

Lima, January 8th, 2024

**Environmental Affairs Council of the U.S. – Peru Trade Promotion Agreement
Office of the United States Trade Representative (USTR)
Ministerio de Comercio Exterior y Turismo de Perú (MINCETUR)**

Subject: Alert regarding the risk of deforestation in the Amazon due to laws approved by the Congress of the Republic of Peru and their relationship to the U.S. - Peru Trade Promotion Agreement (TPA).

To Whom it May Concern:

We are pleased to address you on behalf of the indigenous, academic, trade and civil society organizations and the citizens who co-sign this letter, to express our deep concern regarding the approval by insistence of the proposal to modify the Forest and Wildlife Law -promoted by the bills No. 649, No. 894 and No. 2315 called "The Law that modifies Law 29763, Forest and Wildlife Law, and approves complementary provisions aimed at promoting Forest Zoning" - by the Congress of the Republic of Peru. This law undermines Peru's commitments in the fight against climate change, and violates international treaties on environmental, human rights and trade issues, specifically including the Trade Promotion Agreement (TPA) between the United States and Peru.

The approved bill includes a final complementary provision to be added to the current Forest Law that would modify the rules of land use change by creating "exclusion areas for agricultural purposes" that would be exempted from land classification according to their primary use (*capacidad de uso mayor*), as well as from the requirements for land use change (which are required in Article 38 of the Forest Law). Due to the above, this regulation would result in a mechanism of impunity, destruction and violation of human rights by allowing agricultural or agro-industrial activities without first evaluating whether an area has the capacity to be used as forestry or agricultural land, benefiting actors who have previously failed to comply with the requirements of the Forest Law, weakening forest protection and environmental management, ignoring the rights of Indigenous Peoples, and encouraging new deforestation, all with the aim of promoting trade.

When this legislative initiative - which has been promoted over the past two years - was approved by Peru's Congress in 2022, it was rejected by the Executive in the context of technical opinions of various government agencies such as the Ombudsman's Office, the Ministries of Agriculture and Environment and the National Forest and Wildlife Service (SERFOR). At the same time, embassies -including that of the government of the United States of America- as well as indigenous, civil society, trade associations, and producer and academic associations, have also been expressing their strong concern, some warning that with this regulation, Peru would not be in compliance with the commitments adopted within the framework of the Peru-US TPA.

In March of 2023, the plenary of the Congress of the Republic voted again on this initiative - this time in an effort to approve the law that had been rejected by the Executive. Since it did not obtain the necessary votes, the proposal was rejected until a congresswoman presented a request for reconsideration (a new vote) that was voted on and approved December 14, 2023 without further debate; without considering the various technical opinions against it provided by the State, indigenous organizations and civil society; without taking into account the devastating impact it will have on Peru's forests, on the Amazon and on

the indigenous peoples; and again disregarding the requirement to go through the Prior Consultation process, mandatory for laws that affect Indigenous Peoples.

It is worth mentioning that this bill was not on the agenda of the Congress but, the day before the approval of the law, the president of the National Confederation of Private Business Institutions (CONFIEP) and the American Chamber of Commerce of Peru (AMCHAM) sent communications to the President of the Peruvian Congress urging discussion and analysis in the plenary on the Congressional insistence of Bills 649, 894 and 2315, arguing that "these projects not only guarantee legal security to farmers already established, but also seek a necessary harmonization with international regulations, such as the recent European regulation of zero deforestation imports". This statement is not accurate, among other things, because there are overlaps with native community territories. The USAID publication "Study of the rights of access to land titling of indigenous peoples of the Peruvian Amazon" warns that "the agro-industrial expansion of oil palm, cocoa and rice plantations generate pockets of deforestation of hundreds of hectares. A large part of these new areas begin with land invasion. After the plantations are installed, the property is formalized. This has been generating serious social conflicts with riverside and indigenous populations". The law approved by Congress will facilitate the granting of property titles on lands that may overlap with indigenous territories, aggravating the conflict.

We reject the use of the European Union Regulation 2023/1115 on deforestation-free products (EUDR) as an excuse for the weakening of environmental standards, distorting the spirit of the Regulation and putting the country as a whole at risk of leakage of products associated with deforestation. In fact, the signatories of this letter are sending a similar communication to the relevant authorities of the European Union expressing our concern and requesting that concrete and immediate action be taken in this regard.

