

Agrochemical contamination. Crops.
 Submission No.: SEEM-CA-PMA/003/2021
 Determination No. 004/2022
 Date: September 22, 2022.

Determination No.004/2022 concerning the analysis of whether the Submission presented in relation to the Party's response warrants a recommendation to establish a factual record in accordance with the provisions of Articles 17.8(5) and 17.9(1), (2) and (3) of the United States-Panama Trade Promotion Agreement (US-Panama TPA).	
Submission No.: SEEM-CA-PMA/003/2021 Agrochemical contamination. Crops	Date of receipt: December 31, 2021
Submitter/signatory of the Submission:	Mr. Moisés Montero ID No.: 8-521-1659
Country Part: Panama	

I. Introduction

Pursuant to Article 17.8 of the U.S.-Panama Trade Promotion Agreement, the procedure for Submissions concerning Environmental Enforcement is established whereby, *"any person of a Party may present submissions asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be addressed to a secretariat or other appropriate body ("secretariat"), to be designated by the Parties"*¹.

Following the above provision, on December 31, 2021, Mr. Moisés Montero, presented via email a Submission to the Secretariat for Environmental Law Enforcement of the United States-Panama Trade Promotion Agreement (SEEM TPA U.S.-Panama), in which he asserts that the Government of the Republic of Panama is failing to effectively enforce its environmental legislation.

The Secretariat received in a timely manner the response from the Party, after completing the review of the formal and substantive requirements for the admission of the Submission (Art.17.8 #2 and 4) and finding the merits for the request for a response to the Party (Art.17.8.5), and once all the information was analysed, issued Determination No. 003/2022 of June 3, 2022, in which the Environmental Affairs Council was informed that the Submission merited a Factual Record with respect to the order for presenting a Mandatory Environmental Audit and the Administrative Investigation Procedure for possible infraction.

As provided for in Article 17.9.2 of Chapter 17 of the TPA and Section 7 of the Working Procedures for Submissions, the Secretariat shall establish a factual

¹ Article 17.8 paragraph 1 on Environmental Enforcement Submissions. Chapter 17. TPA US - Panama.

record, if so directed by the Council, by a vote of any of its members, which shall be notified in writing within a period of no more than 60 calendar days from the dispatch of the Determination detailing the merits to suggest opening the record.

Within the period set for the Council to vote on whether or not to examine the factual record, Panama, by note OCTI-123-2022 of July 25, 2022, voted unfavourably, stating the following:

"In accordance with the terms set out in paragraph a, section 5 of article 17.9, chapter 17 of the Panama/United States TPA: "if the particular matter is the subject of pending judicial or administrative proceedings, in which case the secretariat shall not proceed further". In this regard, we proceed to notify that through Memorandum No. 0923-2022 of the Legal Advice Office, it is reported that the Regional Directorate of Panama West, initiated an Administrative Sanctioning Process against the company Inversiones JPW S.A., in response to the complaint filed by Mr. Moisés Montero and Oficio, accumulated by Ruling DRPO-SEVEDA-ALR-No.448-2022, identified with record number 020-2021, currently in process.

For the reason described above, we did not vote in favour of instructing the Secretariat for Environmental Law Enforcement, Trade Promotion Agreement (TPA) between the United States and Panama to prepare a factual record for public submission No. SEEM-CA-PMA/003/2021, entitled "Contamination by Agrochemicals. Crops.

However, in the event that the vote of the council admits the preparation of a factual record, the Ministry of Environment has no objection to provide copies of Technical Report No. 010-2021, prepared by the Regional Directorate of Panama West or other documentation required for this purpose".

In view of this statement sent by Panama and after the deadline for the United States representatives to vote had expired, the members of the Environmental Affairs Council agreed, on an exceptional basis and without setting a precedent for future submissions, to extend Panama 30 days to provide supplementary information to its previously submitted response, and to extend 15 days to the Secretariat for the review of such information, so that it may notify the Council whether the administrative proceeding meets the definition set forth in Article 17.14. Upon receipt of this information, the United States may issue an instruction with respect to the factual record if necessary.

The above was agreed considering that, as stated in subparagraph 5 of Article 17.8, the Secretariat "shall not proceed further" if the particular subject matter of the Submission is the subject of a pending judicial or administrative proceeding, but according to the Determination, the Secretariat was not provided with the investigation record, technical reports or other documents related to the judicial or administrative record described by the Party in its response, preventing a complete analysis.

