



Pollution due to agrochemicals. Crops.

Submission No.: SALA-CA-PMA/003/2021

Determination No. 001/2022 Date: Wednesday, 19 January 2022.

Determination No.001/2022 pertaining to the verification of compliance with Article 17.8 paragraph 2 of the Trade Promotion Agreement between the United States and Panama (TPA USA-Panama).	
Comunication No.: SALA-CA-PMA/003/2021 Pollution due to agrochemicals. Crops.	Date of receipt: 31 December 2021
Petitioner/signatory of the Communication:	Mr. Moisés Montero Personal identification document number: 8-521-1659
General information of petitioner	Address: La Chorrera, Iturralde Corregimiento, La Colorada Telephone number: 6959-9315 Email address: moisesmontero952@gmail.com Website: None reported
Party Country: Panama	

I. Introduction

On 31 December 2021, Mr. Moisés Montero filed a Submission via electronic mail with the Secretariat for the Enforcement of Environmental Legislation of the Trade Promotion Agreement between the United States and Panama (SALA TPA USA- Panama), in which he states that the Republic of Panama is failing to effectively enforce its environmental legislation.

In accordance with Article 17.8 of the Trade Promotion Agreement between the United States and Panama, which establishes the procedure for Submissions pertaining to the Enforcement of the Environmental Legislation, it is stipulated that “any person of a Party may file a submission stating that a Party is failing to effectively enforce its environmental laws. Said submissions shall be filed with a secretariat or other appropriate body (“secretariat”) designated by the Parties.”¹

According to paragraph 2 of the before mentioned article 17.8, and to section 5 of the Working Procedures for Submissions, it is the responsibility of the Secretariat to verify the content of the filed Submission, and to determine whether it fulfills the requirements stipulated in the Agreement. If it is determined that the Submission complies with the stipulated requirements, the Secretariat shall proceed to determine whether the Submission warrants a request for a response from the Party, following the parameters of paragraph 4 of article 17.8.

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



II. Summary of the content of the filed Submission

In the Submission, which has been assigned the No. SALA-CA-PMA/003/2021 and is called “Pollution due to agrochemicals. Crops,” the petitioner states that according to the stipulations of Chapter 17 of the United States-Panama Trade Promotion Agreement, article 17.8, the Government of the Republic of Panama has failed to effectively enforce the provisions of its environmental legislation with respect to Law 47 of 1996. This law established the Phytosanitary Protection Measures. The petitioner also references a failure to effectively enforce the provisions of Law 41 of 1998, General of the Environment of Panama, which regulates the Assessment of Environmental Impact Studies, and Law 125 of 2020, which approves the Regional Agreement on Access to Information, Public Participation, and Access to Justice in Environmental Studies.

In the description of the facts, the petitioner states that in January 2021, the Panama Oeste Regional Directorate of the Ministry of the Environment prepared Procedural Technical Report 010-2021. In its technical analysis, the agency stated that the Inversiones JPW, S.A. company, “does not possess any Environmental Management tools at all” to start operations.

The petitioner continues to detail that even though the company did not possess any instrument for Environmental Management, its cleanup, plowing, sowing, and fumigation activities intensified in August 2021. The company did not inform or hold any consultation with the affected residents of the community of la Colorada, corregimiento of Iturralde, in the District of La Chorrera, Province of Panama Oeste.

The petitioner asserts that other complaints were made to the Ministry of the Environment,² and that the latter performed a second inspection on 20 September 2021, which found signs of non-compliance. These were included in Complaint Technical Report 203-21, which states that the company “does not possess any tool for environmental management; Environmental Impact Study; nor an Environmental Management Readiness Plan.”³

The petitioner also states that in the text of his Communication with the Agricultural Services Directorate for Region 5, Panama Oeste, of the Ministry of Agricultural Development,⁴ he was notified that said office does not have any registration records for the agrochemical products used by the company. In addition to the foregoing, the petitioner asserts that on 4 October 2021, the Ministry of the Environment issued a Suspension Action, but that the company continues to perform its activities of earth-moving, sowing, harvest, and fumigation. The company continues to pursue these activities despite the orders of the authorities and the opposition of the residents of the community of La Colorada, which was voiced in a letter dated 4 October 2021 and addressed to the Regional Directorate of the Ministry of the Environment in La Chorrera.⁵

² The text of Complaint Technical Report 203-21 details that the inspection was performed based on the complaint filed by Mr. Montero.

³ Text of the Communication submitted by Mr. Montero.

⁴ Single copy of Note No. DER-628-2021 dated 22 September 2021, which was provided as evidence for the Submission.

⁵ A single copy of a handwritten note was submitted, referenced as No. 07/MM, dated 4 October 2021, which refers to 75 signatures. This note was provided by the petitioner as evidence for the Submission.



