

USCOLSALASEEM/COL/01/2023-D1En  
ORIGINAL: Spanish

**Determination in accordance with Article. 18.8(2) of the  
United States-Colombia Trade Promotion Agreement**

**Submitter:** Iván Salazar Penna  
**Party:** Colombia  
**Submission ID:** USCOLSALASEEM/COL/01/2023  
**Date of the submission:** June 28, 2023  
**Date of the determination:** September 18, 2023

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## 1. Introduction

The United States of America (hereinafter referred to as "U.S." or the "United States") and Colombia (hereinafter collectively referred to as the "Parties" and individually to as the "Party"), signed on November 22nd, 2006, the Trade Promotion Agreement (hereinafter referred to as "TPA") and on June 28th, 2007, signed an Amending Protocol to the same Agreement. Once the internal procedures for its ratification were completed and the implementation phase was finalized, the TPA came into force on May 15, 2012.

The U.S.-Colombia TPA included a chapter on the environment (hereinafter "Chapter Eighteen"). In particular, Article 18.8 of that TPA established a mechanism for filing submissions on environmental enforcement matters, by virtue of which, any person may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Furthermore, said article provided that the Parties shall designate a Secretariat or other appropriate body to which submission on environmental enforcement matters will be filed. Likewise, Article 18.9 of the TPA sets out the preparation and development of factual records by the Secretariat, if any member of the Environmental Affairs Council<sup>1</sup> established under Articles 18.6.1 of the TPA<sup>2</sup>, instructs it to do so.

The Parties through an Agreement of July 2018, established the Secretariat for Environmental Enforcement Matter (hereinafter referred to as the "Secretariat") and designated it to carry out the functions prescribed for the Secretariat in articles 18.8 and 18.9 of the TPA.

## 2. Background

On June 28, 2023, Iván Salazar Penna, a citizen of Colombia named filed a submission on environmental enforcement matters via electronic mail under Article 18.8 of the TPA, in

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<sup>1</sup> In accordance with article 18.6.1 of the TPA, each Party shall designate "a senior level official with environmental responsibilities to represent it on the Council and an office in its appropriate ministry or government entity to serve as its contact point for carrying out the work of the Council".

<sup>2</sup> Agreement establishing a Secretariat for Environmental Enforcement Matters under the United States-Colombia Trade Promotion Agreement.

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which he asserts that the Colombian Government is failing to effectively enforce its environmental laws regarding the Civil Society Nature Reserve El Danubio.

After registering the submission as "Reserva Natural de la Sociedad Civil (RNSC) – El Danubio" and assigning it the filing number USCOLSALASEEM/COL/01/2023, the Secretariat acknowledged receipt via email on July 18, 2023 with communication number USCOLSALASEEM/COL/01/2023-S1Esp.

In accordance with the submission on environmental enforcement matters process established in Articles 18.8 and 18.9 of the TPA, the Secretariat must proceed to determine whether the submission filed meets the requirements of Article 18.8(2) of the TPA. Before reviewing if the submission meets eligibility requirements, a brief summary of the submission filed is provided.

### **3. Summary of the submission**

According to the Submitter, the Colombian Government is failing to effectively enforce its environmental laws regarding the Civil Society Nature Reserve ("RNSC" by its Spanish acronym or the "Reserve") El Danubio located in the village of Caldas in the municipality of Morelia, Department of Caquetá. The National Natural Parks Agency registered this RNSC by Resolution 008 of February 14, 2020 for the property called "El Danubio", Identified with real estate registration folio numbered 420-26142.

The submitter, as the owner of the RNSC El Danubio, asserts that the Government of Colombia is failing to effectively enforce Article 11 of Decree 1996 of 1999 due to the lack of notice of the works under the Solidarity Agreement No. 026-CNVS-2022 dated November 17, 2022, entered into the municipality of Morelia and the Community Action Committee (Junta de Acción Comunal) of the Caldas village, related to the adaptation of the sanitation facilities at the Palmarito educational institution. The submitter states that the educational institution is located within the RNSC El Danubio, and its status as a protected area and higher environmental criteria for land use planning (determinante ambiental), were not taken into account. The submitter also expresses his concern about possible environmental impacts due to the passage of people and, motorcycles, as well as the effect this is having on species that he has been protecting and conserving, and its strategic importance in the birth of water sources, which feed the Morelia aqueduct.

Additionally, the submitter alleges that with the project "construction of aqueduct network and drinking water treatment plant for the urban area of the municipality of Morelia", the Colombian government is failing to effectively enforce Article 11 of Decree 1996 of 1999, regarding the rights of holders of the RNSCs, as the holders of the El Danubio Reserve were not notified or consulted.