Considering also that the TPA does not contemplate the scenario in which the Secretariat is not provided with sufficient information, the additional period of time for the submission of supplementary information is extended, in which the Secretariat must analyse whether or not the procedure being developed by the Party constitutes a judicial or administrative procedure in accordance with the definition established in Article 17.14 of the TPA, and whether or not it addresses the "precise issue" raised in the Submission.

II. Reasons stated to the Council on the merits for opening the factual record.

After receiving and analysing the Submission presented by the submitter, Mr. Moisés Montero, and the responses submitted by the Party, the Secretariat, through Determination No. 003/2022 of June 3, 2022, supported through the comparative analysis of the information provided with the environmental and procedural legislation in force, the reasons why it found merit for the preparation of a Factual Record regarding the order to present a Mandatory Environmental Audit and the Administrative Investigation Procedure for possible infringement.

In summary, the Secretariat described in its reasons, that despite the fact that the Party's response made reference to administrative processes initiated and accumulated, as well as the practice of inspections and the elaboration of technical reports in conjunction with other institutions competent in the matter, copies of this documentation were not provided with the response notes, which prevented a complete analysis in the light of the legislation indicated as non-compliant in the text of the Submission presented, or the legislation itself cited in the Party's response note, particularly given the fact that the proceedings were already more than a year old and the legislation establishes that an investigation has a period of two months for its development and thirty days to decide or provide a resolution.

III. Supplementary information submitted by the Party.

In accordance with the deadline extended to the Party for the submission of supplementary information for the response note No. OCTI-057-2022 of April 7, 2022, the following information was submitted in a timely manner by means of note OCTI-143-2022 of September 7, 2022, in the following order:

Document	Date	Description
Ruling DRPO-SEVEDA-ALR-No.218-2021	May 26, 2021. Note: No date observed on the document on the notification stamp.	Resolved: INITIATE administrative proceedings, for alleged environmental infringement consisting of starting activities without an Environmental Impact Study and affecting a water source, with a dam without the corresponding permits against the company INVERSIONES JPW S.A., whose legal representative is Mr. JAMES EDUARDS GOODEN, project located in the village of

		Iturralde, district of La Chorrera, province of Panama West.
Ruling DRPO-SEVEDA-ALR- No.448-2021.	September 13, 2021. Note: Mr. Montero was notified on September 14, 2021. No further notification is noted.	Resolved: ACCUMULATE records numbered 020-2021, EX OFFICIO and 195-2021, complaint filed by Mr. MOISÉS ENRIQUE MONTERO, against the company INVERSIONES JPW, S.A.
Ex-officio Technical Report No.010- 2021	January 26, 2021	<p>The result of the technical inspection carried out on January 7, 2021, concluded that:</p> <ul style="list-style-type: none"> • The company... dedicated to the production of pineapple for the local and international market, started operations without any Environmental Management instrument. • ...The company... in the development of its production activities, is generating impacts that affect components of the environment, such as sediments that go to the bed of the stream. • The company... dammed a stream... to form a lake that it uses for irrigation and spraying of the pineapple project. <p>The report recommended that it be sent to the Legal Advice and the National Directorate of Environmental Performance Verification for the corresponding procedures, and also to request a mandatory environmental audit from the company.</p> <p>Note: This report was presented by the submitter as part of his evidence.</p>
Ruling DRPO-SEVEDA-AL- No.439-2021	September 8, 2021 Note: Notification date of this ruling is not shown.	Resolved: ORDER the opening of record 195-2021, due to a complaint filed by Mr. Harley Mitchell, on behalf of Mr. MOISÉS ENRIQUE MONTERO, with identification card No. 8-521-1659, on August 20, 2021, in which he points out environmental infractions executed by the company INVERSIONES JPW, S.A., located in the township of Iturralde, district of La Chorrera, province of Panama West. Orders the initiation of an investigation and referral to the technical unit to prepare a report.
Memorandum DRPO-225-2021	September 8, 2021	Legal Advice Office Requests SEVEDA ² - Regional Directorate of Panama West - to conduct a technical

² SEVEDA: Environmental Performance Verification Section.

