

GUIDELINES FOR SUBMISSIONS ON ENVIRONMENTAL ENFORCEMENT MATTERS

UNITED STATES – PANAMA TRADE PROMOTION AGREEMENT (TPA)

1. - WHAT IS THE SECRETARIAT FOR SUBMISSIONS ON ENVIRONMENTAL ENFORCEMENT MATTERS?

The Secretariat is an independent body created pursuant to the TPA to receive and consider submissions asserting that Panama or the United States is failing to effectively enforce its environmental laws, pursuant to articles 17.8 and 17.9 of the TPA.

2. - WHO CAN FILE A SUBMISSION?

Any natural person or enterprise of either Panama or the United States, may file a submission asserting that Panama or the United States is failing to effectively enforce its environmental laws. An enterprise of a Party includes a non-governmental organization constituted or organized under a Party's law.

As provided in Article 17.8 of the TPA, a person of the United States asserting that the United States is failing to effectively enforce its environmental laws may not file a submission with the Secretariat but instead may file such a submission with the Secretariat of the Commission for Environmental Cooperation established under the North American Agreement on Environmental Cooperation.

3. - WHAT ARE THE REQUIREMENTS OF A SUBMISSION?

A submission should fulfill the following requirements:

- a) Be filed by a person of a Party (see Section 2 of the guidelines);
- b) Be a document in physical or digital format (*If possible, the submission should not exceed fifteen (15) pages, not including the annexes containing the documentary evidence*);
- c) Be written in Spanish or English;
- d) Clearly identify the person making the submission;¹
- e) Include sufficient information to enable the Secretariat to contact the submitter.
- f) Provide sufficient information to allow the Secretariat to review the submission, including identification of the Party (Panama or the United States) that is allegedly not effectively enforcing its environmental laws, and any documentary evidence to support the submission;
- g) Appear to be aimed at promoting enforcement rather than at harassing industry; and
- h) Indicate that the matter has been communicated in writing to the relevant authorities of the Party in question, and the response received from those authorities, if any.

¹ The Submitter may request that his or her personal or institutional data be kept confidential.

4. - HOW DOES ONE FILE A SUBMISSION?

- a) A physical submission may be sent by post to:
Secretariat for Environmental Enforcement Matters
CATHALAC
Calle Luis Bonilla, 203
Panama City, Panama
- b) An electronic submission may be sent to: info@sala-seem.org
- c) An online submission can be sent through the Secretariat's website at <http://www.sala-seem.org>
The instructions for the correct filing of the online submission are at: <http://www.sala-seem.org>

5. - WHAT ARE THE STEPS THAT THE SECRETARIAT FOLLOWS IN PROCESSING THE SUBMISSION?

Upon receipt of the submission, the Secretariat acknowledges receipt within no more than 7 calendar days, and evaluates compliance with all requirements (see section 3 of the guidelines). The Secretariat transmits its acknowledgement and any correspondence it sends to a submitter using any reliable method that provides a record that the acknowledgement or correspondence was sent.

The Secretariat will also forward the submission to the U.S.-Panama Environmental Affairs Council (Council), which was established pursuant to the TPA to oversee implementation of and review progress under the TPA Environment Chapter. The Council consists of cabinet-level or equivalent representatives of Panama and the United States. The Secretariat initially forwards the submission to the Council in the language in which it was received and provides a translation of the submission in the other official language when requested by a Council member or Point of Contact.

Promptly after forwarding the submission to the Council, the Secretariat prepares and forwards to the Council a draft public notice briefly describing the submission and informing the public that the Secretariat will review the submission in accordance with these Working Procedures to determine whether it meets the criteria listed in question 3 above (and outlined in Article 17.8(2) of the TPA). Unless the Secretariat receives a Council decision instructing it otherwise, the Secretariat finalizes and publishes the public notice 15 calendar days after the date it forwards it to the Council. The Secretariat considers any comments or proposed edits it may receive from any Council member within the 15-day period.

The Secretariat should determine whether the submission complies with all requirements within 30 calendar days after receipt of the submission. If the Secretariat determines that the submission complies with the requirements, it will accept the submission for review and promptly notify the Council and the submitter.

