

Washington, DC, February 28, 2024

Subject: Submission in accordance with article
18.8 of the TPA between the U.S. and Colombia

Mr. David Marín Cortés

Executive Director of the Secretariat for Environmental Enforcement
Colombia - U.S. TPA
Race. 7 # 32-33, 27th Floor (Bogotá DC - Colombia)
info@sala-seem.local

Distinguished Mr. Marín,

The [Environmental Investigation Agency-US](#) (EIA-US), a Washington DC-based NGO, has conducted groundbreaking investigations in many countries around the world to expose environmental crimes and support the sustainable management of natural resources. As part of our work, we often share our investigative findings with law enforcement agencies and/or relevant stakeholders, with the goal of improving forest governance.

In Colombia, EIA-US has conducted investigations on both illegal logging and illicit deforestation for cattle ranching. In 2019, the report [Forsaken Forest](#) revealed the *modus operandi* used by timber traffickers in the Colombian Amazon to trade permits purchased on the black market and identified legal loopholes that facilitate *timber laundering*. In 2021, the report [Tainted Beef](#) showed how supermarkets linked to transnational businesses are sourcing from meat suppliers who regularly buy cattle raised on illegally deforested farms installed in national parks and contributing to the financing of illegal armed groups.

Recently, while investigating timber exports, EIA-US found that almost all **wood flooring exported from Colombia fails to comply with Colombian environmental regulations**. For this reason, and in accordance with the provisions of Article 18.8 of the U.S.-Colombia Trade Promotion Agreement (TPA), we are filing a Submission to the effect that, following the procedural steps, a **Factual Record be recommended** around the facts set forth below:

A. Trade flows of wood flooring from Colombia to other countries

According to trade data from [Panjiva](#), which analyzes information provided by the Colombian Directorate of Taxes and Customs ([DIAN](#)) (see [Annex 1](#)), between January 2016 and May 2023,

1,270 shipments of wood flooring [representing approximately **3,226 containers**¹] were exported by sea from Colombia under HS code 4409, which corresponds among other products to parquet or wood flooring².

The main destinations of these shipments were Mexico, Vietnam, and the United States, with 796, 157 and 152 shipments, respectively. This volume of timber represented approximately **US\$43 million declared value in customs**. The main port of export for this timber was Cartagena, with 1,146 shipments, followed by Barranquilla with 81 shipments.

B. Legal requirements for export

According to Article 1 of [Resolution 1367 of 2000](#) issued by the Colombian Ministry of Environment, flooring [*parqués*] is included in the list of forest products that are considered to be secondary transformation forest products.³ Article 7, paragraph 1, of Resolution 1367 of 2000 establishes that those interested in importing or exporting secondary transformation forest products **must attach a certification** from the Regional Environmental Authority [*Corporación Autónoma Regional*] or the Environmental Public Establishments [*unidad ambiental de los grandes centros urbanos*] **stating compliance with the provisions of articles 64 to 68 of [Decree 1791 of 1996](#)**. Such decree established, among other requirements, for timber manufacturing businesses to:

- Have a Forestry Operations Book which is regularly updated. This book needs to contain the volume and species of timber received and processed, as well proof of its legal provenance and accompanying timber transport permits, in addition to the name of the buyer and seller.
- Submit annual reports to the authorities. The reports need to show the harvest area of origin of the processed products and the timber transport permits that accompany them.
- Refrain from acquiring timber without a legal permit, to prove its legality.
- Allow supervision by the competent authorities.

¹ 20 feet long, 8'0" wide and usually 8' 6" high, containers.

² According to information from DIAN, **HS code 4409** corresponds to "Wood (including strips and friezes for **parquet flooring**, not assembled) shaped lengthwise (tongued, grooved, rebated, chamfered, beveled, v-jointed, moulded, rounded or the like) along one or more faces, edges or ends, whether or not planed, sanded or end-jointed". Refer [here](#) to Section IX, Chapter 44.

³ **Secondary transformation forest products or finished products**: These are wood products obtained through different processes and degrees of processing and industrial finishing with higher added value, such as moldings, **parquet**, lath, tongue and groove, doors, furniture, plywood and other related finished products.

