national regulations, treaties and international conventions on human rights, the environment and trade, as a consequence of the approval of Law No. 31973. In the present case, it is not appropriate to issue a determination on alleged violations due to non-compliance with Peruvian environmental legislation, or international conventions or treaties, given its scope and the nature of the mechanism.

Furthermore, the Submitters refer to the Peru – European Union Trade Agreement, of which the United States is not a Party, as well as to regulations of said trade bloc, with respect to which the Secretariat is not competent.

In this sense, a Submissions could only be processed if this condition contained in article 18.8 (1) of the Peru – United States TPA is met, according to which, "a Party is failing to effectively apply its environmental legislation." To this end, the obligation must be specifically established within the **environmental legislation** of the Party, in accordance with Article 18.14 of the TPA.

Considering this, Article 18.14 of the Peru-US TPA defines the term "**environmental legislation**" as follows:

> "***<u>environmental legislation means any law or regulation of a Party, or provisions thereof, the principal purpose of which is the protection of the environment or the prevention of a danger to human, animal or plant life or health</u>***, by:
> *(a) the prevention, reduction or control of a leak, discharge or emission of environmental pollu*
> *(b) the control of substances or chemicals, materials and wastes that are toxic or hazardous to the environment, and the dissemination of information related to them;*
> *(c) the protection or conservation of wild flora and fauna, including endangered species, their habitat and natural areas under special protection;*

> *(d) for Peru, the management of forest resources, in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but not including any law or regulation, or any provision contained therein, directly related to the safety or health of workers."*

The Submitters have mentioned sixteen (16) international conventions and treaties that Peru is allegedly violating with the approval of Law No. 31973. In this regard, and in accordance with the provisions of Chapter 18 of the APC, it is not feasible to allege non-compliance with international conventions and treaties for the purposes of formulating a Request of this type. In said Chapter, the Parties established the scope and limits for formulating a submission for environmental enforcement matters, so the Secretariat is not competent to evaluate the effective application of these international instruments. The scope of action of the Secretariat is delimited in articles 18.8 and 18.9 of the Peru-US APC; and the non-effective application of **environmental legislation**, defined exclusively in the terms established in article 18.14 of the TPA.

The Submitters also assert that with the promulgation of Law No. 31973, Peru would have violated the Political Constitution of Peru and Law No. 26821 - "Organic Law for the Sustainable Use of Natural Resources." In this regard, the Constitution is the supreme rule of the legal system of a country, which is **above all norms** and its compliance is mandatory for public and private powers. Likewise, it organizes the Powers of the State, the public institutions, articulates their functions, regulates the rights and freedoms of people; hence its absolute and indisputable importance.

Under this framework, the Peruvian Political Constitution is a legal norm that is distinct from the laws issued by the Congress of the Republic, as well as from the decrees and resolutions issued to regulate a law. In this sense, for the specific purposes of the 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 enables the formulation of such requests, since as previously stated, this will only be possible when there is evidence of non-compliance with obligations specifically contained in laws issued by the Congress of the Republic or in decrees and/or resolutions issued to regulate a law.

Notwithstanding this, there are mechanisms within Peruvian domestic law that enable the questioning of the possible existence of acts and measures that may contravene constitutional norms, such as the case of amparo and unconstitutionality actions. We must note that the Submitters have been processing these actions before the corresponding internal bodies, as evidenced in section 5.1 of this document.

4.2. <u>The Submission and the Secretariat does not provide sufficient information</u>. -

With regard to the admissibility requirements of the Submission, the provisions of Article 18.8.2 (c) of the TPA must be taken into account:

> "Article 18.8: Requests on Compliance Matters
> 2. The Secretariat may consider a request under this Article if it finds that the request:
> (c) **<u>provides sufficient information</u>** to enable the Secretariat to review the request, including documentary evidence on which the request is based and identification of the environmental laws with respect to which non-compliance is alleged;".

The Submission did not sufficiently justify **how each of the invoked laws would have been effectively breached**, but rather only presents arguments regarding Law No. 31973. Within this framework, information must be provided for each environmental legislation whose alleged breach is alleged, in order to specify the manner in which the laws would have been breached, so that, as a whole, it allows the Secretariat to review the possible alleged lack of effective application. We disagree with the Secretariat's position regarding considering this important requirement fulfilled and admitting the Request for processing, since the lack of justification of the Request regarding the invoked laws does not allow the Peruvian Government to fully exercise its right of defense in the present case and, in addition, the Secretariat exceeds its functions by applying an interpretation that does not comply with what is established in the TPA.

In conclusion, the Submission identifies the environmental legislation on forestry matters, in respect of which it alleges an alleged situation of violation due to non-compliance with national and foreign legal instruments, without providing information explaining how it has not been complied with, and should therefore have been rejected in limine at the time, given that it does not comply with this important admissibility requirement.