Likewise, we are concerned that the Peruvian government does not respect the commitments assumed in the Peru-US TPA, specifically with respect to Article 18.3 "2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the Parties".

The Peruvian congressmen who support the recently approved regulation are taking advantage of the legitimate concerns of small farmers to justify the need for it. But they hide the fact that it facilitates the titling of illegally deforested lands, validating multiple crimes. It also runs the risk of encouraging social conflicts with native communities by promoting land speculation and a disorderly process of land occupation. One of the largest indigenous organizations in Peru, the Interethnic Association for the Development of the Peruvian Rainforest (AIDSEP), has already warned that they will not allow third parties to enter their territories if they intend to destroy their forests under the protection of this law.

We are also concerned that the Peruvian government continues to take actions like this - behind the backs of the population, without participation and without prior consultation - without learning from our recent past. We still remember with pain the loss of human lives during the protests of the Indigenous Peoples in the town of Bagua, in 2009, originated in similar circumstances to the current one, when the forest law was modified in an authoritarian manner and without the participation of the Indigenous Peoples, under the pretext that it was necessary to adapt Peruvian legislation to the requirements of the Peru-US TPA. The justification was false at that time (using the US), as it is now (using the European Union). In 2009 more than 30 people had to die for the government to back down and decide to work on a participatory

norm that went through Prior Consultation with Indigenous Peoples. We hope that this time the government will reconsider before escalating to more conflictual situations.

As non-state sectors we have repeatedly expressed our concern about this and other bills that threaten the right to live in a healthy and adequate environment and violate the rights of the peoples who live in and from the forests. Therefore, we warn about the weakening of environmental, social, human rights and indigenous peoples' rights regulations in our country, a situation that is being promoted and allowed by both the executive and the Congress, thus violating Peru's international commitments.

For this reason, the undersigned organizations request that the Environmental Affairs Council of the Trade Promotion Agreement between Peru and the U.S. carry out immediate oversight with respect to this approved law and request the pertinent information from the Peruvian government. Likewise, in view of its attribution to supervise and monitor the environmental policies and regulations of the Parties, **we request the Council to arrange a monitoring mission to Peru on the impacts of the consecutive regulations that have been relaxing environmental standards since the entry into force of the TPA,** in order to guarantee the effective implementation of the commitments assumed by both countries through said agreement.

In addition, we urge the Government of the United States to issue a public statement as soon as possible against the approval of this law, which is an attack against the forests, the people who live in them, the international trade and environmental commitments made by the U.S. and Peru, as well as against humanity.

In accordance with the mandate of the TPA, we are willing to provide more information, documentation and suggestions in order to help verify and ensure compliance with environmental standards by the Peruvian State during the next public session of the Environmental Affairs Council in the framework of the Trade Promotion Agreement (TPA) Peru - USA.

We remain at your disposal for any further information or clarification regarding this letter.

Yours sincerely,

Indigenous Organizations

1. Asociación Interétnica de Desarrollo de la Selva Peruana-AIDSESP
2. Confederación de Nacionalidades Amazónicas del Perú - CONAP
3. Coordinadora Regional de los Pueblos Indígenas CORPI- SL
4. Federación de Comunidades de los Ríos Tapiche y Blanco- FECORITAYB
5. Federación de Comunidades Nativas de Ucayali y Afluentes-FECONAU
6. Federación de Comunidades Cocama Cocamilla -FEDECOCA
7. Federación de la Nacionalidad Achuar del Perú -FENAP
8. Federación Nativa del Río Madre de Dios y Afluentes- FENAMAD
9. Gobierno Territorial Autónomo de la Nación Kandozi
10. Gobierno Territorial Autónomo de la Nación Shawi
11. Gobierno Territorial Autónomo de la Nación Chapra
12. Organización Regional Aidesep Ucayali- ORAU
13. Organización Regional de Pueblos Indígenas de la Amazonía Norte del Perú -ORPIAN-P