C. EIA-US's Investigation

EIA-US, in collaboration with the independent outlet [Agenda Propia](#), submitted multiple access to information requests to Regional Environmental Authorities (CARs) that have jurisdiction in forested-regions where the timber for flooring is being harvested; and to the Environmental Public Establishments (EPAs) in Cartagena and Barranquilla, to inquire about compliance with the provisions of Resolution 1367 of 2000 issued by the Ministry of Environment.

Among other requests, these authorities (CARs and EPAs) were asked to respond the following:

" 3. Please provide information on the certifications issued by said environmental Authority or EPA between January 1, 2016 and May 31, 2023 related to requests for export of second transformation forest products, where there is proof that the sawmills or forest businesses – from which the timber resources subject to export originate-, are complying with the provisions of Articles 64 to 68 of Decree 1791 of 1996. Among the information requested, provide:

- *Consecutive number of certification and date of issuance*
- *File number*
- *Environmental authority that issued the certificate.*
- *Name of the legal or natural person requesting the certificate.*
- *Description of the type of specimens or products to be exported.*
- *Name of the official who issued the certificate.*
- *Dates of validity of certification".⁴*

As a result of access to information requests filed with the CARs and the EPAs of Cartagena and Barranquilla, three different types of responses were received:

- a) All the CARs responded that they **have not issued** certifications.
- b) EPA Barranquilla reported that as of 2022 **they issued 5 certifications to 3 companies** but had not issued any prior to that year. This number contrasts greatly with the total number of shipments exported from the port of Barranquilla, which was 81 shipments.
- c) EPA Cartagena's first response stated that it had issued 86 certifications, but upon EIA-US's request for clarification, the EPA explained that those records corresponded to exports of primary transformation forest products and that **it had not issued** certifications for the export of **second transformation** forest products in accordance with paragraph 1 of Article 7 of Resolution 1367 of 2000. This contrasts with the total number of shipments that EIA-US has a record of, which amount to 1,146 shipments exported from the port of Cartagena.

⁴ Transcription of part of what was established in the petition rights submitted by EIA-US and Agenda Propia.

Below is a transcript of the relevant portions of each response, which are included in Annex 2:

Corpoamazonia

"...Response to request for information from forestry companies, internal file [REDACTED] of [REDACTED],
[REDACTED], code [REDACTED]...."

With respect to this question, after consulting the entity's PQR System, **no requests for export of forest products in second degree of processing during the requested period have been recorded**."

Corpouraba

CONSECUTIVE: [REDACTED]
Date: [REDACTED]

"Response: **There is no record in CORPOURABA's databases of export certifications** of forest products on behalf of forestry industries registered in the jurisdiction of the Environmental Authority."

Regional Autonomous Corporation of Southern Bolivar - CSB

[REDACTED]
REFERENCE: Request for information, response to Radicado [REDACTED] of [REDACTED]

"Regarding numeral 3 in which is requested "information on the certifications that have been issued between January 1, 2016 and May 31, 2023 around the export of forest products of Second degree of transformation "it is established that the Corporación Autónoma del Sur de Bolívar **does not issue export certifications of both timber and non-timber forest products** in second degree of transformation."

Corporación Autónoma Regional del Atlántico

Ref: Radicado No. [REDACTED]

"Response CRA: We would like to inform you that in our entity's database **there are no requests for export certifications of forest products of second degree of transformation**, where it is stated that the forest companies from which the forest resources subject to export come from are complying with the provisions of articles 64 to 68 of Decree 1791 of 1996; nor have certifications related to timber traders for export purposes been requested."

EPA Barranquilla Verde

SUBJECT: Response No. [REDACTED]

It is important to note that, to date, EPA Barranquilla Verde **has issued a total of Five (5) certifications to Three (3) companies, as of the year 2022**, which indicates that in previous years no such certifications were issued. The companies that have requested and obtained LOF registration certifications are the following:

[Transcribes the records]

Regional Autonomous Corporation of the Canal del Dique - CARDIQUE

Oficio No. [REDACTED] of [REDACTED], [REDACTED]
Response to internal file request No. [REDACTED]-[REDACTED] dated [REDACTED], [REDACTED]
In relation to the third and fourth paragraphs of your request, the Corporation during the period from 2016 to date **has not issued certifications** regarding requests for export of forest products of second degree of transformation, since the points of export of such forest products, are in the jurisdiction of the Environmental Public Establishment - **EPA Cartagena, which is the competent environmental authority** within the urban perimeter of the District of Cartagena de Indias.