4.3. <u>The Submission Has Not Been Communicated in Writing to the Relevant Institutions of the Peruvian Government and the Secretariat Had to Reject it in limine</u>. -

By Determination SACA-SEEM/PE/002/2024/D1, the Secretariat considered that the Submission meets the following admissibility requirement provided for in Article 18.8 (2) (e) of the TPA:

> **"e)[*if*] indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any;**
>
> 35. In the corresponding part of the submission it was indicated that "On May 5, 2022, the submitters presented a Petition for Amparo against the Peruvian Congress of the Republic to prevent the approval of the Bills that seek to modify the Forestry and Conservation Law. Wildlife, Law 29763. The petition was admitted on September 5, 2022 by the Third Specialized Constitutional Chamber of the Superior Court of Justice of Lima (File No. 05654-2022-0-1801-JRDC-03)." Likewise, the submitters attached a copy of the document of the aforementioned application for protection and of the resolution of the Judicial Branch of Peru that admits it for processing.
>
> 36. Likewise, the submitters reported that "various public and private entities have presented various opinions and technical reports against the proposed reforms to the Forestry and Wildlife Law."
>
> 37.Based on the above, the submission SACA-SEEM/PE/002/2024, complies with this admissibility requirement established in Article 18.8 (2) (e)."

As we can see, the Secretariat states, without any justification, that the Submission has complied with the requirement provided for in literal (e) of article 18.8 (2) of the TPA, since a petition for protection was filed before the Third Constitutional Chamber of the Superior Court of Justice of Lima, against the Congress of the Republic of Peru, attaching the claim and the Resolution of the Judicial Branch. It also states that the Submitters reported that various public and private entities issued various communications on the matter.

In this regard, the TPA is totally clear regarding this sine qua non requirement, so there is no room for any interpretation other than what is expressly established in the Agreement regarding the fact that the communication must be addressed to the **relevant institutions**, which was not fulfilled by the Submitters.

The Submission addresses issues related to forest zoning in the different regions of the country, and should therefore have been addressed to the various relevant entities of the Executive Branch, such as the National Forest and Wildlife Service (SERFOR), the Agency for the Supervision of Forest and Wildlife Resources (OSINFOR), the Ministry of the Environment (MINAM), and the Ministry of Agrarian Development and Irrigation (MIDAGRI). This is because forestry matters are the responsibility of various entities of the Peruvian Government, by virtue of the regulatory framework in force in Peru, as shown below:

MINAM	MIDAGRI	SERFOR	OSINFOR
Ministerial Resolution No. 108-2023-MINAM, Approves the Integrated Text of the Regulations for the Organization and Functions of the Ministry of the Environment Article 3.- General Competencies and Functions The Ministry of the Environment exercises at the national level within the scope of its competencies, the following matters: Conservation and Sustainable Use of Natural Resources, Biological Diversity and Protected Natural Areas, Environmental Quality, Climate Change, Management and Handling of Solid Waste, Soil Management, Environmental Governance and other matters established by law, in coordination with the competent sectors, as appropriate. (…)	**Ministerial Resolution No. 0080-2021-MIDAGRI, which approves the Integrated Text of the Regulations on the Organization and Functions of MIDAGRI.** Article 2.- Jurisdiction and Competence The Ministry of Agrarian Development and Irrigation exercises its jurisdiction at the national level, in the following matters: a) Lands for agricultural and grazing use, forest	**Supreme Decree No. 007-2013-MINAGRI, approves the Regulations for the Organization and Functions of the National Forest and Wildlife Service -SERFOR** Article 3.- Scope of Competence and Address SERFOR is the national forest and wildlife authority, which exercises its powers and functions at the national, regional and local levels, is subject to the regulatory framework on the matter and acts in accordance with national policies, plans and objectives, constituting itself as the governing body of the National Forest and Wildlife Management System, hereinafter SINAFOR, and its	**Law No. 29763 - Forestry and Wildlife Law** Article 18.- Forestry and Wildlife Resources Supervisory Body (OSINFOR) The Forestry and Wildlife Resources Supervisory Body (OSINFOR) is responsible for supervising and inspecting the sustainable use and conservation of forestry 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. **Legislative Decree No. 1085 - Law that creates the Forestry and Wildlife**

3.1 Guiding Functions: a) Formulate, plan, direct, coordinate, execute, supervise and evaluate the National Environmental Policy, applicable to all levels of government. b) Ensure compliance with environmental regulations, carrying out inspection, supervision, evaluation and control functions, as well as exercising the power to impose sanctions in matters within its competence and directing the environmental inspection and control regime and the incentive regime within the framework of the relevant law. c) Coordinate the implementation of the national environmental policy with the sectors, regional governments and local governments. (…)	lands (…) with agricultural aptitude. b) (…) c) Forest resources and their sustainable use.	technical-normative authority, responsible for issuing the rules and establishing the procedures related to the scope of its competence.	**Resources Supervisory Body.** Article 1.- Creation and Purpose The Forest and Wildlife Resources Supervision Agency, OSINFOR, is hereby created as a Public Executing Agency, with legal status under public law, responsible for the supervision and inspection of the sustainable use and conservation of forest and wildlife resources, as well as the environmental services derived from the forest.

