

**Secretariat for Submissions on Environmental Enforcement Matters of the
USA—Peru Trade Promotion Agreement
Determination in accordance with Articles 18.8 (1) y (2)**

Submitter: Derecho, Ambiente y Recursos Naturales – DAR
Party: Perú
Reference: Submission on Environmental Enforcement Matters filed by the submitter aforementioned
Submission N°: SACA-SEEM/PE/003/2024
Subject: Article 18.3 of the Trade Promotion Agreement and Law 31973 which amends the peruvian Forest and Wildlife Law, Law 29763
Date of Receipt: August 01, 2024
Date of determination: November 06, 2024

The Secretariat for Submissions on Environmental Enforcement Matters, after reviewing Submission SACA-SEEM/PE/003/2024, pursuant to Article 18.8 (1) and (2) of the United States—Peru Trade Promotion Agreement, considers the **submission meet the admissibility criteria** established in Article 18.8(2), for the reasons stated in this Determination.

Criteria of Article 18.8 (2) of the United States– Peru Trade Promotion Agreement	Meets		Justification
	Yes	No	
<i>The Secretariat may consider a submission under this Article if the Secretariat finds that the submission:</i>			
<i>(a) is in writing in either English or Spanish;</i>	X		Submission SACA-SEEM/PE/003/2024 is written in Spanish.
<i>(b) clearly identifies the person making the submission;</i>	X		Submission SACA-SEEM/PE/003/2024 was filed by one legal entity. This submitter has identified itself through its registration number.

<i>(c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based and identification of the environmental laws of which the failure to enforce is asserted;</i>	X		Submission SACA-SEEM/PE/003/2024, offers sufficient information that allows the Secretariat to review it, and identifies environmental legislation whose non-compliance is invoked.
<i>(d) appears to be aimed at promoting enforcement rather than at harassing industry;</i>	X		Submission SACA-SEEM/PE/003/2024 appears to be aimed at promoting the Party's effective enforcement of environmental law and does not indicate that it aims to harass industry.
<i>(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and</i>	X		Submission SACA-SEEM/PE/003/2024 attaches copy of communications sent to the Agrarian Commission of the Congress of the Republic of Perú in the month of April 2024.
<i>(f) is filed by a person of a Party, except as provided in paragraph 3</i>	X		Submission SACA-SEEM/PE/003/2024 is submitted by one (1) submitter, which is a person from a Party.

I. INTRODUCCIÓN

1. Any person of a Party of the United States-Peru Trade Promotion Agreement (TPA) may file a submission with the Secretariat for Submissions on Environmental Enforcement Matters (hereinafter "Secretariat") asserting that a Party is failing to effectively enforce its environmental law, 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 will prepare a Factual Record if any member of the EAC so orders.
8. One (1) submitter, claiming to act on behalf of seventeen (17) civil society organizations¹ as well as thirty-one (31) natural persons², submitted to the Secretariat, via email dated August 1, 2024, a Submission under Article 18.8 of the TPA; in which invoke the lack of effective application by the State of Peru of environmental legislation. The submitter alleges that with the approval of Law 31973 by the Congress of the Republic, which modifies the Forestry and Wildlife Law – Law 29763, Article 18.3 of the TPA is violated and the regulations on environmental protection in Peru are weakened. The submitter adds that the approval of Law 31973 violates the Political Constitution of Peru, Convention 169 of the International Labor Organization (ILO), as well as Law 29763 (Forest and Wildlife Law), as well as Law 28611 (General Environmental Law). Consequently, the submitter urged that the Peruvian State comply with the provisions of the TPA and that, consequently, Law 31973 be repealed, as well as any other regulation issued as a consequence of the application of said law, as well as that without effect the administrative acts and actions approved within the framework of Law 31973. Finally, the submitter requested official information about the new attempt to weaken forestry legislation in Peru with regard to species protected under the International Convention of Endangered Species of Wild Fauna and Flora – CITES, in response to the existence of Bill No. 7085-2023/PE before the Congress of the Republic of Peru.
9. The Secretariat filed the submission, assigning it the number SACA-SEEM/PE/003/2024.

