

Barú Volcano National Park
Submission No.: SALA-CA-PMA/001/2021
Determination No. 001/2021
Date: Monday 12 April 2021

Determination No. 001/2021 pertaining to the verification of compliance with Article 17.8 numeral 2 of the Trade Promotion Agreement between Panama and the United States (Panama-United States TPA).	
Submission No.: SALA-CA-PMA/001/2021 Barú Volcano National Park	Date of receipt: 12 March 2021
Petitioner/signatory of the Submission:	Mr. Ezequiel Miranda Mr. Ángel Aguirre Sánchez Mr. Ariel Rodríguez
Party Country: Panama	

I. Introduction

On Friday 12 March, citizens Ezequiel Miranda, Ángel Aguirre Sánchez, and Ariel Rodríguez submitted, via electronic mail, a Submission to the Office of the Secretary for the Enforcement of Environmental Legislation (Spanish-language acronym SALA), of the Trade Promotion Agreement between Panama and the United States (TPA Panama-United States) in which they state that the Republic of Panama is breaching the effective enforcement of its environmental legislation.

In accordance with Article 17.8 of the Trade Promotion Agreement between Panama and the United States, the procedure pertaining to the Enforcement of the Environment is established as follows: *"any person from one Party shall be able to file submissions stating that one Party is breaching the effective enforcement of its environmental legislation. Said submissions shall be directed to the office of the secretary or another appropriate entity ("secretariat") designated by the Parties."*¹

In observance of numeral 2 of the before mentioned article 17.8 and of section 5 of the Working Procedures of the Office of the Secretary, it is the duty of the Secretariat to verify the contents of the filed Submission, and to determine whether it fulfills the requirements established by the Agreement. If it is determined that the Submission complies with the stipulated requirements, the process to determine whether it merits a request for a response from the Party, following the parameters of numeral 4 of article 17.8, shall follow.

II. Summary of the content of the filed Submission

In the Submission, identified with No. SALA-CA-PMA/001/2021 and called "Barú Volcano National Park," the subscribers state that the Republic of Panama has incurred in a breach of Panamanian environmental legislation involving Executive Decree No. 40 of 24 June 1976, which establishes the Barú Volcano National Park; Resolution AG-

¹ Article 17.8 lists numeral 1 on Submissions pertaining to the enforcement of Environmental Legislation, Chapter 17. Panama – US TPA.

0295-2004 of 30 July 2004 which approves the Management Plan; and Resolution No. AG-0904-2009, whereby the term for the Management Plan for said Park is established.

The petitioners state that the Panamanian State is not enforcing its environmental legislation in the area of Barú Volcano Natural Park, because *"logging activities, encroachment of the agricultural frontier, improper disposal of solid waste, intensive farming practices that place at risk the environmental values of the protected area, the practice of uncontrolled tourism activities or mass-promoted ones, without consideration for the capacity of the site to support them."*

To complement the legal dispositions described above, they add other regulations that are not being enforced, such as Law No. 1 of 3 February 1994 which established the Forestry Legislation of the Republic of Panama, specifically in its articles 6 and 7²; General Law 41 of 1 July 1998 for the Environment of the Republic of Panama, modified by Law 8 of 25 March 2015 which creates the Ministry of the Environment; and Executive Decree No. 57 of 16 March 2000, which includes the procedure for handling environmental complaints.³ Breaches of Law 38 of 31 July 2000 on General Administrative Procedures and Law 6 of 22 January 2002, on Transparency in Public Administration, which establish the duty of institutions to respond to requests made by the public, are also reported.

To introduce a description of the events, the petitioners state that Barú Volcano National Park has been exposed to various threats, with the project known as the "Ecological Road" being the most notable one.⁴ They move on to describe that this is one of the most symbolic protected areas at the national level. It has seven habitat zones and is an area of great ecosystem value, where water supply services,

² **Law 1 of 1994. Article 6:** When a forest or forest ground which are State-Owned Forest Lands, due to their certified ecological, environmental, scientific, educational, historic, tourism or recreational values, is declared qualified to become part of the National Parks and other Protected Wilderness Areas, it shall be regulated by the corresponding legal instrument.

Article 7: Any project involving public works or human activities, which is fully or partially financed with public, private, or joint funds; or which must be authorized by public entities, shall have an environmental impact study, when said works or activities affect or may deteriorate the environment and the natural world. Said document shall be reviewed and approved by the Ministry of the Environment, as long as the measures and provisions to avoid, eliminate, or reduce the deterioration of the environment are contained within it.