Likewise, the submitter raises his objections due to the lack of feasibility of the water concession permit for the continuation of the previous project, as well as its impact on the

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MURUI-YU-PAHUER indigenous community and deficiencies in the technical studies. The submitter also mentions that he has reported the logging of forest species within the RSNC El Danubio.

As a result of the complaints made to various authorities, the submitter expresses allegations of pressure and persecution.

#### **4. Review of the submission requirements**

In accordance with Article 18.8(2) of the TPA, the Secretariat may consider a submission, if it finds that the submission meets with the eligibility requirements established in letters a) to f) of the aforementioned article, which are elaborated upon below.

##### ***a. It is filed in writing in English or Spanish.***

The submission, as well as the additional documentation, which is provided by the submitter, is written in Spanish. Therefore, the Secretariat finds that the submission meets the requirement established in letter a) of Article 18.8(2) of the TPA.

##### ***b. It clearly identifies the person making the submission***

The submission includes the name, identity document, address, email address, and contact number of the submitter. This information is sufficient for identifying and communicating with the submitter. As a result, the Secretariat finds that the submission complies with the requirement in letter b) of the article 18.8(2) of the TPA.

##### ***c. (i) It provides sufficient information to allow the Secretariat to review the submission, including documentary evidence on which the submission is based***

In addition to the written submission, the submitter provided supporting documentation that allows the Secretariat to review the submission. Therefore, this Secretariat finds that the submission meets with the first part of the eligibility requirement set forth in in letter c) of article 18.8(2) of the TPA

##### ***c. (ii) Identification of the environmental laws of which failure to enforce is asserted***

Article 18.14 of the TPA defines the term environmental law as follows:

**[E] nvironmental law** means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

- a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;
- b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

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c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas.<sup>11</sup>

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

<sup>11</sup> The Parties recognize that such protection or conservation may include the protection or conservation of biological diversity.

Furthermore, Article 24.1 also defines a statute or regulation:

For Colombia, **statute or regulation** means a law of Congress or Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government.

Based on the previous definitions, the Secretariat proceeds to indicate the laws and regulations identified by the submitter and to state the reasons regarding the eligibility of the legal provisions cited by the submitter.

Firstly, the submitter indicates in their submission that he had not been “notified and informed about the work to be carried out within the El Danubio Nature Reserve” under the Solidarity Agreement entered into the municipality of Morelia and the Caldas Community Action Committee, related to the adaptation of the sanitation facilities of the Palmarito Educational Institution. Indicating that “any internal process should be consulted with its landowners as established by Decree 1996 of 1999”.

Additionally, in the project entitled “construction of the aqueduct network and drinking water treatment plant for the urban area of the municipality of Morelia,” the submitter alleges that the provisions of Article 11 of Decree 1996 of 1999 have not been taken into account. Rights. “Duly registered landowners of Civil Society Nature Reserves...”. This is since “landowners have not been contacted despite being environmental criteria in the 30m buffer zone around the boundary of the water source that forms part of the El Danubio Nature Reserve.”

Article 11 of Decree 1996 of 1999 states:

Article 11.- Rights. Duly registered landowners of Civil Society Nature Reserves may exercise the following rights:

1. Right to participate in the planning processes of development programs.
2. Right to give or withhold consent prior to the execution of public investments that affect them.
3. Right to incentives.
4. Any other participation rights established by law.

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This Secretariat notes that Decree 1996 of 1999 was compiled by Decree 1076 of 2015, corresponding to the Single Regulatory Decree of the Environment and Sustainable Development Sector, which, as will be indicated below, was identified by the submitter as one of the laws of which the failure to enforce is asserted. In this respect, Article 11 of Decree 1996 of 1999 corresponds to Article 2.2.2.1.17.11. of Decree 1076 of 2015 as a current regulation.

This Secretariat finds that Article 2.2.2.1.17.11. of Decree 1076 of 2015 qualify as environmental law under Article 18.14 of the TPA, since its primary purpose is the protection or conservation of the environment specially protected natural areas such as the Civil Society Nature Reserves.