¹ The organizations mentioned are: CooperAcción, Red por una Globalización con Equidad – RedGE, Asociación Interétnica de Desarrollo de la Selva Peruana – AIDESEP, Confederación Nacional Agraria – CNA, Confederación Campesina del Perú – CCP, Movimiento Ciudadano Frente al Cambio Climático – MOCICC, Asociación ProPurus, Fundación para la Conservación y el Desarrollo Sostenible – FCDS Perú, Pachamama Alliance Perú, ARBIO Perú, Asociación de Mujeres Indígenas Emprendedoras en la Artesanía Textil La Merced del centro poblado de Otuzco, Federación Regional de Mujeres Campesinas Artesanas Indígenas Asalariadas y Migrantes de Arequipa – FERMUCARINAMA, Federación Agraria Nor Oriental Amazonas Base CNA, Federación Nacional de Mujeres Campesinas Artesanas Indígenas Nativas y Asalariadas del Perú – FENMUCARINAP – Junín, Cecobosque (base de la CCP), Planet TV EIRL y Comisión Episcopal de Acción Social - CEAS.

² The individuals mentioned are: Rocio Paola Prieto Duclós, Héctor Amaya Zacarías, Gisella Valdivia Gozalo, Ivan Brehaut Larrea, Elba Tatiana Espinosa Quiñones, Ana María Ancaya La Rosa, Paola Contreras Dominguez, César Augusto Ipenza Peralta, Elizabeth Rojas Cerrón, Karla Gabriela Zelaya Galloso, Lucia Valer Huacho, Manuel Saboreni Meneses, Segundo Secundino Alarcón Díaz, Guadalupe Alejandrina Hilario Rivas, Francisco Sernaque Espinoza, María Laura Vargas Valcárcel, Javier Rodolfo Jahncke Benavente, Javier Francisco Pastor Bohorquez, Daniel Jesús Rodríguez Azcarate, Martha Filomena Baldera Farroñan, Pablo Alfredo De La Cruz Guerrero, Pamela Alejandra Balanta Jimenez, Nils Gustavo Ordoñez Cayetano, Nathaly Estela Ulloa Arias, Blanca Elcira Marisol Pérez Valdez, Elena Yaranga Huaman, Nelly Maritza Chancha Inga, Mariano Huayhua Espinoza, Daniela Margaret Quispe Delgado, Joaquín Luciano Castañeda Rosales y Kathy Janet Salazar Munive.

10. The Secretariat acknowledged receipt of the Submission via email dated August 01, 2024, through communication SACA-SEEM/PE/003/2024, addressed to the submitter with a copy to the EAC.
11. Subsequently, on October 30, 2024, the submitter presented an additional document, specifying that the submission is submitted solely by her and that the natural persons and civil society organizations indicated in her submission document of August 1, 2024, support her submission but do not act represented by her³.
12. After examining the submission, per paragraphs 1 and 2 of Article 18.8 of the TPA, the Secretariat considers that Submission SACA-SEEM/PE/003/2024 meet all the admissibility criteria, for the reasons set forth below.

II. ANALYSIS

A. Regarding the environmental law that would have ceased to be effectively enforced, in accordance with Article 18.8 (1)

13. Any person from a Party may file a submission with the Secretariat per paragraph 1 of Article 18.8 of the TPA asserting that a Party is failing to effectively enforce its environmental law.
14. One (1) submitter filed Submission SACA-SEEM/PE/003/2024.
15. The submitter alleges that with the approval of Law 31973, amending the Forestry and Wildlife Law – Law 29763, it implies a weakening of the commitments assumed by Peru through the TPA by violating the principle of non-regression, especially in matters of forest management. forest resources by promoting deforestation of forests, as well as non-compliance with various national and international standards. The submitter indicates that, specifically, the regulations that would be non-compliant are the Political Constitution of Peru, the General Environmental Law – Law 28611, the Forestry and Wildlife Law – Law 29763, chapter 18 of the TPA (especially Article 18.3, as well as the Annex and 18.3.4), as well as Convention 169 of the ILO.

