

Barú Volcano National Park  
**Submission No.** SALA-CA-PMA/001/2021  
**Determination No.** 002/2021 003/2021 003/2021  
**Date:** Friday 15 July 2021.

<b>Determination No.003/2021 pertaining to the analysis to decide whether the Submission filed in relation to the response from the Party merits the recommendation to prepare a factual record according to the dispositions of articles 17.8 paragraph 5 and 17.9 paragraphs 1, 2 and 3 of the Trade Promotion Agreement between Panama and the United States (Panama–United States TPA).</b>	
<b>Submission No.:</b> SALA-CA-PMA/002/2021 Barú Volcano National Park	<b>Date of receipt:</b> 12 March 2021
<b>Petitioner/Signatory of Submission:</b>	Mr. Ezequiel Miranda Mr. Ángel Aguirre Sánchez Mr. Ariel Rodríguez
<b>Party Country:</b> Panama	

## I. Introduction

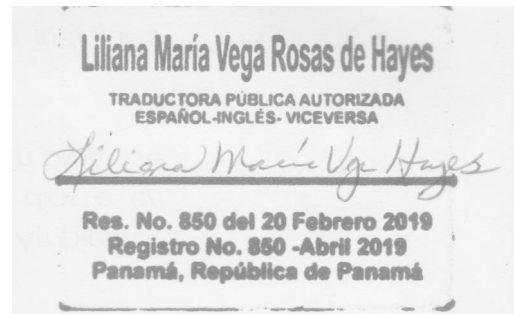
In accordance with Chapter 17 -Environmental- of the Trade Promotion Agreement between Panama and the United States, particularly its article 17.8, the procedure pertaining to the Enforcement of the Environmental Legislation is established, whereby *“any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body (“secretariat”) that the Parties designate.”*<sup>1</sup>

The implementation of the foregoing procedure establishes in paragraph 2 of the before mentioned Article 17.8, and in section 5 of the Working Procedures of the Secretariat, that it is the responsibility of the Secretariat to verify the content of the filed Submission, and to determine whether it complies with the requirements established by the Agreement. If it is determined that the Submission complies with the stipulated requirements, the Secretariat shall proceed to determine whether the Submission merits a request for a response from the Party, following the parameters of paragraph 4 of Article 17.8.

Given the Determination that requests the Party to issue a response to the filed Submission, and in accordance with paragraph 5 of article 17.8, “The Party shall notify the Secretariat within 45 days, or in exceptional circumstances and by notifying the secretariat within 60 days after the delivery of the request.”

In accordance with the above, on Friday 12 March of this year citizens

<sup>1</sup> Article 17.8 paragraph 1 on Submissions pertaining to the enforcement of Environmental Legislation. Chapter 17. Panama-United States TPA.



Ezequiel Miranda, Ángel Aguirre Sánchez, and Ariel Rodríguez filed via email a Submission before the Secretariat for the Enforcement of Environmental Legislation (SALA), of the Trade Promotion Agreement between Panama and the United States (TPA USA-Panama), in which they assert that the Republic of Panama is failing to effectively enforce its environmental legislation.

After verifying the formal requirements and analyzing the substantive aspects of the filed Submission, the Secretariat issued Determinations No. 001/2021 of 12 April 2021 and No. 002/2021 of 7 May 2021, in which it determined, respectively, that the requirements were met and the merit to request a response from the Party, as stipulated in paragraphs 2 and 4 of article 17.8.

The request for a response that was sent to the Party had a deadline of 45 days to be complied with according to the ordinary period, which expired on 30 June 2021. Since the Secretariat did not receive a response from the Party, or a request for an extension, it is necessary at this time to conduct the corresponding analysis as set forth in article 17.9 of Chapter 17, on Factual Records and Related Cooperation, and to determine whether the filed Submission merits a recommendation by the Secretariat for the preparation of a Factual Record.<sup>2</sup>

## II. Summary of the content of the filed Submission

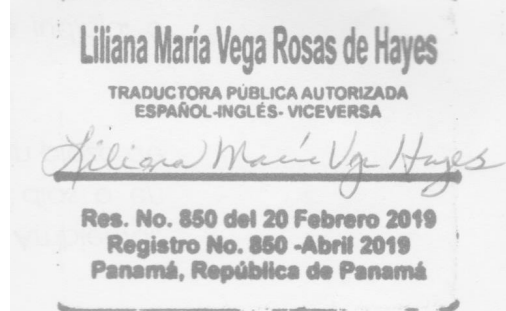
In the Submission identified as No. SALA-CA-PMA/001/2021, and called “Barú Volcano National Park,” the petitioners state that the Republic of Panama has failed to enforce Panamanian environmental legislation pertaining to Executive Decree No. 40 of 24 June 1976, which establishes Barú Volcano National Park; Resolution AG-0295-2004 of 30 July 2004, which approves the Management Plan; and Resolution No. AG-0904-2009, which reestablishes the validity of the Management Plan for said Park.