Failure to comply with the stipulations of the study shall authorize the Ministry of the Environment to suspend said works or activities, without prejudice to the application of the corresponding sanctions.

³ Executive Decree No. 57 of 16 March 2000, which regulates the formation and functioning of the Environmental Consultative Commissions, stipulates in its Title V Of Complaints Due to Administrative Violations, a special procedure for the handling of complaints by the Ministry of the Environment.

⁴ The petitioners cite an extract of a Ruling issued by the Supreme Court of Justice on 9 February 2006, which stipulated, among other items, that *"...the construction of the so-called ecological road is incompatible with the activities whose execution inside Barú Volcano Natural Park are prohibited, given that it not only requires the felling of trees to build said trail, but also of excavations and construction of buildings which, since they do not harmonize with nature, doubtless have a negative impact..."*

opportunities for recreation and tourism, mitigation of extreme events (floods), prevention of erosion, and climate regulation can be highlighted.

It is also mentioned that since 1983, UNESCO declared the La Amistad Biosphere Reserve with an area of 612,570 hectares. In Panama, this area was established beginning in 2000, and consisted of the protected areas and zones adjacent to La Amistad Natural Park, Barú Volcano Natural Park, Isla Bastimentos Marine Park, Fortuna Forest Reserve, the San San Pond Sak Wetlands of International Importance, the Lagunas de Volcan wetlands, and Palo Seco Forest Reserve. The petitioners describe the area by referring to its natural characteristics: it is covered by tropical rain and cloud forests; rocky peaks; mountain masses; moors; bogs. They mention that the region is inhabited by four separate indigenous tribes.

The petitioners assert that despite its importance, this protected area has suffered great impact due to human intervention, whose activities have produced a deterioration of the environmental values of the Park. The zoning regulations in the Management Plan have not been observed and activities have not been minimized. For eight years now, the Ministry of the Environment has not concretized the necessary elements to update said Management Plan, which was issued in 2004, despite joint efforts made from 2012 to 2014 to carry this out. The institution has advanced other instruments such as the Public Use Plan for the promotion of tourism activities due to their economic benefits, but not the Management Plan. The latter is the instrument that will guide the programs related to the protection and conservation of the protected area,⁵ and it will allow to approach tourism activities separately.

The Submission proceeds to describe the concern of the environmental civil society in the province--Province of Chiriquí--and the country. In 2019, a meeting with the Minister of the Environment was requested, which was held in October of that year. The concerns with regard to the condition and management of the protected area were expressed in said meeting, but the problems that were discussed were not followed up on. The petitioners state that a letter detailing the various environmental problems in the protected areas of the west of Panama was submitted on 22 October 2020. This letter was generated by a lack of concrete answers; the constant complaints arising from logging activities; the encroachment of agricultural, livestock, and coffee farming activities; and the growth of waste disposal sites. This letter is attached to this Submission; the only reply received was an electronic mail dated 6 January 2021, addressed to the petitioners, which referred to a letter dated 21 December 2020 stating that a reply to the note was being drafted. However, no reply had been received two months after this Exchange, not even a partial one mentioning any of the events cited therein. Consequently, the 30-day term allowed for a reply was exceeded, as well as the term corresponding to an extension.⁶

The petitioners reaffirm, in the SEVENTH fact of the Submission, their request for concrete answers to the issues raised in the letter dated 22 October. They refer in a general manner to such aspects as:

⁵ Account of the SECOND to FOURTH facts of Submission No.: SALA-CA- PMA/001/2021 Barú Volcano National Park.

⁶ Account of the FIFTH and SIXTH facts of Submission No.: SALA-CA-PMA/001/2021 Barú Volcano National Park.

- Request for information as to whether the institution has prepared Environmental Impact Studies for improvements to access the summit; conditioning of the infrastructure for tourism and coffee farming inside the Park, in the sector of Los Fogones.
- Regulation enforceable by the Ministry for projects for roads located inside the protected area that are carried out by local authorities or private companies.
- Concrete results for the logging cases that have taken place in the agricultural sectors of Alto Pineda, Bajo Grande, Las Cumbres among other sites; as well as complaints arising from logging within the protected area. These complaints were also lodged with the office of the public prosecutor, but it is not known if inspections, technical reports, or sanctions were carried out.
- Request for an opinion on the governing mechanism proposed for the Park by environmental organizations (Trust for its Administration).
- Process for updates to the Management Plan which has been in force since 2004, based on current diagnoses of the impacts experienced by the park. These updates should help with the review of zoning regulations, in order to strengthen conservation programs and curtail any regression in management aspects.⁷