B. Regarding the environmental law asserted

a) Regarding the concept of “environmental law” in the TPA

³ Said document presented by the submitter responded to the request formulated by the Executive Directorate of the Secretariat on October 10, 2024, given that the submission document mentioned seventeen (17) civil society organizations and thirty-one (31) natural persons, but the document did not contain the signature of any of them and no document was attached to show that said organizations and persons granted powers of representation to Derecho, Ambiente y Recursos Naturales – DAR to submit the application on their behalf.

16. The Submissions mechanism on Environmental Compliance Matters, in accordance with the provisions of paragraph 1 of Article 18.8 of the TPA, has been created so that any person from any of the Parties (that is, the subscribing countries of the TPA, Peru and the United States) invokes that “a Party is failing to effectively apply its environmental legislation.”

17. In addition, Article 18.14 defines the term “environmental law” as follows:

*“**environmental law** means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:*

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto;

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas⁴; or

(d) for Peru, the management of forest resources.

In areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation or provision thereof, directly related to worker safety or health.”

18. Likewise, Article 18.14 of the TPA also establishes that the laws and regulations covered are:

“Laws, regulations, and all other measures to fulfill its obligations under a covered agreement means a Party’s laws, regulations, and other measures at the central level of government”.

19. Also, Article 18.14 of the TPA it is added that, for Perú, the following qualify as laws or regulations:

“a law of Congress or Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government.”

20. From the concepts just presented contained in the TPA, the following can be concluded:

⁴ The Parties recognize that such protection or conservation may include the protection or conservation of biological diversity (foot note 12 of Chapter 18 of the TPA).

- 1° The Submissions mechanism on Environmental Compliance Matters is specifically planned to highlight that a country that is a Party to the TPA is not effectively applying the provisions of its environmental legislation. This means that a rule that is part of such legislation establishes some obligation that must be fulfilled or executed by at least one public entity that makes up the organization of the Party country and that, in addition, said obligation is not being fulfilled in accordance with the provisions of the corresponding standard.
- 2° For this purpose, the obligation must be specifically established within the environmental legislation of the Party, understood as any law or regulation issued by the respective signatory country of the TPA; and
- 3° In the case of Peru, it is specifically considered as a law or regulation that makes up environmental legislation, which may therefore contain an obligation included in the scope of Article 18.8 of the TPA, to certain specific standards. These norms are the laws issued by the Congress of the Republic, as well as other provisions (decrees and resolutions) issued to regulate a law.

In this order of ideas, a Submission on Environmental Compliance Matters could only be processed if it coincides with the set of premises contained in the TPA that have just been described and, in addition, of course, all the requirements met the criteria established in paragraph 2 of Article 18.8 of the TPA.

b) Regarding the environmental law asserted

21. As indicated, the submitter assert that with the promulgation of Law 3173 the Government of Peru would have stopped applying various national and international norms related to environmental protection.
22. It is then necessary to review whether, within the framework of a Submission on Environmental Enforcement Matters, the aforementioned standards are included or not within the premises just explained, established by the TPA, since only if the response is positive, the Secretariat will have powers to analyze the respective Submission.
23. The submitter refer to the following norms:

i. Political Constitution of Perú

In this regard, the current Political Constitution of Peru was prepared between the months of January and September 1993 by a body established ad hoc for the preparation of the constitutional text, the so-called Democratic Constituent Congress (CCD). After that, on October 31, 1993, a Referendum (vote) was held in which the majority of Peruvian citizens approved the constitutional text prepared by the CCD, which is why on December 30, 1993 it was published in the official newspaper “El Peruano” the aforementioned Constitution.