Therefore, 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 the Secretariat's opinion, the filing of legal actions against some relevant entity (and not all of them), as well as communications issued by third parties (other than the Submitters) would be sufficient to fulfill this requirement; which implies a failure to comply with the provisions of the TPA.

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

V. THE SECRETARIAT SHOULD NOT HAVE REQUIRED A RESPONSE TO THE REQUEST FROM THE PERUVIAN GOVERNMENT

5.1. <u>The Specific Matter in Question is Subject of Judicial Proceedings in the Internal Jurisdictions of Perú, and the Secretariat was Therefire Obliged to Reject the Submission *in limine*</u>. -

Through Determination SACA-SEEM/PE/002/2024/D2, and in accordance with Article 18.8 (5) of the TPA, the Secretariat has requested the following information from the Peruvian Government:

> (a**<u>) whether the specific matter in question is the subject of a pending judicial or administrative proceeding</u>**, in which case **<u>the Secretariat will not proceed with the request</u>**; and
> (b) any other information the Party wishes to submit, including:
>
> (i) **<u>whether the matter has previously been the subject of a judicial or administrative proceeding</u>**;
>
> (ii) whether private remedies in relation to the matter are available to the person making the request and have been requested; or
>
> (iii) information on capacity-building activities under the ACA.

In this regard, and considering the information provided by the Submitters, the Secretariat in Determinations D1 and D2-SACA-SEEM/PE/002/2024 has identified that the matter in question is the subject of various judicial proceedings, including criminal and constitutional proceedings, as shown below:

35. *In the corresponding part of the submission it was indicated that "On May 5, 2022, the submitters presented a Petition for Amparo against the Peruvian Congress of the Republic to prevent the approval of the Bills that seek to modify the Forestry and Conservation Law. Wildlife, Law 29763. The petition was admitted on September 5, 2022 by the Third Specialized Constitutional Chamber of the Superior Court of Justice of Lima (File No. 05654-2022-0-1801- JRDC-03)." Likewise, the submitters attached a copy of the document of the aforementioned application for protection and of the resolution of the Judicial Branch of Peru that admits it for processing.*

Regarding the amparo action claim filed by Mrs. Angela Lucila Pautrat Oyarzun (who is one of the Submitters) against the Congress of the Republic, filed in **File 05654-2022-0-1801-JR-DC-03**, the Third Specialized Constitutional Court of the Superior Court of Justice of Lima admitted said claim for processing by Resolution No. 1, dated September 5, 2022. Although the decision of the first instance declares the amparo process inadmissible, it has been challenged and, to date, is pending resolution by the First Constitutional Chamber, as shown in the following report of "Court File Consultations" of the Judiciary:

REPORTE DE EXPEDIENTE

Expediente N°:	**05654-2022-0-1801-JR-DC-03**		
Órgano Jurisdiccional:	1° SALA CONSTITUCIONAL - SEDE ALZAMORA	**Distrito Judicial:**	LIMA
Juez:		**Especialista Legal:**	ARIAS TORRES, SUSANA
Fecha de Inicio:	05/08/2022	**Proceso:**	CONSTITUCIONAL
Observación:	ADJ. ANEXOS DEL 1-A AL 1-F CONFORME INDICA EN COPIA SIMPLE // ANX. 1-F EN FIRMA DIGITAL	**Especialidad:**	DERECHO CONSTITUCIONAL
Materia(s):	ACCION DE AMPARO	**Estado:**	TRAMITE
Etapa Procesal:	GENERAL	**Fecha Conclusión:**	
Ubicación:	RELATORIA	**Motivo Conclusión:**	-------
Sumilla:	INTEPRONE DEMANDA DE AMPARO		

Source: https://cej.pj.gob.pe/cej/forms/busquedaform.html

It should be noted that, by Resolution No. 05, dated December 16, 2024, the First Constitutional Chamber rescheduled the Hearing of the Case for January 24, 2025:

Fecha de Resolución:	16/12/2024	**Acto:**	AUTO
Resolución:	CINCO	**Fojas:**	2
Tipo de Notificación:	Pta. Cedula Not.	**Proveido:**	18/12/2024

1

Sumilla:
SE DISPONE: 1) DEJAR SIN EFECTO LA VISTA DE LA CAUSA LLEVADA A CABO EL DÍA 16 DE DICIEMBRE DEL PRESENTE AÑO. 2) REPROGRAMAR LA VISTA DE LA CAUSA PARA EL DÍA VEINTICUATRO DE ENERO DEL DOS MIL VEINTICINCO - HORA: 09:00 AM. LA CUAL SE LLEVARÁ A CABO DE FORMA VIRTUAL A TRAVÉS DEL URL DE LA REUNIÓN: MEET.GOOGLE.COM/ZAJ-NHSO-WPF CONCEDIENDOSELE A LOS SEÑORES ABOGADOS EL TÉRMINO DE CINCO MINUTOS PARA SU INFORME ORAL.