Agricultural Associations

1. Confederacion Nacional Agraria-CNA
2. Cámara de Turismo, Producción, Ecología y Cultura Villa Rica
3. Consorcio Agroecológico Peruano
4. Federación Agraria Departamental Illatupa de Huánuco (FADITH)
5. Federación Agraria Departamental de Ayacucho (FADA)
6. Federación Agraria Departamental de Lima (FADEL)
7. Federación Agraria Regional Arequipa (FARA)
8. Federación Agraria del Departamento de Puno (RUMIMAKI)
9. Federación Agraria Revolucionaria de Apurímac (FARA)
10. Federación Agraria Departamental de Ica (FADEICA)
11. Federación Agraria Revolucionaria Tupac Amaru del Cusco (FARTAC)
12. Federación Agraria Regional de Junín (FAREJ)
13. Federación Agraria de Lambayeque (FAL)
14. Federación Agraria Departamental de Ancash Atusparia Uchcu Pedro (FADA)
15. Federación Agraria Selva Maestra Región San Martín (FASMA)
16. Federación Agraria del Nor Oriente Peruano (FANORP)
17. Federación Agraria Regional de Loreto Juan Velasco Alvarado (FARL-JVA)
18. Federación Regional Agraria de Piura (FRADEP)
19. Federación Regional Agraria de Tumbes (FRADET)
20. Federación Agraria y Ambiental de Moquegua (FACAREMOQ)
21. Federación Agraria Revolucionaria Región Ucayali (FARRU)
22. Federación Agraria Departamental de Madre de Dios (FADEMAD)
23. Federación Agraria Regional de Cajamarca (FARECAJ)
24. Red de Acción en Agricultura Alternativa

Non-governmental organizations

1. Academia Peruana de Derecho Ambiental - APDA
2. Amazon Sacred Headwaters Alliance - ASHA
3. Amazon Watch
4. ARBIO Perú
5. Asociación Ambiental del Distrito de Máncora - AADM
6. Asociación Nacional de Centros - ANC
7. Asociación Peruana para la Conservación de la Naturaleza - APECO
8. Ayuda para Vida Silvestre Sociedad Zoológica de Francfort Perú
9. Center for Climate Crime Analysis - CCCA
10. Centro de Derechos y Desarrollo - CEDAL
11. Centro de Promoción de la Mujer Micaela Bastidas
12. Centro para el Desarrollo del Indígena Amazónico - CEDIA
13. Centro Peruano de Estudios Sociales - CEPES
14. Colegio de Sociólogos Lima y Callao
15. Comisión Episcopal de Acción Social - CEAS
16. Cooperación
17. CORBIDI - División de Ecología Vegetal

18. Derecho ambiente y Recursos Naturales - DAR
19. Earthrights International
20. ECOAN, Acción Andina
21. Environmental Investigation Agency - EIA
22. Foro Ecológico
23. Forest Peoples Programme - FPP
24. Fundación para la Conservación y Desarrollo Sostenible - FCDS
25. Iniciativa Interreligiosa para los Bosques Tropicales - IRI
26. Instituto del Bien Común - IBC
27. Interacción Ambiental
28. Instituto de Defensa Legal - IDL
29. Instituto de Defensa Legal del Ambiente y Desarrollo Sostenible - IDLADS
30. Instituto de estudios Forestales y Ambientales - Kené
31. Iuris Ambiental
32. Maryknoll Office for Global Concerns - MGOCC
33. Nodo Perú de Red Latinoamericana Iglesias y Minería
34. Oxfam
35. Pachamama Alliance Perú
36. Planeta Seaumanoid
37. Rainforest Foundation US Peru
38. Rainforest Foundation Noruega - RFN
39. Red de Mujeres Emprendedoras y Empresarias de la Región Huánuco
40. Red Pastoral Pueblos Indígenas y Ecología Integral
41. Red Peruana por una Globalización con Equidad - RedGE
42. Servicios Educativos, Promoción y Apoyo Rural - SEPAR
43. Sisters of Mercy of the Americas Justice Team
44. Viernes por el Futuro Perú
45. Washington Office on Latin America - WOLA
46. Yusen Caraza - Despacho Jurídico & Abogados Ambientales

Individual Signatories

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27. Segundo Calle Castillo
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29. Tatiana Espinosa Quiñones

With copy:

United States Department of State

United States Senate Committee on Finance

United States House Committee on Natural Resources

United States House Committee on Ways and Means, Subcommittee on Trade

United States Congress

United States Embassy in Peru

Secretariat for Submissions on Environmental Enforcement Matters

Peru Ministry of Foreign Trade and Tourism

Peru Ministry of Environment

Presidency of the Congress of the Republic of Peru