		inspection in the process of the complaint filed by Mr. Montero (Exp.195-2021). It is urged to coordinate the participation of other sections or institutions, and it is described that in accordance with Article 15 of the Single Text of Law 41 of 1998, the stoppage of the project, work or activity may be ordered.
Memorandum DRPO-213-2021.	September 8, 2021	The Regional Director of Panama West, requests personnel from the DIVEDA ³ Section, to carry out a joint inspection and request water analysis of the "Pineapple Production" Project, promoter Inversiones JPW, S.A.
Ruling DRPO-SEVEDA-ALR- No.497-2021.	September 30, 2021. Note: In the considerations of this ruling, it is shown that Mr. Emiro Córdoba was notified of the Ruling to initiate an ex officio investigation (DRPO-SEVEDA-ALR-No.218-2021) on September 15, 2021.	Resolved: GRANT the defendant eight (8) working days for the presentation of evidence and five (5) working days for written pleadings, and to notify the parties by means of an edict.
Edict No. DRPO-096-2021	October 5, 2021 -the edict is fixed-. October 6, 2021 -the edict will be set-.	Notification of the ruling opening the period of evidence and pleadings.
Technical Ex Officio Report No. 213-2021	October 19, 2021	Describes the observations made in the inspection of October 18, 2021, which was preceded by the inspection of October 4, 2021, where the stoppage of activities was ordered. Concluded: <ul style="list-style-type: none"> • The company complied with the stop-work order. • It was observed in the field that given the stoppage the pineapple crop began to be affected by the Erwinia bacteria. • The company submitted the Environmental Audit Plan to DIVEDA. • The company has an international Global Gap certification valid until November 2021. • The company made changes in the use of some pesticides, as all the pesticides they are using in their agricultural activities are allowed and are applied according to national regulations.

³ DIVEDA: Directorate for the Verification of Environmental Performance.

		<p>Recommended:</p> <ul style="list-style-type: none"> • Provide a 30 day authorisation to the company to continue its activities. • Consider the total lifting of the stoppage since the company delivered the Environmental Audit Plan and it is necessary to see the operation of the company with this environmental management tool. • Provide ongoing environmental monitoring of the company to verify compliance with certain activities, such as washing pesticide containers, erosion and the correct application of the pesticides used, in coordination with MIDA. • Send a report to Legal Advice.
Note DRPO-1292-2021	November 18, 2021	<p>The Regional Directorate of Panama West requests the Regional Director of the Ministry of Health to certify whether the agrochemicals used for the cultivation of MD-2 pineapple by Inversiones JPW are authorised for crop use. It also requests the list of restricted agrochemicals.</p> <p>This note attaches the list of agrochemicals used in the MD-2 pineapple crop of Inversiones JPW/La Colorada Fresh, S.A.</p>
Technical Report No. 257-2021	December 30, 2021	<p>As a result of the technical inspection carried out on November 15, 2021.</p> <p>This inspection carried out jointly by MiAmbiente, the ACP, the Company and Mr. Montero for the community, sought to verify in the field, a complaint filed with the ACP by the community of Cerro Cama for discharges of sediment and decomposed pineapples into the La Colorada stream.</p> <p>Concluded:</p> <ul style="list-style-type: none"> • The artificial lake observed during the inspection tour is an activity authorised by the ACP, with the aim of accumulating water for

		<p>cultivation.</p> <ul style="list-style-type: none"> • In the area close to the project, what appeared to be a land development project was observed, and this activity must go through the Environmental Impact Assessment process. • The company should improve the roads to avoid dragging sediment into the stream. • No pineapple remains were observed in or around the stream bed. <p>Recommended:</p> <ul style="list-style-type: none"> • Inform the company that they should improve their roads near the La Colorada stream bridge to reduce sediment. • Request from the ACP a copy of the permits granted to the company for the damming of the stream. • Verify the legal status of the land development near the La Colorada stream. • Send the report to Legal Advice.
Ruling DRPO-SEVEDA-ALR- No. 585-2021	<p>No date noted.</p> <p>Note: The statement of evidence was submitted by the company's legal representative on October 11, 2021</p>	<p>Resolved: ADMIT the defence, the documentary evidence and the pleadings presented by the company's legal representative. Deny the request for clarification of the procedure and grant an extension of 30 days to conduct fumigation, maturation, induction and fertilisation.</p> <p>LIFT the suspension of the activities of the company, JPW, S.A.</p>
Note DER-818-2021 of the Ministry of Agricultural Development.	November 30, 2021	<p>Replies to note DRPO-1291-2021 sent by the Regional Directorate of Panama West, on the cultivation of pineapple md-2 by the company Inversiones JPW, stating that: According to the agrochemicals database, all agrochemicals have their registration number and can be used in pineapple cultivation.</p> <p>In the case of Oxamil and Etoprophos, they are on the list of restricted agrochemicals that can be used in pineapple cultivation under the management of an ATF or agronomist and that the company has such a professional.</p>