Descripción de Usuario: DESCARGADO POR: CORNEJO HARO BLANCA LUZ

Source: https://cej.pj.gob.pe/cej/forms/busquedaform.html

With regard to the claim of unconstitutionality filed by the Regional College of Sociologists of Lima - Callao against Law 31973, the Constitutional Court, by Order of May 27, 2024, issued in **File No. 0002-2024-PI / TC**, admitted the claim for processing due to violation of articles 1, 2.22, 67, 68 and 69 of the Constitution and the right to prior consultation (ILO Convention 169 and Law 29785) and also declared it inadmissible due to the alleged violation of articles 59, 66, 88 and 103 of the Constitution. It should be noted that the Submission was submitted to the Secretariat after the College of Sociologists of Peru filed a claim of unconstitutionality with the Constitutional Court. To date, it is pending resolution, as shown in the search for "Case Consultations" of the Constitutional Court:

← Retornar **Detalle causa**

Datos del Expediente

Nro. expediente	Fecha de ingreso	Colegiado	Ponente	Fecha de Devolución al PJ
00002-2024-AI	11/01/2024	PLENO	--	

Resoluciones y Sentencias Publicadas

Tipo de Resolución	Fecha de Public. Web	Public. Diario El Peruano	Fallo	Ver Publicación	Ver Publicación (Formato HTML)
Inadmisibilidad	27/03/2024 (338827)			00002-2024-AI Inadmisibilidad.pdf	00002-2024-AI Inadmisibilidad.htm
Admisibilidad	29/06/2024 (345186)			00002-2024-AI Admisibilidad.pdf	00002-2024-AI Admisibilidad.htm
Resolucion de Acumulacion	24/09/2024 (350286)			00002-2024-AI Acumulacion.pdf	00002-2024-AI Acumulacion.html
Resolucion Continua Tramite	22/10/2024 (352024)			00002-2024-AI CTResolucion.pdf	00002-2024-AI CTResolucion.html
Resolucion Continua Tramite	22/10/2024 (352025)			00002-2024-AI CTResolucion2.pdf	00002-2024-AI CTResolucion2.html
Resolucion Continua Tramite	18/12/2024 (356060)			00002-2024-AI CTResolucion3.pdf	00002-2024-AI CTResolucion3.html
Resolucion Continua Tramite	16/01/2025 (357178)			00002-2024-AI CTResolucion4.pdf	00002-2024-AI CTResolucion4.html

Audiencias Públicas

Fecha de Vista	Fecha de Programación	Lugar	Turno	Sala
05/11/2024	22/10/2024	LA AUDIENCIA MENCIONADA SE REALIZARÁ EN LA SEDE SAN ISIDRO, UBICADO EN LA AV. AREQUIPA 2720, SAN ISIDRO - LIMA.	09:15	PLENO

Source: https://www.tc.gob.pe/consultas-de-causas/

Regarding the unconstitutionality claim filed by the Regional Government of San Martín against Law No. 31973, "Law that modifies Law No. 29763, Forestry and Wildlife Law, and approves complementary provisions aimed at promoting forest zoning", the Constitutional Court by Order of February 20, 2024, issued in **File No. 00003-2024-PI / TC**, admitted said claim for processing. To date, it is pending resolution, as shown in the search for "Case Consultations" of the Constitutional Court:

Datos del Expediente

Nro. expediente	Fecha de ingreso	Colegiado	Ponente	Fecha de Devolución al PJ
00003-2024-AI	31/01/2024	PLENO	--	

Resoluciones y Sentencias Publicadas

Tipo de Resolución	Fecha de Public. Web	Public. Diario El Peruano	Fallo	Ver Publicación	Ver Publicación (Formato HTML)
Admisibilidad	27/03/2024 (338865)			00003-2024-AI Admisibilidad.pdf	00003-2024-AI Admisibilidad.htm
Resolucion Continua Tramite	29/06/2024 (345187)			00003-2024-AI CTResolucion.pdf	00003-2024-AI CTResolucion.htm
Resolucion de Acumulacion	24/09/2024 (350287)			00003-2024-AI Acumulacion.pdf	00003-2024-AI Acumulacion.html
Resolucion Continua Tramite	24/09/2024 (350288)			00003-2024-AI CTResolucion2.pdf	00003-2024-AI CTResolucion2.html
Resolucion Continua Tramite	24/09/2024 (350289)			00003-2024-AI CTResolucion3.pdf	00003-2024-AI CTResolucion3.html
Resolucion Continua Tramite	22/10/2024 (352026)			00003-2024-AI CTResolucion4.pdf	00003-2024-AI CTResolucion4.html
Resolucion Continua Tramite	22/10/2024 (352027)			00003-2024-AI CTResolucion5.pdf	00003-2024-AI CTResolucion5.html
Resolucion Continua Tramite	18/12/2024 (356146)			00003-2024-AI CTResolucion6.pdf	00003-2024-AI CTResolucion6.html
Resolucion Continua Tramite	16/01/2025 (357179)			00003-2024-AI CTResolucion7.pdf	00003-2024-AI CTResolucion7.html