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 the environmental values of the protected area at risk, the practice of uncontrolled tourism activities or mass-promoted ones, without consideration for the capacity of the site to support them”* are taking place.<sup>3</sup>

---

<sup>2</sup> Article 17.9.1 1. If the secretariat considers that the submission, in light of any response provided by the Party, merits the preparation a factual record, the secretariat shall so inform the Council and provide its reasons

<sup>3</sup>In view of this assertion, it is appropriate to add that Article 5 of Executive Decree No. 40 of 1976 which establishes the Barú Volcano National Park states that: *“The occupation, exploitation, grazing, as well as slash and burn activities are strictly prohibited in the area destined for the Park....”* In addition to this, sanctions are established in article 7 of said regulation for the acquisition of timber, any other forestry product or fauna specimens, as a complement to the penalty dispositions established by the regulation on forestry matters.



To complement the foregoing legal dispositions, they add other regulations that are not being enforced: Law No. 1 of 3 February 1994, which establishes the Forestry Legislation of the Republic of Panama, specifically its articles 6 and 7<sup>4</sup>; Law 41 of 1 July 1998, General of the Environment of the Republic of Panama, amended 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.<sup>5</sup> They also mention the failure to enforce Law 38 of 31 July of 2000 on General Administrative Procedures<sup>6</sup> and Law 6 of 22 January 2002,<sup>7</sup> on Transparency in Public Management, since these laws establish the duties of the institutions to respond to the requests of the public.

To introduce a description of the facts, the petitioners state that Barú Volcano National Park has been exposed to several threats, with the

---

<sup>4</sup> **Law 1 of 1994.** Which establishes the Forestry Legislation in the Republic of Panama and stipulates other dispositions:

**Article 6:** When a forest or forest grounds, which are State-Owned Forest Lands, are declared qualified to become part of the National Parks and other Protected Wilderness Areas due to their certified ecological, environmental, scientific, educational, historical, tourism or recreational value, they 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 mixed funds; or which must be authorized by public entities, shall have an environmental impact study when said public 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 adopted 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 enforcement of the corresponding sanctions.

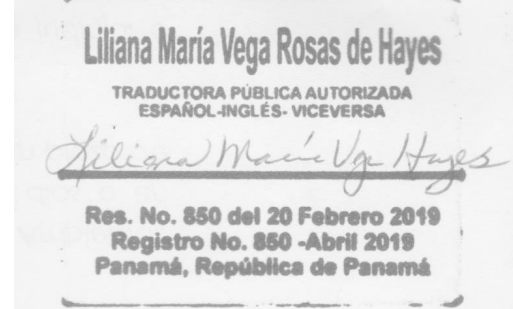
<sup>5</sup> **Executive Decree No. 57 of 16 March 2000** Which regulates the formation and functioning of the Environmental Consultative Commissions, stipulates in its Title V Of Complaints Due to Administrative Violations, a special procedure for the handling of complaints by the Ministry of the Environment and stipulates the following in its articles 51 and 52:

**Article 51:** Anyone, whether an individual or a legal association, may report environmental violations of Law No. 41 of 1998, General Environmental Law, in accordance with the provisions of these regulations.

**Article 52:** All complaints shall be filed with the office of the Ministry of the Environment that is geographically closest to the residence of the complainant, or which has regional jurisdiction over the event that is the subject of the complaint.

<sup>6</sup> **Law 38 of 2000.** Regulates the General Administrative Procedures, **Article 44:** “Any person who has filed a petition, inquiry or complaint has the right to know the status of the process, and the corresponding public entity is obliged to inform him/her accordingly within five days, beginning on the date of its filing. If the entity is unable to resolve the petition, consultation or complaint within the term stipulated by law, the pertinent authority shall inform the interested party of the status of the process, which shall include a statement to the interested party justifying the reasons for the delay.”

<sup>7</sup> **Law 6 of 2002.** Regulates Transparency in Public Administration. **Article 2:** “Any person has the right to request, without having to substantiate any justification or motivation whatsoever, public access information held by or known by the institutions stipulated in this Law...”.. **Article 7:** “The receiving officer shall have thirty calendar days from the date of submission of the request to answer it in writing and, if the request does not contain the requested documents or records, shall so inform... In the case of a complex or extended request, the officer shall inform in writing, within the thirty calendar days indicated, of the need to extend the term to gather the requested information. In no case shall such term exceed thirty additional calendar days...”.



project known as the “Ecological Road” being the most notable one.<sup>8</sup> 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, 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 has 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 adjacent protected areas and zones, such as La Amistad Natural Park, Barú Volcano National Park, Isla Bastimentos Marine Park, Fortuna Forest Reserve, the San San Pond Sak Wetlands of International Importance, the Lagunas de Volcán 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, and they mention that it is inhabited by four different indigenous tribes.