The petitioners close the Submission by referring to the situation that unfolded in November 2020 after the events caused by the ETA and IOTA hurricanes. A proposal was made at the beginning of the current year to relocate the families affected by these events to sites located within the protected area, Barú Volcano National Park. This situation led to a local and national debate, and to threats to area environmental advocates who had voiced their concerns over compliance with environmental regulations. The description notes that although the situation was resolved with a proposal for relocation outside the Park, *"the situation evidenced once again that the non-inclusion of citizens' participation in the analysis, and search for solutions, may generate unnecessary conflicts."*

Evidence in the form of various electronic address links to news reports and communiqués pertaining to construction projects within the road leading to Barú Volcano are provided as evidence. Formal complaints about the lack of a response from authorities in the case of logging incidents, as well as photographs of the meeting held with the Minister of the Environment in October 2019; the open Letter sent to the Minister of the Environment in October 2020; and the letter sent to the Ministry of the Environment in February 2021 are also included.

III. Analysis of the Submission

It is the duty of the Secretariat to verify compliance with the requirements established in numeral 2 of article 17.8 of the Treaty, which stipulates the following:

- "17.8 Submissions related to the enforcement of Environmental Legislation:
... 2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:*
- a. Is in writing in either English or Spanish;*
 - b. Clearly identifies the person making the submission;*
 - c. Provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based;*

⁷ Summary of references made in the SEVENTH fact of Submission No.: SALA-CA-PMA/001/2021 Barú Volcano National, of the note dated 22 October 2020 sent to the Ministry of the Environment.

- d. *Appears to be aimed at promoting enforcement rather than at harassing industry;*
- 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*
- f. *Is filed by a person of a Party."*

Verification of compliance with the requirements stipulated in Article 17.8 numeral2, of the Panama–United States TPA for the filing of Environmental Submissions.			
Requirement	In compliance	Not in compliance	Justification
<i>a. a. Is in writing in either English or Spanish;</i>	X		The Submission, as well as the documents provided as evidence were filed in the Spanish language.
<i>b. Clearly identifies the person making the submission;</i>	X		The petitioners are duly identified as Ezequiel Miranda, Ángel Aguirre Sánchez, and Ariel Rodríguez. All of them have provided their personal identity document; physical address (residence or business); electronic email address for those who have one; and a cell phone number that they can be reached at.
<i>c. Provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based;</i>	X		<p>Besides the written Submission, the petitioners are attaching the letter tendered to the Ministry of the Environment, in which they raised a series of issues and answers. These are ratified in the current Submission, and they were seeking in said letter information and answers that were not provided in due time (Introduction to the Submission).</p> <p>In addition to the letter, photographs and news reports are included, as references pertaining to the facts described in the Submission.</p> <p>It is estimated that the information is sufficient in order for the Secretariat to review the background of the Submission when it</p>

			comes to the information that was filed previously, and the terms for an answer to this Submission.
<i>d. Appears to be aimed at promoting enforcement rather than at harassing industry;</i>	X		<p>The description of the facts made in this Submission explicitly mentions the environmental legislation or regulations that are believed to be breached by the Party, among them Executive Decree No. 40 of 1976, Resolution AG-0259-2004, and Resolution AG-0904-2009.</p> <p>No specific industry is mentioned, thereby ruling out the premise of harassment.</p>
<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;</i>	X		<p>In addition to the account made of the facts, a copy of the note/Open Letter tendered by the petitioners to the Ministry of the Environment has been attached to the Submission. The petitioners state that there has been no response to this letter.</p> <p>A seal with the date of receipt by the office of the Ministry of the Environment can be observed on said letter.</p>
<i>f. Is filed by a person of a Party;</i>	X		As evidenced in the description of the general information of the Submission, the petitioners are Panamanian citizens; therefore, all the petitioners belong to one of the Parties to the Agreement.

IV. Determination of the Secretariat

After evaluating the content of the Environmental Submission filed by the petitioners, and verifying its compliance with the form requirements for the admissibility of the Submission, which are established in numeral 2 article 17.8 of the Treaty, the Secretariat, thus fulfilling its duties, **DETERMINES** that the Submission **COMPLIES WITH** the stipulated requirements.

In view of the foregoing, the Secretariat shall proceed to **ANALYZE** the substance of the request, to determine whether it merits a response from the Party, in accordance with the dispositions of numeral 4 of article 17.8 of the Treaty.

NOTICE is hereby given to the petitioners and to the Environmental Affairs Council for the purposes set forth in Chapter 17, Environmental of the Panama-United States TPA and the Working Procedures of SALA.



Bethzaida E. Carranza Ch.
Executive Director