Audiencias Públicas

Fecha de Vista	Fecha de Programación	Lugar	Turno	Sala
05/11/2024	22/10/2024	LA AUDIENCIA MENCIONADA SE REALIZARÁ EN LA SEDE SAN ISIDRO, UBICADO EN LA AV. AREQUIPA 2720, SAN ISIDRO - LIMA.	09:15	PLENO

Source: https://www.tc.gob.pe/consultas-de-causas/

Likewise, by Order of May 27, 2024, in **File No. 00005-2024-PI/TC**, the Constitutional Court admitted the unconstitutionality claim filed by the Lambayeque Bar Association against Law No. 31973. To date, it is pending resolution, as shown in the search "Case Consultations" of the Constitutional Court:

Datos del Expediente

Nro. expediente	Fecha de ingreso	Colegiado	Ponente	Fecha de Devolución al PJ
00005-2024-AI	03/05/2024	PLENO	--	

Resoluciones y Sentencias Publicadas

Tipo de Resolución	Fecha de Public. Web	Public. Diario El Peruano	Fallo	Ver Publicación	Ver Publicación (Formato HTML)
Admisibilidad	29/06/2024 (345189)			00005-2024-AI Admisibilidad.pdf	00005-2024-AI Admisibilidad.htm
Resolucion de Acumulacion	24/09/2024 (350274)			00005-2024-AI Acumulacion.pdf	00005-2024-AI Acumulacion.html
Resolucion Continua Tramite	22/10/2024 (352028)			00005-2024-AI CTResolucion1.pdf	00005-2024-AI CTResolucion1.html
Resolucion Continua Tramite	22/10/2024 (352030)			00005-2024-AI CTResolucion.pdf	00005-2024-AI CTResolucion.html
Resolucion Continua Tramite	18/12/2024 (356147)			00005-2024-AI CTResolucion2.pdf	00005-2024-AI CTResolucion2.html
Resolucion Continua Tramite	16/01/2025 (357180)			00005-2024-AI CTResolucion4.pdf	00005-2024-AI CTResolucion4.html

Audiencias Públicas

Fecha de Vista	Fecha de Programación	Lugar	Turno	Sala
05/11/2024	22/10/2024	LA AUDIENCIA MENCIONADA SE REALIZARÁ EN LA SEDE SAN ISIDRO, UBICADO EN LA AV. AREQUIPA 2720, SAN ISIDRO - LIMA.	09:15	PLENO

Source: https://www.tc.gob.pe/consultas-de-causas/

It should be noted that, considering the connection between the files 00002-2024-PI/TC, 00003-2024-PI/TC and 00005-2004-PI/TC mentioned above, the Constitutional Court proceeded to accumulate them to File 00002-2024-PI/TC, continuing with the processing of the case[2].

As we can see, it is striking that the Secretariat has not taken into account the information provided in the Submission and continues with the processing of the same; despite the fact that, from the beginning, it was aware that the Submitters had resorted to the Peruvian national jurisdiction, through actions for protection, unconstitutionality and constitutional complaints, in which they question Law No. 31973, which is the subject of this Submission. It should be noted that, according to what is established in the TPA, the ultimate purpose of the Submission is to ensure that there is a correct application of the environmental law, which is guaranteed under the internal judicial procedure of Peru.

In this context, the Secretariat should not have admitted the Submission for processing and, therefore, must immediately conclude this procedure, in accordance with the provisions of Article 18.8 (5) of the TPA. This is because, at the time of its presentation, on May 6, 2024, the judicial process for the amparo action and the aforementioned claims of unconstitutionality had been filed, which are still in process.

In this regard, we must highlight that the Secretariat was able to know about this situation, since it is publicly available information, which can be accessed from the public platforms "Consultas de Causas del Tribunal Constitucional" and "Consultas de Expedientes Judiciales del Poder Judicial" by entering the aforementioned file numbers; data that appears in the Annexes that accompany the Submission.

According to the provisions of article 139, paragraph 4 of the Peruvian Political Constitution, all proceedings are public, except for certain exceptions established by law. According to the Supreme Law of Peru, all proceedings are public and the way to materialize this principle of publicity is the existence of the Consultation of Judicial Files (CEJ), which has been developed precisely to provide access to this information to any interested party. In this sense, the Secretariat is empowered to use this tool and verify the status of judicial proceedings, even more so if the Submission refers to the processing of a file and even provides the code or number of the same.

In this sense, the Secretariat, by admitting and determining that the Submission merits a response from a Party, without the latter having verified the status of the judicial proceedings mentioned in the Request, is not 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, since the matter of the Submission is still being processed in the Peruvian judicial authorities. Therefore, the Peruvian Government requests the Secretariat not to continue processing the Submission.