The petitioners state that despite its importance, this protected area has experienced serious impacts as a product of human intervention, whose activities have deteriorated the environmental values of the Park. The zoning restrictions established by the Management Plan have not been observed,<sup>9</sup> activities have not been minimized, and for eight years now, the Ministry of the Environment has not concretized the necessary elements to update said Management Plan, issued in 2004, despite joint efforts made from 2012 to 2014 by the civil society of Chiriquí and academic sectors to bring it up to date. The institution has advanced other instruments such as the Public Use Plan<sup>10</sup> 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,<sup>11</sup> 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

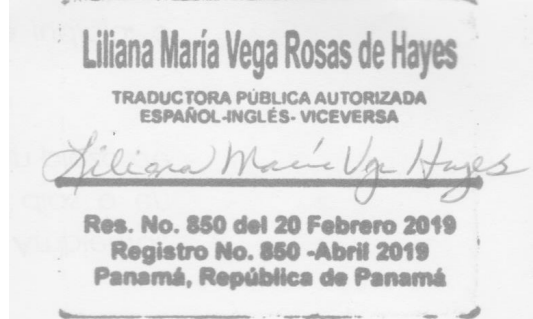
---

<sup>8</sup> The petitioners cited an extract from a Ruling issued by the Supreme Court of Justice on 9 February 2006, which among other things stipulated that “...the construction of said ecological road is incompatible due to the activities that are forbidden from being carried out within Barú Volcano National Park, since they require not only the felling of trees to build said road, but also excavations and the construction of buildings which, due to lacking harmony with nature, without a doubt cause a negative impact...”.

<sup>9</sup> It must be mentioned here that since the establishment of Barú National Volcano Park, article 7 of **Executive Decree No. 40 of 1976** stipulates the following: **Article 7:** *Privately owned lands within the Barú Volcano National Park area will be subject to the land use regime established by the Ministry of Environment, formerly the National Directorate of Renewable Natural Resources of the Ministry of Agricultural Development.*

<sup>10</sup> Resolution No. DAPVS-0006-2016 of 6 July 2016, which approves the Public Use Plan for Barú Volcano National Park. Official Gazette No. 28075-A.

<sup>11</sup> Account of the SECOND to FOURTH facts of Submission No.: SALA-CA-PMA/001/2021 Barú Volcano National Park.



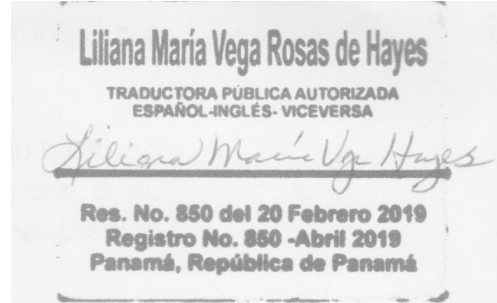
were voiced during said meeting, but the problems that were discussed were not followed up on. The petitioners state that a letter detailing the various environmental problems in the protected areas in western Panama was submitted on 22 October 2020. This letter was generated by a lack of concrete answers; 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 message dated 6 January 2021, addressed to the petitioners, which referred to a letter dated 21 December 2020. This email stated 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.<sup>12</sup>

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 2020. They refer in a general manner to such aspects as:

- 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).
- Request to learn which procedure was used to suspend the projects that were being carried out within the PNVB in violation of the environmental legislation, because they did not have an Environmental Impact Study. However, the restoration of the affected sites was not ordered either.
- Process for updating the Management Plan which has been in existence since 2004, based on current diagnoses of the impacts experienced by the park; to review the zoning regulations to strengthen conservation programs, and not to favor setbacks in management aspects.<sup>13</sup>

<sup>12</sup> Account of the FIFTH and SIXTH facts of Submission No.: SALA-CA-PMA/001/2021 Barú Volcano National Park.

<sup>13</sup> 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.



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. Other evidence items provided are 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 before mentioned ministry in February 2021 are also included.

### **III. Analysis regarding the response of the Party**

According to Determination No. 002/2021 of 7 May 2021, and seeing that the filed Submission complied with all the substantive and formal requirements, the secretariat determined that there was merit to request a response from the Party. In observance of the procedures, said request was formally submitted in a note to the Republic of Panama, which was channeled through the Ministry of the Environment on 14 May 2021.

That just as established by paragraph 5 of article 17.8, which states verbatim:

*“17.8 Submissions on Enforcement Matters:*

*... 5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and upon notification to the secretariat, within 60 days of delivery of the request:*

- 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. 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.<sup>14</sup>”*

<sup>14</sup> Environmental Cooperation Agreement (ECA).