In addition to the previous regulatory provision, the submitter identified additional statutes and regulations. The submitter provided a list and classification of these provisions, which cited below, along with the Secretariat's review:

LEGAL PROVISIONS CITED	SECRETARIAT'S REVIEW
<b>GENERAL LAWS:</b>	
<i>Colombian Political Constitution of 1991</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Law 99 of 1993 and its regulatory decrees. Whereby the Ministry of the Environment is created, the public sector responsible for managing and conserving the environment and renewable natural resources is reorganized, the National Environmental System (SINA) is structured, and other provisions are enacted.</i>	Although Law 99 of 1993 could be qualified as environmental law, the submitter does not specify any particular provisions that the Colombian Government is failing to enforce effectively.  Likewise, the submitter does not specify the decrees and particular provisions that the Colombian Government is failing to enforce effectively and that could be qualified as environmental law under the terms of Article 18.14 of the TPA.
<i>Law 388 of 1997 (land-use planning) and its regulatory decrees</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Decree 2844 of 2010. Whereby organic regulations regarding budgets and the National Development Plan are established.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Law 1454 of 2011 and its legislative decrees. Whereby organic regulations regarding land-use planning are enacted and other provisions are modified.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.  Likewise, the submitter does not specify the decrees and particular provisions that the Colombian Government is failing to enforce

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LEGAL PROVISIONS CITED	SECRETARIAT'S REVIEW
	effectively and that could be qualified as environmental law under the terms of Article 18.14 of the TPA.
<i>Law 1712 of 2014 and its legislative decrees. Whereby the law of transparency and the right to access national public information are created and other provisions are enacted.</i>	Although the submitter does not specify particular provisions of Law 1454 of 2011 and its regulatory decrees that can be qualified as environmental legislation under the terms of Article 18.14 of the TPA, transparency and the right of access to environmental information contribute to the effective enforcement of environmental laws and could be considered in the enforcement review as applicable.
<i>Decree 1072 of 2015. Whereby the Single Regulatory Decree for the labor sector is issued.</i>	The submitter does not specify the particular provisions that the Colombian Government is failing to enforce effectively and that could be qualified as environmental law under the terms of Article 18.14 of the TPA.  In addition, according to the Article 18.14 of the TPA, the definition of environmental legislation does not include any statute or regulation, or provision thereof, directly related to workers' safety or health.
<i>Decree 1076 of 2015. Whereby the Single Regulatory Decree for the environmental and sustainable development sector is issued.</i>	Given the general reference to Decree 1076 of 2015 and the above reference, Article 2.2.2.1.17.11 of Decree 1076 of 2015 will be qualified as environmental law that the Colombian Government is failing to enforce effectively.
<i>Decree 1077 of 2015. Whereby the Single Regulatory Decree for the housing, city and territory sector is issued.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Resolution 0312 of 2019. Whereby the minimum standards of the Workplace Health and Safety Management System are defined.</i>	According to the Article 18.14 of the TPA, the definition of environmental legislation does not include any statute or regulation, or provision thereof, directly related to workers' safety or health.
<i>Colombian Technical Standard NTC-ISO 10005 - Quality Control Systems / Directives for Quality Control Plans.</i>	Technical standards do not have the force of law or regulations unless incorporated within them.
<b>DISASTER RISK MANAGEMENT LAWS</b>	
<i>Decree 2340 of 1997: Whereby measures for organizing the prevention and mitigation of forest fires and other provisions are enacted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.



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<i>Law 46 of 1988. Whereby the National System for Disaster Prevention and Response is created and structured, extraordinary powers are granted to the president of Colombia, and other provisions are enacted.</i>	This law is not in force, as it was repealed by Article 96 of Law 1523 of 2012.
<i>Document CONPES 3146 of 2001. Strategy to consolidate the implementation of the National Plan for Disaster Prevention and Response (PNPAD by its Spanish acronym) in the short and medium term.</i>	Since this is a public policy document, it could not be qualified as environmental law under the terms of Article 18.14 of the TPA.
<i>Decree 510 of 2011. Whereby directives for the formulation of the Action Plan for Responding to the Emergency and Mitigating its Effects are adopted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Law 1523 of 2012. Whereby the national disaster risk management policy is adopted, the National Disaster Risk Management System is established, and other provisions are enacted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Resolution 154 of 2014. Whereby the guidelines for the formulation of emergency and contingency plans for the management of disasters and emergencies related to the provision of public domestic water, sewage and trash collection services, and other provisions are enacted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Decree 1807 of 2014. Whereby Article 189 of Decree-Law 019 of 2012 is regulated in what pertains to the integration of risk management into land use plans, and other provisions are enacted.</i>	This regulation was compiled in Decree 1077 of 2015 (see comment above).
<b>STRUCTURAL AND GEOTECHNICAL LAWS:</b>	
<i>Decree 1400 of 1984. Whereby the Colombian Earthquake-Resistant Construction Code is adopted.</i>	This decree is not in force, as it was repealed by Article 55 of Law 400 of 1997.
<i>Law 400 of 1997. Whereby standards regarding earthquake-resistant construction are adopted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Decree 926 of 2010 - Colombian Earthquake-Resistant Construction Regulations NSR-10. Ministry of the Environment, Housing and Territorial Development.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Decree 945 of 2017. Whereby Decree 926 of March 19, 2010 is modified and other provision are enacted. Ministry of Housing, City and Territory.</i>	See above comment regarding Decree 926 of 2010.
<b>ENVIRONMENTAL LAWS</b>	
<i>Law 2 of 1959. Concerning the forest economy of the nation and the conservation of renewable natural resources.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.