5.2. **The Submission Has Not Invoked Any Real Damage to Prove How the Submitters Have Been Harmed -**

The Secretariat, without further analysis or evidence, has considered that the Request complies with the requirement established in paragraph (a) of article 18.8 (4) of the APC, since the Requesters invoke *"(…) that the harm (damage) caused by Law 31973 is to improperly allow the deforestation of forests, protected natural areas, as well as territories corresponding to indigenous peoples, to make way in an improper way for the development of agricultural activities on said soils affecting biodiversity, wildlife, as well as indigenous peoples"*. These subjective assertions lack support in light of the provisions of the TPA.

The Submission does not allege any damage to the persons who make it. The Submitters have not presented information that demonstrates that they have suffered any damage and only refer to documents issued by

[2] Article 113 of the New Constitutional Procedural Code establishes that "The Constitutional Court may, at any time, order the accumulation of proceedings when they are connected", and this connection would be configured when two or more claims fall on the same challenged rule and base their unconstitutionality on similar arguments (basis 3 of Resolution 00026-2008-PI/TC and another, dated May 5, 2009).

public and private entities prior[3] to and after[4] the approval of Law No. 31973, which modifies Law 29763 - Forestry and Wildlife Law, which constitute only non-binding opinions and administrative acts, not being suitable to demonstrate the existence of real damage nor do they reliably prove how the Submitters have been harmed.

Likewise, Article 18.8.4 (a) of the TPA clearly establishes that one of the requirements for requesting a response from the Party is that damage to the Submitters must be alleged, which is not demonstrated by the information available, and therefore such an allegation would not be upheld. The Submitters make a **general, subjective and imprecise reference to damage** that has not been properly substantiated and that does not directly affect the Submitters, which is not within the provisions of 18.8.4 a) of the TPA. Nevertheless, the Secretariat considers that the Submission presents elements that *"show environmental damage resulting from the non-compliance with the aforementioned regulations by the Peruvian State",* and then concludes that the Submitters have alleged damage in accordance with Article 18.8. 4 (a) of the Peru-US TPA.

In Determination SACA-SEEM/PE/002/2024/D2, the Secretariat indicates that *"(…) the submitters have invoked damage to the extent that the application of Law 31973 would imply an impact on the environment and the protection or conservation of wild flora (including protected natural areas), as well as a danger to biodiversity, wildlife and forest resources in Peru."*

In this regard, we must point out that this assertion is absolutely subjective and lacks legal basis to the extent that it does not adhere to the damage established as a requirement of the Submission provided for in Article 18.8.4 (a) of the TPA.

Indeed, the Secretariat has not carried out any analysis of the alleged damage claimed 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 and also assesses the documents submitted by the Submitters as full, certain and irrefutable proof that damage is being caused to the Submitters, without any type of analysis or support; despite the fact that the TPA provides as a **sine qua non** requirement for the admission of a submission before the Secretariat, the allegation of damage to the person who submits it. It should be noted that the TPA refers to **real damage.**

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[3] These documents are: An official letter from the Presidency of the Republic observing the signature of the law issued by Congress referring to the modification of Law 29763 – Forestry and Wildlife Law; a statement and statement from the Ministry of the Environment - MINAM; a report from the Presidency of the Council of Ministers -PCM; a statement from the National Forestry and Wildlife Service – SERFOR; Two official letters issued by the Ombudsman's Office; Two official letters from the Ministry of Agrarian Development and Irrigation – MIDAGRI that contain the opinions of said ministry and SERFOR; a statement from the Interfaith Initiative; A mandatory jurisdictional ruling issued by the Superior Court of Justice of the Judicial Branch that establishes the obligation of prior consultation in favor of indigenous and native peoples before any legislative or other measure that may affect them is adopted; Request presented by the Federation of Native Communities of Ucayali and Tributaries (FECONAU) to the Congress of the Republic in order to submit to prior consultation the Autograph of the Law that modifies Law 29763, Forestry and Wildlife Law ; Request presented by Miss Ángela Lucila Pautrat Oyarzun, addressed to the Agrarian Commission of the Congress of the Republic, in order to refrain from supporting the opinion due to insistence regarding the signature of the law issued by Congress referring to the modification of the Law 29763 – Forestry and Wildlife Law, after the observations made by the Presidency of the Republic; and, Writ of Amparo Claim filed by Miss Ángela Lucila Pautrat Oyarzun against the Congress of the Republic, in order to refrain from continuing with the process referring to the modification of Law 29763 – Forestry and Wildlife Law, as well as the order admitting said claim issued by the Judiciary.
Also These documents: A statement entitled "We express our concern about the weakening of the regulatory framework for the sustainable management of the territory" signed by more than 300 natural and legal persons; Legal report analyzing the constitutionality of the regulatory projects to modify Law 29763 – Forestry and Wildlife Law prepared by the Legal Defense Institute; Statement from the Inter-Ethnic Association for the Development of the Peruvian Jungle (AIDESEP) rejecting the modification of the Forestry and Wildlife Law; and, Letter sent by various indigenous, union and civil society organizations to the European Commission on deforestation risks due to the regulations approved by the Peruvian Congress.