		A list of pesticides restricted for use in Panama is attached to the note.
Note DRPO-1490-2021	December 31, 2021	The Regional Directorate of Panama West addressed the Deputy National Director of Environmental Health of the Ministry of Health to ask if Decree No. 71 of 1964 "Which regulates the location of industries that constitute public hazards or nuisances and the minimum sanitary conditions they must meet" applies to the pineapple plantation activity and those activities that could place at risk the public health of neighbours to the companies.
Note DIVEDA-060-2022	January 31, 2022	The National Directorate of Environmental Performance Verification requested the Regional Health Directorate of Panama West to conduct a water quality analysis of a well located on the road leading to the community of Lagarterita - coordinates provided - given the proximity of the well to the activities of the pineapple company, Inversiones JPW, S.A., taking into account that several agrochemicals are used in their processes.
ACP Inspection Report. Sent through Note HIP090.	March 3, 2022.	<p>Delivered report of the joint inspection conducted on November 15, 2021 and request that the environmental management instrument be sent to them once it has been submitted by the developer.</p> <p>After the field visit, the report concluded:</p> <p>The MiAmbiente gave the company an order to suspend its activities and it could not start operating again until it had made the necessary adjustments to the findings and presented the documentation for the PAMA.</p> <ul style="list-style-type: none"> • The company submitted for review and approval of an audit report with improvements and restarted operations upon submission of the requested documentation. • The project area maintains some sites that add sediments to the water source.

		<ul style="list-style-type: none"> • Mitigation measures for sediment control by means of natural barriers were observed. • Other non-project sites were observed adding sediment. <p>Recommended:</p> <ul style="list-style-type: none"> • Request the implementation of the project's erosion control systems to reduce sediment input. • Request to shape and stabilise the slopes in the water abstraction area and protect the slopes as they are uncovered. • Request from MiAmbiente the inspection reports generated for the follow-up of improvements. • Request the follow-up of the complaint lodged by Mr. Montero.
<p>Minutes of the meeting</p>	<p>December 28, 2021</p> <p>Note: The meeting was held on December 21, 2021.</p>	<p>The meeting was requested by Mr. Montero, due to concerns of inhabitants about the pineapple cultivation activity and the use of agrochemicals.</p> <p>Officials from MiAmbiente at national and regional level, officials from MIDA, MINSA and ACP participated. Mr. Montero and five other people from the community and a representative of the company.</p> <p>In summary, the representatives of MiAmbiente stated that they are looking for solutions to the problems between the company and the community and that there is a balance between the parties and that they are looking for a climate of agreement together with the other institutions. Mr. Montero said that he has been living with the agrochemical situation for years and that he has tried to find a solution with the company, but has been unable to do so, and has approached all the institutions without success. Mr. Montero requested an inter-institutional inspection to verify the effects on the area, while Ms. Serracín stated that this type of meeting should be held, but that this one in particular is out of time because the company is operating without an EslA, which in addition to being an administrative issue, should be treated as an environmental crime.</p>

		Towards the end of the meeting, Mr. Montero stood up in annoyance and said that all the institutions were against them and against the company. For its part, MiAmbiente closes the minutes by pointing out that Mr. Montero objected to almost all the interventions of the institutions and that their attitudes were not focused on finding solutions, but rather that they were asking the company to leave their community.
Request from Mr Montero. Note 23/MM	January 12, 2022	Mr Montero requests copies of the minutes of the meeting held on December 21, 2021.
Note DIVEDA-021-2022	January 12, 2022	Hand over simple copies of the minutes of the meeting requested in note 23/MM.
Ruling DRPO-SEVEDA-ALR-051-2022	April 29, 2022	Resolved: INHIBIT knowledge of the administrative record on the complaint filed by Mr. Moisés Montero for alleged environmental infringement consisting of starting activities without an Environmental Impact Study and affecting a water source with a dam without the corresponding permits, against the company INVERSIONES JPW S.A. SUBMIT the record to the Ministry of the Environment, Headquarters, for the corresponding procedures, due to the fact that the monetary sanction, in accordance with the economic evaluation supported by the Department of Environmental Economics, is greater than that permitted for the Regional Directorates in accordance with Resolution AG-0414-2022 of August 28, 2002.
Ruling DRPO-SEVEDA-ALR- 439-2022	August 10, 2022	Resolved: CORRECT Ruling DRPO-SEVEDA-ALR- No.051-2022 of April 13, to indicate that the Regional Directorate of the Ministry of the Environment of Panama West is INHIBITED from the administrative record containing records No. 020-2021 ex officio Administrative Process and No. 195-2021 Administrative Process by Complaint, followed against the company INVERSIONES JPW, S.A.