That for the implementation of this disposition of the Agreement, the Procedural Manual of the Secretariat stipulates in Section 5 subparagraph e) that: "... *The Party shall tender its response in writing to the Secretariat within a period of 45 calendar days, beginning on the date on which the Secretariat submits the request, or in exceptional circumstances, no later than 60 calendar days after the delivery of the request. After receipt of the Party's response, or after the deadline for the response has passed, the Secretariat shall consider whether the submission merits the preparation of a factual record, and shall post its response on the website of the Secretariat.*"

In view of the date on which the request for a response was sent to the Party, the deadline for the receipt of the response was 30 June 2021. As of that date the Secretariat had not received a response from the Party, or a request to justify an extension of the period to submit the required response.

Given this state of affairs, it is incumbent upon the Secretariat, in accordance with the procedures, to consider whether the submission filed merits the preparation of a factual record and if so, to notify the Environmental Affairs Council of this recommendation.

#### **IV. Regarding the Preparation of a Factual Record**

As stipulated in article 17.9.1 of Chapter 17 of the Trade Promotion Agreement between the United States and Panama, "*If the secretariat considers that the submission, in light of the response given by the Party, merits the preparation of a factual record, the secretariat shall so inform the Council and provide its reasons.*"

In furtherance of the foregoing, Section 7 of the Procedural Manual of the Secretariat establishes that: "*The Secretariat, during its assessment of the submission and the response of the Party involved, if such exists, shall determine whether the preparation of a factual record is warranted within a period not to exceed 45 calendar days, or in exceptional circumstances within 60 calendar days, starting upon receipt of the response from the party involved, or from the expiration of the period for receiving such response.*"

Since the Secretariat did not receive a timely response from the Party, it is not possible to determine whether the facts raised in the Submission filed by the petitioners for potential violations to the effective enforcement of environmental legislation, are subject to any judicial or administrative proceeding or whether they have been previously addressed by the Party. It is also not possible to determine whether there are any resources available to individuals that can be accessed or requested, or whether there is information regarding any capacity building process within the Environmental Cooperation Agreement to address this issue.

Therefore, the questions regarding non-compliance with the environmental legislation raised by the facts described by the



petitioners in the filed Submission remain. Consequently, there is merit for the preparation of a factual record, and the Environmental Affairs Council shall be informed accordingly, so that as stipulated by the procedures, it may advance to the pertinent vote.<sup>15</sup>

## V. Determination of the Secretariat

After analyzing the substantive content of the Environmental Submission filed by the petitioners, the Secretariat established in Determination No.002 /2021 of 7 May 2021 that the substance of the petition pursues the enforcement of environmental legislation, generally related to the conservation of the Barú Volcano National Park and its surrounding areas; with the update, execution, and compliance with its Management Plan; with the processes for instituting sanctions and for restoration, in case of potential violations of environmental regulations pertaining to environmental impact studies and illegal logging; to public participation processes and access to information associated with the state of the natural resources and conservation status of the protected area; as well as to the status and actions taken by the State in the complaints that were previously filed by the petitioners.

After verifying compliance with the formal and substantive requirements for the admissibility of the Submission, it was found that there is merit in requesting a response from the Party. This was formally notified to the Party on 14 May 2021, but the response was not submitted to the Secretariat within the 45 calendar days established by the procedures for issuing such response.

In view of the foregoing and according to paragraph 1 of article 17.9 of the Agreement, and to section No. 7 of the Procedural Manual,<sup>16</sup> the Secretariat, in the fulfillment of its duties, thus **DETERMINES** to inform the Environmental Affairs Council that Submission SALA-CA-PMA/001/2021 Barú Volcano National Park **MERITS** the **preparation of a Factual Record**.

Per the stipulations set forth in paragraph 3 of article 17.9 of the Agreement, and in the relevant sections of the Working Procedures of the Secretariat, the preparation of the Factual Record by the Secretariat shall be performed without prejudice to any further measures that may be adopted with regard to a Submission.

**NOTICE** is hereby given to the petitioners and to the Environmental Affairs Council that, if they so order by means of a vote of any of the Parties, the process for the preparation of the pertinent Factual Record shall begin, in accordance with the purposes established in Chapter 17, of the Environment, of the Panama-United States TPA and Working Procedures of SALA.

<sup>15</sup> Article 17.9.2: The Secretariat shall prepare a factual record, if directed to do so by the Council upon a vote of any of its members.

<sup>16</sup> SALA Procedural Manual. Section 7. If the Secretariat considers that a submission merits the preparation of a factual record, the Secretariat shall notify the Council. Any member of the Council may vote for the preparation by the Secretariat of a factual record, upon written notification, within a period not to exceed 60 calendar days.





**Bethzaida E. Carranza Ch.**  
**Executive Director.**