According to article 51 of the Political Constitution of Peru, said document, that is, the Constitution itself, has the nature of a legal norm and prevails over all legal norms, being that below the Constitution come the laws, and after the laws follow others lower hierarchy norms.

Therefore, the Political Constitution of Peru is a legal norm different from the laws issued by the Congress of the Republic, as well as it is different from the decrees and resolutions that are issued to regulate a law.

Bearing in mind what has just been indicated, it is clear that although the Political Constitution is undoubtedly the highest-ranking norm within the legal system of Peru, and it certainly contains relevant provisions of an environmental nature in the Chapter entitled “On the Environment and Natural Resources” (which covers articles 66 to 69 of said instrument) which are the foundation of the rest of the legal system in that matter, for the specific purposes of the Submissions on Environmental Enforcement Matters provided for in Article 18.8 of the TPA, the Constitution is not part of the environmental legislation that enables such requests to be made, since as has been previously stated, this will only be possible when 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. This has been expressly established by the signatory Parties to the TPA, in which the scope and limits for the formulation of the Submissions on Environmental Enforcement Matters were established.

Consequently, in accordance with the provisions of Chapter 18 of the TPA, it is not feasible to allege lack of compliance with provisions of the Political Constitution of Peru⁵, for the purposes of formulating a Submission on Environmental Enforcement Matters.

ii. International Conventions and Treaties

On the other hand, the submitter has made reference to the TPA and ILO Convention 169, which Peru would be failing to comply with the approval of Law 31973.

In this regard, it is necessary to mention that according to article 55 of the Political Constitution of Peru, the treaties entered into by the Peruvian State that are in force are part of national law.

Furthermore, in accordance with the provisions of Article 3 of the Political Constitution of Peru, the international treaties and agreements entered into by the Peruvian State, to the extent that they refer to rights issues related to the environment and others of a similar nature, which are recognized by the aforementioned Constitution, also make up provisions of constitutional rank.

⁵ What is stated here does not undermine the existence of mechanisms within the domestic law of the Republic of Peru, which enable to question the possible existence of acts and measures that may contravene constitutional norms, as is the case of amparo actions and unconstitutionality.

In relation to this, it is relevant to mention that the Constitutional Court of Peru has indicated that⁶ *“The treaty as a normative form in domestic law has some special characteristics that differentiate it from other normative sources. This is because, on the one hand, the production bodies of said source (that is, the States and international organizations that celebrate the treaty), develop their productive activity in the field of international law, and on the other, because their mode of production (for example the rules of the Vienna Convention on the Law of Treaties – negotiation, approval and ratification) is governed by public international law”*.

Likewise, the Constitutional Court adds that⁷ *“Unlike the other normative forms that occur in the scope of Peruvian domestic law, treaties are a normative source, not because they are produced internally, but because the Constitution so provides. To this end, the Constitution, unlike other regulatory forms, provides for the technique of reception or integration of treaties into Peruvian domestic law.”*

As can be seen, international treaties have a different preparation and approval process than the other regulations that make up domestic law in Peru. With this, it is clear that international agreements and treaties are legal norms that are different from the laws issued by the Congress of the Republic, as well as from the decrees and resolutions that are issued to regulate a law.

It is evident, therefore, that for the specific purposes of the Submissions on Environmental Enforcement Matters provided for in Article 18.8 of the TPA, international conventions and treaties (beyond the fact that they contain important provisions on environmental law), are not part of the environmental legislation that enables the aforementioned requests to be submitted, since, as has been explained, this will only be possible when 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 law⁸. This, like the assumption of the Political Constitution of Peru that was previously developed, has been expressly agreed upon by the Parties that approved the TPA, in which the scope and limits for the formulation of the Submissions on Environmental were established. Enforcement Matters.

