

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

Submitters: Derecho, Ambiente y Recursos Naturales - DAR
Party: Peru
Reference: Submission on Environmental Enforcement Matters filed by the Submitters
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 Notification: July 3, 2025

The Secretariat for Submissions on Environmental Enforcement Matters, after reviewing Submission SACA-SEEM/PE/003/2024, and pursuant to Article 18.8 (5) (a) of the United States—Peru Trade Promotion Agreement, **considers that the processing of the Submission cannot continue.**

I. INTRODUCTION

1. Any person of a Party of the United States-Peru Trade Promotion Agreement (TPA) may make a Submission to the Secretariat for Submissions on Environmental Enforcement Matters (hereinafter “Secretariat”) asserting the lack of effective environmental law enforcement by a Party, in accordance with Article 18.8 (1) of the TPA.
2. In June 2015, the Parties signed the “Understanding for Implementing Article 18.8 of the United States—Peru Trade Promotion Agreement,” which established the Secretariat. A Memorandum of Understanding was also signed with the Organization of American States (OAS) by which it is agreed that the OAS will house and provide administrative and technical support to the Secretariat in its headquarters in Washington D.C., in the United States.
3. The Secretariat, among its main functions, receives and considers Submissions on environmental enforcement matters (hereinafter “Submissions”) filed by any person, natural or legal, of a Party, in accordance with the provisions of Article 18.8 of the TPA.
4. The Secretariat determines the eligibility of the Submission, in accordance with the criteria set out in paragraph 2 of Article 18.8 of the TPA. If the Submissions meet these criteria, the Secretariat will determine whether these submissions merit a response from the Party, in accordance with paragraph 4 of Article 18.8 of the TPA.

5. The Secretariat will determine, once it has received a response from the Party or once the timeline set forth in Article 18.9 of the TPA in which such response is received has been met, whether the preparation of a Factual Record is warranted. If the Secretariat determines that the preparation of a Factual Record is not warranted, the process is then terminated with respect to that Submission.
6. If the Secretariat determines that the preparation of a Factual Record is warranted, the Environmental Affairs Council (EAC) of the TPA will be notified of this decision in accordance with Article 18.9 of the TPA.
7. The Secretariat prepares a Factual Record if any member of the EAC so orders.
8. Derecho, Ambiente y Recursos Naturales (DAR) filed a Submission, via email on August 01, 2024, under Article 18.8 of the APC; in which they invoke the lack of effective enforcement by the State of Peru of environmental legislation. The Submitter allege that the approval of Law 31973 by the Congress of the Republic, which amends the Forestry and Wildlife Law (Law 29763), violates the aforementioned Law 29763 and Law 28611 (General Environmental Law). Furthermore, on October 30, 2024, DAR submitted a supplementary document to its Submission.
9. The Secretariat registered the Submission as SACA-SEEM/PE/003/2024.
10. The Secretariat acknowledged receipt of the Submission via email dated August 01, 2024, through letter SACA-SEEM/PE/003/2024, addressed to the Submitters with a copy to the EAC.
11. The Secretariat determined that Submission SACA-SEEM/PE/003/2024 complies with Article 18.8 (1) and with the criteria established in Article 18.8 (2).
12. Based on the above, the Secretariat issued Determination SACA-SEEM/PE/003/2024/D1, communicating it to the EAC and to the Submitter via email on November 06, 2024.
13. The Secretariat, through Determination SACA-SEEM/PE/003/2024/D2 dated December 27, 2024, indicated that Submission SACA-SEEM/PE/003/2024 merited a response from the Peruvian Government, notifying both the EAC and the Submitter via email on the same date.
14. In the aforementioned Determination SACA-SEEM/PE/003/2024/D2, the Peruvian State was informed that the deadline to submit its response was February 25, 2025.
15. The Peruvian State did not submit any response document regarding Request SACA-SEEM/PE/003/2024.
16. On February 25, 2025, DAR submitted a document in which it stated that *“currently, DAR is not involved in any pending judicial or administrative proceedings with the Peruvian State regarding the challenged regulation”*.

17. In this stage, it is the responsibility of the Secretariat to inform the EAC if Submission SACA-SEEM/PE/003/2024 warrants the development of a Factual Record.