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<i>Resolution 1433 of 2004. Whereby Article 12 of Decree 3100 of 2003 is regulated with regard to sanitation and discharge management plans, and other determinations are adopted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Resolution 2145 of 2005. Whereby Resolution 1433 of 2004 regarding sanitation and discharge management plans is partially modified.</i>	See above comment regarding Resolution 1433 of 2004.
<i>Resolution 1285 of 2006. Whereby the terms of reference are adopted regarding the production of environmental impact studies for the construction and operation of domestic wastewater treatment plants, and other determinations are adopted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Resolution 1503 of 2010. Whereby the general methodology for the presentation of environmental studies is adopted.</i>	This resolution is not in force, as it was repealed by Article 6 of Resolution 1402 of 2018.
<i>Decree 3930 of 2010. Whereby Heading I of Law 9a of 1979 and Chapter II of Heading VI, Part III of Decree-Law 2811 of 1974 are partially regulated with regard to water uses and liquid waste, and other provisions are enacted.</i>	This decree was compiled in Decree 1076 of 2015. See comment above regarding Decree 1076 of 2015.
<i>Decree 1640 of 2012. Whereby instruments for the planning, organization and management of hydrographic basins and aquifers are regulated, and other provisions are enacted.</i>	This decree was compiled in Decree 1076 of 2015. See above comment regarding Decree 1076 of 2015.
<i>Resolution 1541 of 2013. Whereby permissible air quality and immission levels are established, the procedure for evaluating activities that generate offensive odors is defined, and other provisions are enacted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Decree 1287 of 2014. Whereby criteria for the use of biosolids generated in municipal wastewater treatment plants are established.</i>	This decree was compiled in Decree 1077 of 2015. See above comment regarding Decree 1077 of 2015.
<i>Resolution 631 of 2015. Whereby the parameters and maximum permissible limits for one-time discharging into surface water bodies and public sewage systems are established, and other provisions are enacted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Decree 1076 of 2015, Single Regulatory Decree of the environmental and sustainable development sector.</i>	See above comment regarding Decree 1076 of 2015.
<i>Resolution 472 of 2017. Whereby the comprehensive management of the waste generated in construction and demolition activities is regulated, and other provisions are enacted.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Decree 050 of 2018. Whereby Decree 1076 of 2015 (Single Regulatory Decree of the environmental and sustainable development sector) is partially modified with regard to the</i>	This decree was compiled in Decree 1076 of 2015. See above comment regarding Decree 1076 of 2015.



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<i>regional environmental microbasin councils (CARMACs) and the regulation of water resources and discharges, and other provisions are enacted.</i>	
<b>DRINKING WATER AND BASIC SANITATION LAWS</b>	
<i>Resolution 330 of 2017. Whereby technical regulations for the drinking water and basic sanitation sector are adopted, and Resolutions 1096 of 2000, 0424 of 2001, 0668 of 2003, 1459 of 2005, 1447 of 2005 and 2320 of 2009 are repealed.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Resolution 650 of 2017. Whereby a temporary article is added to Resolution 330 of 2017.</i>	See above comment regarding Decree 650 of 2017.
<i>Resolution 501 of 2017. Whereby technical requirements related to chemical composition and information are issued, which must be met by any tubes, ducts and accessories for use in water main, sewage, sanitary and rainwater systems and domestic hydro-sanitary installations that may be acquired by people who provide water and sewage services, and Resolutions 1166 of 2006 and 1127 of 2007 are repealed.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Resolution 115 of 2018. Whereby Article 19 of Resolution 0501 of 2017 is modified, whereby technical requirements related to chemical composition and information are issued, which must be met by any tubes, ducts and accessories for use in water main, sewage, sanitary and rainwater systems and domestic hydro-sanitary installations that may be acquired by people who provide water and sewage services, and Resolutions 1166 of 2006 and 1127 of 2007 are repealed.</i>	See above comment regarding Resolution 0501 of 2017.
<i>Resolution 884 of 2018. Whereby technical requirements for water and basic sanitation projects in rural areas that are carried out under the differential schemes defined in Part 3, Heading 7, Chapter 1 of Book 2 of Decree 1077 of 2015 are established.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.
<i>Resolution 1063 of 2016. Whereby requirements for water and basic sanitation projects in rural areas that are carried out under the differential schemes defined in Part 3, Heading 7, Chapter 1 of Book 2 of Decree 1077 of 2015 are established.</i>	This resolution is not in force, as it was repealed by Article 28 of Resolution 661 of 2019.
<b>ETHNIC AND PLANNING LAWS:</b>	
<i>Because they are rights that have been established by constitutional law and due to it being supported by the environmental authority itself.</i>	The submitter does not specify any provisions that fall under Article 18.14 of the TPA as environmental law.