Consequently, in accordance with the provisions of Chapter 18 of the TPA, it is not feasible to allege the lack of compliance with international conventions and treaties, for the purposes of formulating a Submission on Environmental Enforcement Matters.

⁶ The quote corresponds to paragraph 19 of the Fundamentals section of the Judgment issued on April 24, 2006, within the framework of the Unconstitutionality Action Process followed by the Regional Government of San Martín against Law No. 27971, followed under File No. 0047-2004-AI/TC.

⁷ This quote corresponds to paragraph 21 of the same Constitutional Court Judgment mentioned above.

⁸ In this order of ideas, it is also worth remembering that on previous occasions (as happened in the case of the SACA Determination - SEEM/PE/002/2018/D1) the Secretariat has expressed that “(...) it is not competent to evaluate the effective application of the provisions contained in the TPA itself (...)”, as well as that its action will be restricted, specifically, to the application of the regulations issued internally by a party to the TPA.

iii. Laws 28611 and 29763

Additionally, the submitter has stated that the issuance of Law 31973 would be generating non-compliance of the General Environmental Law – Law 28611 and the Forestry and Wildlife Law – Law 29763.

The submitter states that Law 28611 includes in articles V and VI of its Preliminary Title those principles on which environmental management in Peru must be governed, such as the principle of sustainability (The management of the environment and its components is based on the balanced integration of the social, environmental and economic aspects of national development, as well as the satisfaction of the needs of current and future generations) and the principle of prevention (Environmental management has as its priority objectives to prevent, monitor and avoid environmental degradation).

For its part, the submitter indicates that articles 4 and 5 of Law 29763 clearly establish that forest resources are part of the Forest Heritage of Peru and cannot be used for agricultural activity. The submitter add that, with issuance 31973, what is intended is the elimination of land classification and the prohibition of change of use, required by article 38 of Law 29763.

In this particular case, unlike the cases of the Political Constitution of Peru and the international treaties and agreements that have been previously exposed, the submitters mention a two (2) laws issued by Congress (Law 28611 and Law 29763), provisions that are included within the definition of “environmental legislation” referred to in Articles 18.8 and 18.14 of the TPA.

It should be remembered that the Submissions on Environmental Enforcement Matters mechanism is specifically planned so that people can highlight that a country that is a Party to the TPA is not effectively applying the provisions of its environmental legislation.

The above means that a rule included within environmental legislation orders that an entity that is a member of the state organization of a Party to the TPA carry out a certain activity with an impact on the environment and that, however, in practice it is found that the normatively provided obligation is not being fulfilled.

C. Regarding meeting the admissibility criterion of Article 18.8 (2)

24. Article 18.8 (2) of the TPA establishes the criteria that must be met concurrently for Submissions to be considered by the Secretariat. Below is the evaluation of the aforementioned criteria:

a) *[if]* it is in writing in either English or Spanish

25. The Submission SACA-SEEM/PE/003/2024, is written in Spanish.

26. The Secretariat considers that the Submission meets the criterion of Article 18.8 (2) (a).

b) [if] it clearly identifies the person making the submission

27. Submission SACA-SEEM/PE/003/2024 was filed by a legal entity, who is listed below, identified by its Registry entry number:

NAME OF SUBMITTER	PUBLIC REGISTRATION NUMBER
Derecho, Ambiente y Recursos Naturales - DAR	11649248 (of the Registry of Legal Entities of Lima)

28. Based on the aforementioned, the Secretariat considers that the Submission meets the criterion of Article 18.8 (2) (b).

c) [if] it provides sufficient information to allow the Secretariat to review the Submission, including documentary evidence on which the Submission is based and identification of the environmental laws of which failure to enforce is asserted

29. The submission under analysis and its annexed documents offer the following information:

- a) Journalistic reports that collect the position of various specialists on the weakening of the framework for the protection of CITES species as a result of the weakening of the legal framework, when the Peruvian state committed to obtaining all the necessary resources to meet the demands of protecting species such as the Shihuahuaco. <https://ojo-publico.com/ambiente/territorio-amazonas/peru-ignoro-evidencia-sobre-peligros-explotacion-del-shihuahuaco>
- b) Opinion of indigenous organizations contrary to the proposal that led to Law 31973⁹.
- c) Opinion of civil society contrary to the proposal that led to Law 31973¹⁰.