II. ANALYSIS

A. About the Submission under analysis:

18. The Submitter allege the lack of effective enforcement of environmental legislation by the State of Peru, alleging that the enactment of Law 31973 would result in non-compliance with the General Environmental Law – Law 28611 and the Forestry and Wildlife Law – Law 29763.
19. The Submitter states that Law 28611 establishes in Articles V and VI of its Preliminary Title the principles that govern environmental management in Peru, 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 (The priority objectives of environmental management are to prevent, monitor, and avoid environmental degradation).
20. The Submitter also indicates that Articles 4 and 5 of Law 29763 clearly establish that forest resources constitute Peru's Forest Heritage and cannot be used for agricultural activities. They add that, with the enactment of Law 31973, the objective is to eliminate the land classification and prohibition on change of use required by Article 38 of Law 29763.
21. The Submitter asserts that Law 31973 will generate negative effects on forests, such as massive deforestation and the impact on forest and wildlife resources and ecosystem services, in addition to promoting impunity for large-scale agribusiness activities that have historically failed to comply with the requirements established in the Forest and Wildlife Law, under the modus operandi of deforestation first and legalization later.
22. The Submitter adds that Law 31973 condones deforestation by improperly allowing the development of agricultural activities in territories that are actually suitable for forestry, thereby weakening Peruvian legal framework and threatening the right of all peruvians to enjoy a balanced environment suitable for life.
23. Finally, the Submitter indicates that the approval and implementation of Law 31973 will generate negative impacts from the environmental, social and legal perspectives.

B. Regarding the requirement providing for in Article 18.8 (5) of the TPA:

24. Article 18.8 (5) of the TPA provides that, when the Secretariat requests a response from the Party pursuant to Article 18.8 (4) of the TPA, the Party shall provide the following information:

“(a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and

(b) of any other information the Party wishes to submit, such as:

- (i) whether the matter was previously the subject of a judicial or administrative proceeding,*
- (ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued, or*
- (iii) information concerning relevant capacity-building activities under the ECA.”*

25. In this regard, as can be seen, the provision contained in paragraph a) of Article 18.8 (5) of the TPA contains two (2) independent obligations with distinct recipients.
26. The first of these obligations states that the Party requested to issue a response must report whether it is aware of the existence of judicial or administrative proceedings pending before the corresponding authorities in its country.
27. The second obligation is directed at the Secretariat and states that, if it identifies the existence of judicial or administrative proceedings pending before the Party's national authorities, it must refrain from continuing with the request.
28. It is necessary to specify that the aforementioned obligation of the Secretariat has some characteristics that are described below: (a) Although it is assumed that the eventual existence of judicial or administrative proceedings in progress will normally be reported by the Party whose response has been requested, this does not prevent the Secretariat from learning about the existence of such pending proceedings by other means, such as, for example, through information provided by the submitters themselves, or through ex officio inquiries to public sources of information; (b) The judicial or administrative proceedings subject to paragraph a) of Article 18.8 (5) of the TPA and which result in the non-continuation of the processing of the request are not only those in which the submitters are the active subjects, but also include any process followed by any other natural or legal person before bodies of the domestic jurisdiction of the Party in which the matter subject of the request is in dispute, given that environmental issues are of general interest and, therefore, legitimacy regarding them rests with all citizens; and (c) The impediment to continuing with the analysis of a submission by the Secretariat will occur whenever, at the time of filing such submission, judicial or administrative proceedings are already underway before the national authorities.
29. It should be added that the purpose of the provision contained in Article 18.8 (5) (a) of the TPA is that the submission mechanism for environmental enforcement matters provided for in said international instrument may only be used when no judicial or administrative proceedings are underway before the national authorities of one of the parties. This is because, according to the states that negotiated the treaty, the domestic jurisdiction of said parties has appropriate tools to ensure the proper application of the corresponding environmental legislation. The submission mechanism may only be used on a residual basis when national processes have not been activated for such purposes.
30. In this regard, it should be noted that the Peruvian Government was required by Determination SACA-SEEM/PE/003/2024/D2, notified on December 27, 2024, to submit its response to the Submission by February 25, 2025. However, after that deadline, and up to the present, the Government of Peru has not submitted any response.