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<p><i>As planning and land-use tools, but despite this there is pressure and none of the planning principles are followed at local, departmental and national level.</i></p> <p><i>This generates pressure on those of us who are dedicated to conservation and protection based on the Constitution and the law, leading to fatigue and persecution.</i></p>	

The Secretariat finds that with the submitter's identification of article 2.2.2.1.17.11. of Decree 1076 of 2015, as environmental law of which the failure to enforce is asserted, the submission fulfills the second part of the admissibility set out in letter (c) of Article 18.8 (2).

***d. Appears to be aimed at promoting enforcement rather than at harassing industry;***

The submission filed does not appear to be aimed at harassing an industry, but at seeking the effective enforcement of the environmental law. Therefore, the Secretariat finds that the submission meets the requirement established in letter d) of Article 18.8(2) of the TPA.

***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***

The submitter includes documentation by which it is evident that the matter has been communicated in writing to the following relevant authorities: Corpoamazonía; the Ministry of Environment and Sustainable Development; the Ministry of Housing, City and Territory; the Mayor's Office, Police Inspection and Office of the Ombudsman of Morelia; the Governor's Office of Caquetá; the Office of the Comptroller General of the Republic; Office of the Inspector General of Colombia; and Office of the Attorney General of Colombia. The communications sent by the submitter to the authorities and the responses provided by the authorities, which are attached to the submission, are listed in the analysis of the first part of the eligibility requirement set out in letter c) of Article 18.8(2) of the TPA.

The Secretariat finds that the submission fulfills the requirement of letter e) of Article 18.8 (2) of the TPA, since it includes information substantiating that the matter has been communicated in writing to the relevant authorities of the Party.

***f. Filed by a person of a Party.***

Article 18.8(1) of the TPA allows any person of a Party to file a submission asserting that a Party is failing to effectively enforce its environmental laws. In this regard, Chapter One of the TPA<sup>3</sup> defines the term "person of a Party" as "a national or an enterprise of a Party".

<sup>3</sup> Initial Provisions and General Definitions.

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Likewise, it defines “national” as “a natural person who has the nationality of a Party<sup>4</sup> according to Annex 1.3 or a permanent resident of a Part”.

In the submission filed, the submitter identifies himself as a Colombian citizen, fulfilling the requirement of letter f) of Article 18.8(2) of the TPA, since he is a natural person who has the nationality of a Party.

## 5. Determination of the Secretariat

For the foregoing reasons, the Secretariat finds that submission USCOLSALASEEM/COL/01/2023 meets the eligibility requirements of article 18.8 (2) of the TPA. Pursuant to Article 18.8(4) of the TPA, the Secretariat will determine whether the submission merits a response from the Party.

Notice is hereby given to the submitter and to the Environmental Affairs Council for the purposes established in Chapter Eighteen of the TPA.

(Original signed)

David Marín Cortés  
*Executive Director*

**Secretariat for Environmental Enforcement Matters**

U.S. - COLOMBIA TRADE PROMOTION AGREEMENT

C.C. Sarah Flores, Department of State - U.S.  
Sigrid Simpson, Office of the U.S. Trade Representative  
Daniela Almario, Ministry of Environment and Sustainable Development - Colombia.  
Laura Constanza Hernández, Ministry of Commerce, Industry and Tourism Colombia  
Submitter

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<sup>4</sup> According to Annex 1.3 of the TPA regarding Country-Specific Definitions, with respect to Colombia, natural person who has the nationality of a Party means Colombians by birth or naturalization, in accordance with Article 96 of the Constitución Política de Colombia.