[4] These documents are: Communiqués issued by the Embassies of Germany, Canada, the United Kingdom and Norway expressing their concern about the impact of Law 31973; SERFOR statement; Presentation of the MINAM before the PCM explaining the negative effects of the approval of Law 31963; Agreement of the Regional Government of Pasco rejecting Law 31973; Complaint for Constitutional Infraction filed by Miss Ángela Lucila Pautrat Oyarzun against the President of Congress and another member of the board of directors of said entity for violation of the Constitution by having promoted the approval of Law 31973; Unconstitutionality lawsuit filed by the College of Sociologists of Peru against Law 31973, and Admission Order of said lawsuit; and, Admission Order of the Unconstitutionality Lawsuit filed by the Regional Government of San Martín against Law 31973. In addition to this, the criminal complaint filed by Miss Ángela Lucila Pautrat Oyarzun against PCM, MIDAGRI, MINAM and SERFOR.

Also These documents: Communication sent by Kené – Institute of Forestry and Environmental Studies to the United States Embassy in Peru; Statement from the Legal Defense Institute; Pronouncement of the Peruvian Chapter of the Laudato SÍ Movement; Statement signed by more than 3,800 people against the modification of the Forestry and Wildlife Law; Statement of the Bishops of the Peruvian Amazon; Statement of the Pastoral Network of Indigenous Peoples and Integral Ecology; Statement from the Observatory of Illegal Mining and Related Activities in Key Biodiversity Areas; Statement of the Ecclesial Conference of the Amazon; Multiple Letter sent by the NGO Environmental Law and Natural Resources – DAR to various authorities; Statement of the National Council of Deans of the Professional Colleges of Peru; Letter sent by 13 indigenous organizations, 24 agricultural sector associations, 46 non-governmental organizations and 29 natural persons, addressed to the Environmental Affairs Council of the APC Peru – United States; Letter sent by 7 indigenous organizations to the President of Congress; Pronouncement of the National Assembly of Regional Governments; Statement from the Faculty of Forestry Sciences of the National Agrarian University La Molina; Document called "Declaration of Iquitos" signed by the National Coordinator of Forestry Engineering Chapters of the College of Engineers of Peru; Statement of the Awajún Autonomous Territorial Government; Statement by the Coordinator of Development and Defense of the Indigenous Peoples of the San Martín Region; Statement of the General Confederation of Workers of Peru; and, Message from the Peruvian Episcopal Conference.

Even more worrying is the fact that the Secretariat interprets the provisions of the TPA (paragraph (a) of Article 18.8 (4) of the TPA), without this being part of its functions, and does so in a way that is contrary to what has been expressly established by the Parties to the Agreement as the 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 Secretariat's interpretation is reproduced below:

> *"In this order of ideas, when literal a) of Article 18.8 (4) of the APC refers to the fact that when analyzing a submission, it is evaluated whether "harm is claimed to the person who makes the Request**", this concept includes both individual interests, as well as collective interests and diffuse interests**. This means that the harm does not necessarily have to be individualized exclusively in the submitters, since in matters of an environmental nature, it is typical and usual for **the affectation to be diffuse**, reaching an indeterminate universe of people (within which, of course, those people who have assumed the role of submitters may be included)."* (Emphasis added)

The Secretariat has also exceeded its functions by interpreting Article 18.8 (4) of the TPA to the effect that the claim of harm to the person making the Submission includes both individual interests, as well as **collective and diffuse interests**, erroneously basing itself on the jurisprudence of the Constitutional Court of Peru, which is not applicable to the present case. The Secretariat mistakenly equates the present procedure with a dispute resolution mechanism (contentious process), in which the parties have the opportunity to present written submissions and responses during the course of a process, emphasizing the respective jurisprudential pronouncements. The actions of the Environmental Secretariat must be limited to applying what has been agreed by the Parties in the TPA.

On the other hand, the Secretariat has exceeded its functions by citing previous pronouncements, such as the case of the Submission referred to Law No. 30723 – Border Zone Highway, to characterize those submissions as frivolous and without legal merit and that are presented in bad faith with the purpose of harassing one of the parties.

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 Environmental Affairs Council (EAC), within the framework of article 5 of the Understanding to implement article 18.8 of the TPA, are met by the Submitters. Therefore, the evaluation of a Submission by the Secretariat must be limited to applying only the provisions of the Treaty, as well as the procedures approved by the EAC.

It should be noted 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 reinterpreted and distorted by the Secretariat, by processing information beyond its powers, generating spaces for exchange not foreseen and without support in the provisions of the TPA, 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 a supranational body**, in which differences are resolved regarding the incompatibility of obligations or the annulment and impairment of the advantages resulting from the TPA; rather, its proceedings are under the sole direction and guidance of the EAC, composed of representatives of both sovereign States.