The petitioner ends the Submission by stating that due to the violation of the environmental regulations, attorney Susana Serracín filed a complaint against the company and officials with the Ministry of the Environment on 18 November 2021. The complaint was filed on the grounds of actions or omission of their duties, for an offense Against the Environment and Territorial Zoning Regulations, committed against the community of La Colorada. The petitioner states that on 26 December, he was notified at his home address by a company employee of the filing of a legal action against him. This lawsuit is recorded as Docket 2021 00085173 at the Office of the Original Jurisdiction Prosecutor of the District of La Chorrera. The petitioner regards this legal action as being of an *“intimidating nature, to prevent the continuation of claims for the rights to health; a healthy environment; information; and environmental justice, enshrined in Law 125 of 2020, which is ratified by Escazú Agreement.”*⁶

The petitioner provides a series of documents as evidence of the assertions made in his written Submission, which are the follows:

1. Non-certified copy of Procedural Technical Report No. 010-2021 of 26 January 2021, prepared by Engineer Edgar Murillo of the Regional Directorate of the Ministry of the Environment in Panama Oeste. This document details that on the date 7 January 2021, a procedural inspection was performed at a pineapple farm in the sector of La Colorada, because earth-moving activities had been observed, and there was no Environmental Impact Study sign.⁷ The report consists of 6 pages, which describe the onsite findings of the MiAmbiente staff. The conclusions of the report confirm the start of operations without an instrument for environmental management; impact on environmental components such as sediment which runs to a creekbed; and a dam at a creek used for irrigation and fumigation activities for the Project. The report recommends forwarding the document to the Office of the Legal Counsel and to the National Directorate for the Verification of Environmental Performance, for the continuation of the process. It also recommends requesting a mandatory environmental audit from the company.
2. Non-certified copy of Disposition DRPO-SEVEDA-ALR. No. 218-2021 of 26 May 2021, which pursuant to the content of Procedural Technical Report No. 010-2021 of 26 January 2021, the Regional Director of the Ministry of the Environment for Panama Oeste determines to begin an administrative process against the Inversiones JPW, S.A. company, on the grounds of an alleged environmental violation consisting in the start of activities without an Environmental Impact Study. The disposition likewise orders the suspension of all of the activities of the company⁸; and the manual removal within a period of 30 days of the dam built by the company in the water easement. The disposition allows a period of 5 days for the presentation of defense statements. It can be noticed in the copy of this document that the stamp of notification to the company is missing.
3. Non-certified copy of Disposition No. DRPO-SEVEDA-ALR-No. 448-2021 of 13 September 2021, in which the Regional Directorate of the Ministry of the Environment for Panama Oeste decides to accumulate the files No. 020-2121 procedural and No. 195-2021, complaint filed by Mr. Moisés Montero,

⁶ Reference, last section of the written Submission.

⁷ Fact asserted by the requesting party in his written Submission.

⁸ Ibidem.



since both files address the same facts and charge the same company. The copy provided shows the notification stamp filled out with regard to Mr. Montero, but there is no notification stamp for the company.

4. Non-certified copy of Complaint Technical Report No. 203-21 dated 1 October 2021, prepared by the Section for Verification of Environmental Performance of the Regional Directorate of the Ministry of the Environment, for the purpose of addressing the complaint filed by Mr. Moisés Montero through his lawyer, Mr. Harley Mitchell, for environmental violations committed by a company engaging in the cultivation of pineapples in the corregimiento of Iturralde, District of La Chorrera, Province of Panama Oeste. This report refers to an inspection performed on 20 September 2021, whose basis is, among other things, Procedural Technical Report No. 010-2021. This report concluded that the company under inspection engages in the cultivation of pineapples without possessing an instrument for environmental management. The report also details that due to note DRPO-915-2021, a mandatory environmental audit was requested from the company through its legal representative. This notification was made on 15 September 2021. The report consists of 11 pages, which describe the findings identified during the inspection, such as sediment present in the creek and the distance between the pineapple orchard and the home of the complainant, in accordance with the provisions of the Plant Health regulations. The report concludes, among other things, that the company operates without an environmental management instrument and makes several recommendations, including reiterating the request to the company to submit to a mandatory environmental audit.
5. Non-certified copy of a handwritten note labeled as Note 05/MM of 20 September 2021, addressed by Mr. Montero to Mr. José Barría, Regional Director of Zone 5 of the Ministry of Agricultural Development, in which he requests a copy of the technical specifications of the phytosanitary or agrochemical products used by the JPW, S.A. company.
6. Non-certified copy of note DER-628-2021 of 22 September issued by the Directorate of Agricultural Services, Region 5, Panama Oeste of the Ministry of Agricultural Development, which replies to the request for information submitted by Mr. Montero regarding the agrochemical products used by the company. Said note states that the registration information for the products used by the company is unavailable, but that the latter should have the technical specifications that were approved by plant health.
7. Non-certified copy of a handwritten note labeled as Note 07/MM dated 4 October 2021, which is attached to a series of signatures (the number stated is 75 signatures), addressed to the Regional Director of MiAmbiente in La Chorrera by residents of La Colorada, corregimiento of Iturralde, pertaining to the pineapple cultivation activities undertaken by the company, which are a cause of concern for them, since they *"affect health, the environment, and our sources of water; mainly the well and tank that supply more than 100 families, who live in the vicinity of the plots of land of this company."*
8. Non-certified copy of the complaint filed with the Adversarial Criminal Justice System, Single Number Notice 202100076860. This complaint was filed by Attorney Susana Serracín, as representative for the community of la



Colorada, for an offense Against the Environment and Territorial Zoning Regulations, article 399 of the Penal Code.