31. Furthermore, in a letter dated January 25, 2025, DAR stated that it is not currently a party to any pending judicial or administrative proceedings with the Peruvian State regarding the challenged regulation, that is, Law 31973.
32. Although neither the Submitter nor the Party against which the Submission has been made has reported in the framework of case SACA-SEEM/PE/003/2024 about the existence of judicial or administrative proceedings underway in the national jurisdiction of Peru, as explained in paragraph 28 above, it is the duty of the Secretariat to verify whether or not such proceedings exist before the internal authorities of the Party in which the matter subject of the Submission is being discussed (that is, national proceedings in which the object of the dispute is the legal norm that, according to the Submission, causes non-compliance with environmental legislation by a Party).
33. In this regard, taking into account the recent processing of another submission (case SACA-SEEM/PE/002/2024¹), the Secretariat has identified that the specific matter in question is the subject of various judicial proceedings in Peru.
34. First, has been verified the existence of an amparo action filed by Ms. Ángela Lucila Pautrat Oyarzún (one of the Submitters) against the Congress of the Republic of Peru seeking to prevent the defendant entity from approving amendments to the Forestry and Wildlife Law, a process followed under File No. 05654-2022-0-1801-JR-DC-03. This process is currently pending before the First Constitutional Chamber of the Superior Court of Justice of Lima, as confirmed by the Judicial File Consultation System (CEJ by its acronym in spanish)².
35. Likewise, the existence of the the claim of unconstitutionality filed by the College of Sociologists of Peru against Law 31973, which was admitted for processing on May 27, 2024 (File No. 0002-2024-PI/TC) has been identified.
36. In addition, the existence of the claim of unconstitutionality filed by the Regional Government of San Martin against Law 31973, in which the Constitutional Court issued the admissibility of the claim on February 20, 2024 (File No. 0003-2024-PI/TC), has been identified.
37. Finally, the existence of the claim of unconstitutionality filed by the Lambayeque Bar Association against Law 31973, which was admitted on May 27, 2024 (File No. 0005-2024-PI/TC) by the Constitutional Court, has been identified.
38. The cases mentioned in paragraphs 86 and 37, due to their thematic connection, were accumulated in File No. 0002-2024-PI/TC mentioned in paragraph 35³.

¹ This submission was presented by Mrs. Ángela Lucila Pautrat Oyarzún and Kené- Instituto de Estudios Forestales y Ambientales, alleging that the approval of Law 31973 would trigger compliance with various environmental regulations in Peru. The query in the CEJ system was carried out on July 3 at 5:18 p.m.

² This portal can be accessed through the link cej.pj.gob.pe/cej/forms/detalleform.html

³ This information is available at the link <https://www.tc.gob.pe/consultas-de-causas/>

39. It should be noted that although the Constitutional Court has issued a judgment in response to these claims of unconstitutionality to date⁴, the truth is that at the time the Submission subject to this case was filed (August 1, 2024) and even when Determination SACA-SEEM/PE/003/2024/D2 was issued (December 27, 2024) requesting a response from the Peruvian State, these jurisdictional processes were still pending a decision by the competent national authority in Peru.
40. In this regard, based on the information to which the Secretariat has had access and detailed in the previous recitals, it has been identified that at the time the Submission was filed, there was an amparo proceeding and three (3) unconstitutionality actions in progress, in which the matter in discussion is Law 31973, a legal norm that precisely, according to what was stated by the Submitter, is the one that causes the Government of Peru to not comply with its environmental legislation.
41. Given that all of the aforementioned jurisdictional proceedings were in progress and pending resolution by the competent national authorities in Peru (Judiciary and Constitutional Court, respectively) when the Submission was filed (and even to this day the amparo proceeding is still ongoing), the assumption established in paragraph a) of section 5 of Article 18.8 of the TPA is confirmed.
42. Due to this, the Secretariat cannot continue with the processing of the Submission, since the TPA has provided that the existence of ongoing jurisdictional proceedings before the competent bodies of one of the parties determines the completion of the evaluation of the submission.
43. It is very important to clarify that the provisions set forth in the previous paragraph do not constitute a pronouncement or assessment regarding the existence (or non existence) of the problem presented in the Submission, but rather merely represent the identification of an objective circumstance established in the TPA that does not allow the continuation of the analysis of the Submission and, rather, determines the completion of its processing.

III. FINAL NOTE

44. Pursuant to Article 18.8 (5) (a) of the TPA, the existence of ongoing judicial proceedings before the domestic court of one of the parties in which the specific matter of the Submission is being discussed will determine that the Secretariat cannot continue with the process.
45. Consequently, having verified that there are currently judicial proceedings in Peru that challenge Law 31973, a legal norm that, according to the Submitter, is causing the Government of Peru to fail to comply with its environmental legislation, the Secretariat cannot continue with the processing of Submission No. SACA-SEEM/PE/003/2024.

⁴ On March 26, 2025, the Constitutional Court issued a judgment declaring partially founded the claims of unconstitutionality filed by the College of Sociologists of Peru, the Regional Government of San Martín, and the Bar Association of Lambayeque against Law 31973 and, consequently, declared the First and Second Transitory Complementary Provisions of Law 31973 unconstitutional.

46. This Notification will be made known to the Environmental Affairs Council and the Submitter.

A handwritten signature in black ink, appearing to read 'D. Vainstein', with a long, sweeping horizontal stroke extending to the right.

Daniel Schmerler Vainstein
Executive Director
Secretariat for Submissions on Environmental Enforcement Matters
U.S.— Peru Trade Promotion Agreement