⁹ ORAU, 2024. Letter of Organización Regional AIDESEP de Ucayali (ORAU) in: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjE0NQ==/pdf>
CNA, 2024. Letter of Confederación Nacional Agraria (CNA) in: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjA0Ng==/pdf>
PPICC, 2024. Letter of Plataforma de los Pueblos Indígenas frente al Cambio Climático (PPICC) in <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjA0Mw==/pdf>
GTA-NW, 2024. Letter of Gobierno Territorial Autónomo de la Nación Wampís (GTA-NW) in: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjAwMg==/pdf>

¹⁰ DAR, 2023. Letter and civil society statement. In: <https://wb2server.congreso.gob.pe/spley-portal-service/documento->

- d) Opinion of the academic and scientific sector contrary to the proposal that gave rise to the Law¹¹.
- e) Opinion of the National Council of Deans of the Professional Colleges of Peru contrary to Law 31973¹².
- f) Joint statement from the Embassies of Germany, Norway, the United Kingdom and Canada, expressing concern about the approval of Law 31973. In: <https://twitter.com/UKinPeru/status/1748344710412878056>.
- g) Letter prepared by DAR requesting various authorities to repeal Law 31973. In: <https://drive.google.com/file/d/1yEnI1MTPnP7f2oc8fSGZVwHtGCHNtqeI/view>
- h) Reconsiderations presented by two congressmen regarding the vote on Law 31973¹³.
- i) Communiqué from four (4) embassies expressing concern about the implications of the approval of Law 31973 In: <https://www.infobae.com/peru/2024/01/20/embajadas-de-cuatro-paises-expresan-preocupacion-por-situacion-en-peru-sobre-ley-antiforestal-aprobada-por-el-congreso/>
- j) Communiqué from the UN Special Rapporteur on the Rights of Indigenous Peoples expressing concern over the approval of Law 31973. In: <https://www.infobae.com/peru/2024/02/01/relator-de-la-onu-advierte-a-peru-que-ley-antiforestal-incentiva-el-despojo-y-tala-en-tierras-indigenas/>
- k) Project “Monitoring of the Andean Amazon Project (MAAP)” that analyzed the National Map of Agricultural Surface prepared by MIDAGRI, finding that 56% of the forest lost in the Peruvian Amazon, between 2001 and 2017, had become surface agricultural in 2018. In: <https://tinyurl.com/2b8nys2k>
- l) Shanee, N., & Shanee, S. (2016). Land Trafficking, Migration, and Conservation in the “No-Man’s Land” of Northeastern Peru. Tropical Conservation Science, 9(4), Art. 4 in

[anexo/NjAxNQ==/pdf](#)

¹¹ PUCP, 2024.SCIENCE,VOL. 383, NO. 6686,PERU’S ZONING AMENDMENT ENDANGERS FORESTS
<https://www.science.org/doi/10.1126/science.ado005>

¹² The National Council of Deans of the Professional Colleges of Peru represents all professions organized in Professional Colleges in the country.<https://www.connuestroperu.com/ecologia/83118-los-colegios-profesionales-del-peru-rechazan-ley-que-amenaza-la-biodiversidad-en-la-amazonia>