9. Non-certified copy of the order of suspension, dated 4 October 2021, issued by the Panama Oeste Regional Directorate of the Ministry of the Environment, in accordance with the provisions of Disposition DRPO-SEVEDA-ALR No. 218-2021 of 26 May 2021. The document reiterates the order of suspension, and details the activities that the company cannot continue to engage in. It also states that the company will be allowed to harvest pineapples through 9 October 2021.
10. Non-certified copy of Edict No. DRPO-096-2021, issued by the Office of the Legal Counsel of the Panama Oeste Regional Directorate of the Ministry of the Environment, which within the formal administrative process underway for alleged environmental violations by the Sociedad Inversiones JPW, S.A. company, grants the latter 8 business days to submit evidence, and 5 business days to present written legal arguments. This edict has a removal date of 6 October 2021.
11. Non-certified copy of a handwritten note labeled Note 13/MM of 1 December 2021, addressed to the Regional Directorate, Zone 5 of the Ministry of Agricultural Development, which requests copies of the follow-up to the complaint reports filed by Attorney Harley Mitchell against the Inversiones JPW, S.A company.
12. Non-certified copy of note DER-846-2021 of 9 December 2021, issued by the Regional Directorate of Agricultural Services of the Ministry of Agricultural development, which in reply to request note 13/MM, suggests filing a complaint with the corresponding Justice of the Peace for the corregimiento.

III. Analysis of the requirements of the Submission

The Secretariat is responsible for verifying compliance with the requirements established in paragraph 2 of article 17.8 of the Agreement, which states the following verbatim:

*“17.8 Submissions on Environmental Law Enforcement Matters:...
2. The secretariat may consider a submission under this Article, if the secretariat finds that it:*

- 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;*
- 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 set forth in Article 17.8 paragraph 2 of the Panama-USA TPA for the filing of Environmental Submissions.			
Requirement	In compliance	Non-compliant	Justification

<p>a. Is in writing in either English or Spanish;</p>	<p>X</p>		<p>The Submission, as well as the documents provided as evidence, were submitted in writing, in Spanish and filed electronically.</p>
<p>b. Clearly identifies the person making the submission;</p>	<p>X</p>		<p>The petitioner is duly identified as Moisés Montero. It states his personal identity document number; his physical address (residence); electronic email address; and the cellular phone number that he can be reached at.</p>
<p>c. Provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based;</p>	<p>X</p>		<p>Besides the written Submission, the petitioner includes a series of official documents issued by the Ministry of the Environment and the Ministry of Agricultural Development. Handwritten notes are also included, in which he and members of the Community have voiced their concerns to the competent authorities.</p> <p>It is deemed that the information provided is sufficient for the Secretariat to review the substance of the Communication as pertains to the situation that generated it. In this case, it is the undertaking of an agricultural activity which, as may observed in the technical reports, does not possess an environmental management instrument for its regulation.</p>
<p>d. Appears to be aimed at promoting enforcement rather than at harassing industry;</p>	<p>X</p>		<p>In the heading of the Submission, the petitioner mentions the environmental regulations that the Party is deemed to have failed to enforce, in relation to the facts described in the content. This can be verified with the evidence provided.</p>

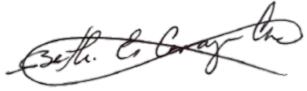
			In the text written in the Submission, the name of a company is mentioned directly. This company, according to the official documents presented as evidence, is the subject of an administrative investigation. Therefore, the premise of harassment by the petitioner is discarded, since references are made to non-compliance with the regulations.
<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		In addition to the description of the facts which is provided, the petitioner attached single copies of requests for information as evidentiary documentation for the Submission. It is duly noted that besides the formal docket, the petitioner filed a complaint. The corresponding authorities are aware of the situation, since they started a formal investigation.
<i>f. Is filed by a person of a Party</i>	X		As evidenced in the description of the general information stated in the Submission, the petitioner is a Panamanian national. Therefore, he belongs to one of the Parties to the Agreement.

IV. Determination of the Secretariat

After evaluating the content of the Submission filed by the petitioner, and verifying compliance with the formal requirements for its admissibility pursuant to paragraph 2 of article 17.8 of the Agreement, the Secretariat, in fulfillment of its duties, hereby **DETERMINES** that the Submission **COMPLIES** with the requirements set forth therein.

In view of the foregoing, the Secretariat shall proceed to **ANALYZE** the substance of the content of the petition, to determine whether it warrants a reply from the Party, as stipulated in paragraph 4 of article 17.8 of the Agreement.

NOTICE is hereby given to the petitioner and to the Environmental Affairs Council for the purposes established in Chapter 17, of the Environment, of the United States-Panama TPA, and Working Procedures for Submissions.



Bethzaida E. Carranza Ch.
Executive Director.