IV. Analysis of the submitted documentation in terms of the required objectives.

The Secretariat was requested by the Council to receive and analyse the supplementary information submitted by the Party in order to address two objectives: to assess whether the proceeding described in OCTI-123-2022 constitutes a "judicial or administrative proceeding" as defined in Article 17.14 of the US-Panama Trade Promotion Agreement and, if so, to what extent the proceeding addresses the "specific matter" asserted in the Submission.

Whereas Article 17.14 of the TPA on Definitions, paragraph 2 of which states that for the purposes of Article 17.7.5, judicial or administrative proceeding means:

"a. a domestic judicial, quasi-judicial or **administrative action taken by a Party in a timely manner and in accordance with its law.** Such actions include: mediation; arbitration; **the issuance of a licence, permit, or authorisation;** the seeking of a voluntary undertaking or compliance agreement; **the seeking of sanctions or relief in an administrative or judicial forum;** **the process of issuing an administrative ruling;** and

b. an international dispute settlement procedure to which the Party is a party". -highlighting added -

We can confirm, as raised in Determination No. 003/2022 of June 3, 2022, that the Party is indeed pursuing an administrative proceeding, under its law, involving an application for sanctions or relief in an administrative forum, as described in the above definition, and that, in effect, such proceeding directly addresses the matter raised by the submitter in its Submission.

By June, when the Determination was issued, the lack of information on the process or its reports made it impossible to analyse whether the procedure complied with the parameter of being "timely", as described in the definition, since, the term for processing and resolving it was exceeded when comparing the dates on which the process was initiated with the legislation governing the matter.

The supplementary information provided made it possible to verify the steps of the procedure and the dates on which the proceedings were issued, observing that the process has been continuous, but that it has taken longer than the time established by the legislation, among other things because: there were two simultaneous processes on the same subject that should have been accumulated; that after the records accumulation, reports and proceedings which should have been integrated were developed independently; that there was a long period of time to notify the investigated party of the beginning of the process and to continue with the due process; that a large number of institutions were involved, which resulted in the time needed to obtain information from them; that the Regional Directorate of Panama West was prevented from taking cognizance of the case, as it was beyond its competence to deal with the case, among other aspects that extended the development of the procedure beyond the three months stipulated by the legislation.

V. Determination of the Secretariat

After analysing the supplementary information sent by the Party with respect to the substantive content of the Environmental Submission presented by Mr. Moisés Montero, and the response previously sent by the Party, the Secretariat has elements to state that an administrative proceeding on the issue raised by the submitter in its Submission is underway in a timely manner.

In the light of the above and in accordance with Article 17.8.5(a) of the Treaty, which provides that:

"...a. if the particular matter is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall not proceed further..." - added -

The Secretariat in compliance with its functions hereby DETERMINES to inform the Environmental Affairs Council that with respect to Submission SEEM-CA-PMA/003/2021 Contamination by Agrochemicals. Crops, **DOES NOT REQUIRE** the preparation of a Factual Record since an Administrative Investigation Procedure for possible infringement is still underway, submitter still has recourse to the competent institution.

NOTIFY the submitter of the additional information sent in this process, as well as the content of this Determination. **NOTIFY** the submitter that it may approach the Secretariat again, if it deems that the implementation of the environmental legislation is not complied with in the final resolution of this administrative process or its corresponding appeals. **NOTIFY** the Environmental Affairs Council for the pertinent purposes.



Bethzaida E. Carranza Ch.
Executive Director.



Maylee A. Granados C.
Traductora Pública Autorizada
Res. 43 del 20-01-2009
Panamá, Rep. de Panamá