¹³ Reconsideration of the vote on the opinion of Bill 649, 849 y 2315/2021 -CR. of Congresswoman Ruth Luque Ibarra. Oficio N° 384-2023-2024/RLI-CR. In: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjAyMQ==/pdf>
And Congresswoman Susel Paredes Piqué. Oficio N° 507-2023-2024-SAMPP/CR. In: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjAxOQ==/pdf>

which the problem of land trafficking and illegal delivery of titles is addressed. In: <http://tinyurl.com/msur4bch>

m) Sierra Praeli, Y. (2018). Land trafficking in Ucayali: officials arrested for belonging to the mafia, which addresses the problem of land trafficking and illegal delivery of titles. In: Mongabay <http://tinyurl.com/3h6apbn4> ; y

n) Vera, E. (2021) Amazon: The illegal delivery of lands that cornered native communities of Huánuco, which addresses the problem of land trafficking and illegal delivery of titles. In: Convoca.pe <http://tinyurl.com/44t8w6nb>

30. Taking into consideration the nature of the submission filed, the documentation sent by the submitter constitutes sufficient information to allow the Secretariat to review the submission.

31. Regarding the identification of the environmental laws whose failure to be effectively enforced is asserted (specifically, Law 28611 and Law 29763), this analysis has been carried out in item II B b) iii of this Determination; having concluded that the submission includes the assertion of environmental law that is not being effectively enforced, under the scope of the concept of environmental law established in the TPA.

32. Based on the above, the submission SACA-SEEM/PE/003/2024, in accordance with the analysis in this Determination, complies with this admissibility requirement established in Article 18.8 (2) (c).

d) [if] appears to be aimed at promoting enforcement rather than at harassing industry;

33. Submission SACA-SEEM/PE/003/2024 appears to be aimed at promoting the effective enforcement of the law. The Secretariat considers that the Submission does not give indications of seeking to harass industry.

34. The Secretariat considers that the Submission meets the criterion of Article 18.8 (2) (d).

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, the submitter made reference to Letters No. 081-2024-DAR/DE and No. 092-2023-DAR/DE dated April 17 and 18, 2024, sent to the Agrarian Commission of the Congress of the Republic, in which, among other topics, it is requested that the repeal of Law 31973 be debated. Likewise, the submitter attached a copy of the aforementioned documents.

36. Based on the above, the submission SACA-SEEM/PE/003/2024, complies with this admissibility requirement established in Article 18.8 (2) (e).

f) [if] is filed by a person of a Party, except as provided in paragraph 3.

37. As previously detailed, submission SACA-SEEM/PE/003/2024 has been presented by a legal entity, which is a person of one of the Parties.

38. The Secretariat considers that the Submission meets the requirement of Article 18.8 (2) (f).

D. About the request for information made in the submission

39. In the submission, the submitter has requested to be provided with “*official information on the new attempt to weaken forestry legislation in Peru with regard to species protected under the International Convention on Endangered Species of Fauna and Wild Flora – CITES, in response to the existence of Bill No. 7085-2023/PE before the Congress of the Republic of Peru.*”.

40. In this regard, as explained in section 20 of this Determination, the mechanism for Submissions on Environmental Enforcement Matters is specifically planned to demonstrate that a country that is a Party to the TPA is not effectively applying what is provided for in its environmental legislation. On the contrary, the Secretariat does not have the powers to analyze or rule on the implications of regulatory proposals that have not been approved and, therefore, do not constitute environmental legislation.

41. In this order of ideas, the request to provide information made by the submitter must be rejected.

DETERMINATION

42. For the reasons stated, the Secretariat considers that Submission SACA-SEEM/PE/003/2024 asserts a Party’s failure to effectively enforce the environmental law, pursuant to what is established in Article 18.8 (1) of the TPA. Likewise, the Submission meets the admissibility criteria established in Article 18.8 (2) of the TPA.

43. Therefore, the Secretariat determines that the Submission complies with paragraphs 1 and 2 of Article 18.8 of the TPA.

44. Pursuant to Article 18.8 (4), the Secretariat will determine whether the Submission merits a response from the Party.



Daniel Schmerler Vainstein
Executive Director

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