The Secretariat will proceed with processing the submission and will determine whether the submission warrants a response of the Party concerned. The Secretariat should make this determination within 30 calendar days of acceptance of the submission for review and will be guided by whether:

- (a) The submission is not frivolous and alleges harm to the person making the submission;
- (b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of the TPA Environment Chapter and the Environmental Cooperation Agreement, taking into account guidance regarding those goals provided by the Environmental Affairs Council and the Environmental Cooperation Commission;
- (c) private remedies available under the Party's law have been pursued; and
- (d) the submission is drawn exclusively from mass media reports.

If the Secretariat determines that the submission warrants the response of the concerned Party, it notifies that Party immediately after the 30 calendar day review window by sending a copy of the submission and all supporting information provided with it. This notification includes an explanation of the factors that led the Secretariat to make such a determination.

The concerned Party must then respond to the Secretariat within 45 calendar days, or in exceptional circumstances, within 60 calendar days of the receipt of the request. Once the Secretariat receives a response from the concerned Party or if the deadline for receipt of such a response has lapsed, the Secretariat will conduct an analysis of all information received and publish the response on the Secretariat's website.

6. - WHAT HAPPENS IF THE SECRETARIAT DETERMINES THAT THE SUBMISSION DOES NOT MEET THE REQUIREMENTS?

If a submission does not meet the requirements, the Secretariat will promptly notify the Submitter of the requirements that have not been met and the reasons for which the Secretariat has determined not to proceed with the submission. The Secretariat will grant the Submitter 30 calendar days to present to the Secretariat a new version of the submission that meets all of the requirements. If the deadline has expired and if the Submitter does not submit a new version, or having filed a new version, if it still does not meet the requirements, the submission will be archived and the process will be terminated.

7. - WHAT IS THE PROCESS FOR DETERMINING WHETHER TO DEVELOP A FACTUAL RECORD?

The Secretariat, in evaluating the submission and the response of the concerned Party, if any, should determine whether developing a factual record is justified, within a period of no more than 45 calendar days, or in exceptional circumstances within 60 calendar days, counted from the receipt of the response of the concerned Party or the expiration of the deadline to receive such a response.

In the event that the Secretariat determines that developing a Factual Record is justified, it will notify the Council. Any member of the Council may vote to instruct the Secretariat, in writing, within no more than 60 calendar days, to prepare a Factual Record.

8. - WHAT IS A FACTUAL RECORD?

A Factual Record is a document prepared by the Secretariat that compiles all of the information, starting with the submission that initiated the proceedings, and objectively presents the facts related to the assertion raised in the submission.

The Secretariat prepares a preliminary Factual Record no later than 120 calendar days from the receipt of the Council's communication instructing its preparation. The preliminary Factual Record is submitted to the Council to provide comments on the accuracy of the draft within 45 calendar days. Having received comments from either of the Parties on the certainty of the facts, or having fulfilled the deadline for comments, the Secretariat incorporates those comments and/or contributions that it deems pertinent, prepares the final Factual Record, and submits it to the Council within 30 calendar days.

The development of a Factual Record by the Secretariat is carried out without prejudice to any further steps that may be taken with respect to any submission.

9. - WHAT INFORMATION DOES THE SECRETARIAT CONSIDER IN PREPARING A FACTUAL RECORD?

In preparing a factual record, the Secretariat will consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:

- a) that is publicly available;
- b) submitted by interested persons;
- c) submitted by national advisory or consultative committees;
- d) developed by independent experts; or
- e) developed under the Environmental Cooperation Agreement.

10. - WHAT HAPPENS AFTER A FACTUAL RECORD IS DEVELOPED AND HOW DOES THIS PROCESS CONCLUDE?

The Secretariat will make the Factual Record publicly available, by posting it on its website, if a member of the Council instructs it to do so, which it normally does within 60 calendar days following its submission to the Council. If the Secretariat is instructed to publish a Factual Record, it will do so within 30 calendar days after being instructed by the Council. In addition, the Council, as appropriate, will provide recommendations to the Environmental Cooperation Commission related to issues addressed in the Factual Record, including recommendations on further development of the Party's mechanisms for monitoring compliance with environmental laws.

11. - WHAT IF THE SUBMITTER WOULD LIKE CERTAIN INFORMATION TO BE KEPT CONFIDENTIAL?

The Secretariat does not furnish to the public or allow public access to any information it may receive from a submitter, where the submitter has identified the information as confidential, and the Secretariat determines that the information is not otherwise publicly available and the disclosure of the information could reveal:

- (i) the submitter's identity and subject the submitter to serious reprisal; or
- (ii) business or proprietary information;