In light of the above, we must point out that the only body that could issue an interpretation of any provision of the APC 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 TPA, which provide the following:

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

Furthermore, the way the Secretariat is handling the Submitters' brief is striking, without taking into consideration the procedures established in the TPA, distorting the functions of the Secretariat, which is neither a jurisdictional nor a supranational body, and therefore has not complied with the provisions of the

TPA and distorts what was agreed by the Parties in 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 procedure.

It should be remembered that the Royal Spanish Academy defines the term “damage” as follows: “Damage: Effect of causing harm.” “To harm: to cause detriment, injury, damage, pain or discomfort.” It is clear that, in this case, the Secretariat has not required justification of how the Submitters have suffered damage; it has only indicated that it is a diffuse damage.

In this regard, this requirement was not met by the Submitters in light of the TPA, which should have been taken into account in Determination SACA-SEEM/PE/002/2024/D2, which requires a response from the Party. In addition, the Submission must invoke real damage to justify how the Submitters have been harmed. Disregarding this **sine qua non** requirement in the initial admission phase violates the minimum essential formalities of this procedure. Consequently, it is of utmost importance that the submission be evaluated in light of what was agreed by the Parties in the TPA.

In paragraph 5 of article 18.8 of the Environment Chapter of the Peru-US TPA the following was established:

> “5. The Party shall inform the Secretariat within 45 days or, in exceptional circumstances and upon notification to the Secretariat, within 60 days of receipt of the request of:
>
> (a) whether the specific matter in question is the subject of a pending judicial or administrative proceeding, in which case the Secretariat will not pursue the request; and
> (b) any other information the Party wishes to submit, including: (i) whether the matter has previously been the subject of a judicial or administrative proceeding; (ii) whether private remedies in relation to the matter are available to the person making the request and have been requested; (iii) or information on capacity-building activities under the ECA.”

As stated in this document, the Regional Government of San Martín, the College of Sociologists, and the College of Lawyers of Lambayeque have filed lawsuits of unconstitutionality against Law No. 31973, which modifies Law No. 29763 Forestry and Wildlife Law and approves complementary provisions aimed at promoting forest zoning, which are being processed before the Constitutional Court of Peru; and therefore the Secretariat for Submission on Environmental Enforcement Matters should not continue with the submission received regarding Law No. 31973; in accordance with the provisions of literal a) of numeral 5 of article 18.8 of the Peru-US TPA.

VI. CONCLUSIONS. -

The Submission does not meet the concurrent admissibility requirements set out in Article 18.8 (2) of the TPA, nor does it show that this alleged non-application of the legislation has affected trade or investment between the Parties, so it should have been rejected in limine at the time, considering that it does not meet this important admissibility requirement.

The Submission has no link to trade. The obligations assumed within the framework of the Environmental Chapter of the TPA have not been established in isolation from the trade obligations adopted in the aforementioned agreement, which is why it is a fundamental element to consider this link in the processing of the Submission before the Secretariat.

The Submission addresses issues related to the forestry issue, so it should have been addressed to the various relevant entities of the Executive Branch, such as MIDAGRI, MINAM, SERFOR and OSINFOR. This is because forestry matters are the responsibility of various Peruvian government entities, pursuant to their respective regulatory frameworks.

The Secretariat has, among its functions, to receive and process submissions on environmental enforcement matters submitted under Article 18.8 of the Peru-US TPA, so its function is not to interpret the provisions of the TPA, but to apply them, verifying compliance with the requirements established therein.

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

To date, among other actions filed in the domestic jurisdiction, three (3) unconstitutionality claims have been filed against Law No. 31973, “Law that modifies Law No. 29763 Forestry and Wildlife Law, and approves complementary provisions aimed at promoting forest zoning.” By order dated February 20, 2024, and May 27, 2024, the Constitutional Court admitted the claims of unconstitutionality in Files 00002-2024-PI7TC,

00003-2024-PI/TC, and 00005-2024-PI/TC, filed by the College of Sociologists of Peru, the Regional Government of San Martín, and the Lambayeque Bar Association, respectively.

The Secretariat has not verified that the subject matter of this submission was pending judicial resolution, even though the Submission made special reference to different judicial proceedings (including the numbers or codes of the files), and even more so when there was the capacity to verify the status of said case through the public platforms of the Judiciary "Court File Consultations" and of the Constitutional Court "Case Consultations".

VII. PETITION

Taking into account the arguments put forward by the Peruvian Government through this response document, we request that you, Mr. Executive Director of the Secretariat, kindly order that this procedure not be continued and, therefore, that Submission SACA-SEEM/PE/002/2024 be definitively archived because: (i) it does not comply with the concurrent requirements established in article 18.8 (2) and (4) of the TPA, therefore it should not have been processed, much less requested a response from the Peruvian Government; and (ii) since the date of submission of the Submission, its subject matter is the subject of various pending judicial proceedings, in accordance with article 18.8 (5) of the TPA.

Lima, January 31, 2025