EPA Cartagena

MEMORANDUM EPA-MEM-[REDACTED]-[REDACTED]

"In response to this point we communicate not being able to provide the requested information for the years 2016, 2017 and 2018. Similarly, with respect to part of the information for the year 2019. Therefore, we provide the corresponding information for the other years requested. In the table, information related to this request is found."

[Transcribes 86 records]

(...)

MEMORANDUM EPA-MEM-[REDACTED]

We hereby **provide a complementary response** to the notification provided through Memorandum EPA-MEM-03563-2023.

EPA Cartagena's Technical Sub-Directorate for Sustainable Development communicates that the response offered to point 4 in MEMORANDUM EPA-MEM-[REDACTED] according to request EXT-AMC-[REDACTED] dated [REDACTED], where 86 records EPA Cartagena Certificates were shared, those correspond to products in **first grade of transformation**.

Regarding requests for the export of forest products at the **second degree of processing**, this Sub-Directorate has **not issued certifications for forest products at the second degree of processing in accordance with paragraph 1 of Article 7 of Resolution 1367 of 2000**.

Therefore, it stems from the responses received that there is a generalized **non-compliance with the obligations** established by Article 7, paragraph one of Resolution 1367 of 2000 issued by the Ministry of Environment, by the competent authorities that should be issuing the certificates and supervising compliance with the provisions of articles 64 to 68 of [Decree 1791 of 1996](#). It also appears that some of the authorities involved are unclear as to the scope of their authority to comply with environmental regulations related to the export of second transformation forest products.

It is important to clarify that the acknowledgement by competent authorities about the lack of issuance of said certifications as per Article 1 of Resolution 1367 of 2000 applies to all products defined as being *secondary transformation forest products*, that include, in addition to flooring, also moldings, doors, furniture, plywood, amongst others. As such, this means that other timber products being exported without these certificates would also be non-compliant with environmental regulations, but the scope of this Submission is limited at this time to flooring [HS code 4409] because EIA-US's investigative inquiries centered exclusively on this supply chain.

D. Harm caused by non-compliance with environmental regulations.

The non-compliance with the export requirements for wood flooring is not just about a missing document mandated by Colombian regulations for international trade, but proof that some of the most basic governance accountability safeguards are not being followed. The fact that Colombia's competent authorities are not issuing the export certificates mandated by article 7, paragraph 1, of Resolution 1367 of 2000, calls into question the legality of the sourcing of the raw timber used to manufacture such flooring. As such and given the lack of effective control in remote and often conflict-prone harvesting areas, the non-compliance can hide environmental harm to Colombia's forests and local peoples as well as lead to unfair competition for U.S. timber flooring manufacturers and other international buyers.

i. Environmental harm

The environmental value of the Colombian Pacific and the Amazon —regions where exporters source their raw timber—cannot be overstated. The identified non-compliance brings into question the legality of the raw materials used to manufacture the approximately 3,226 containers of flooring exported from Colombia between January 2016 and May 2023, as exporters were not able to prove to relevant authorities that their suppliers have basic governance mechanisms in place in their supply chain that include, amongst others, having and keeping their Forestry Operations Book updated; submitting annual reports; refraining from acquiring timber without a legal permit to prove its legality; and allowing supervisions by the

competent authorities.⁵ In the absence of such crucial verifications and without the legally required certificates by relevant authorities, there is significant risk that this wood came from illegal logging, with all the environmental and social damage this implies for Colombia's forests.

The lack of implementation of the regulations established by the State to ensure wood flooring is not manufactured and exported using illegally sourced timber, directly impacts the ability of the state to prevent the illegal degradation of Colombia's tropical forests, and for international consumers of such products to unwittingly or unknowingly be part of it.

ii. Unfair competition for U.S. and other international buyers.

The trade in wood from uncontrolled and illegal sources subjects U.S. manufacturers and forestry companies to unfair competition with an imported product that is not complying with the laws of the country of origin. United States flooring manufacturers [and other international buyers of Colombian wood flooring] should not be in a position where they have to compete with a product for which the costs of forest management, forest inventories, taxes, harvest duties and other requirements have often not been paid, as is the case when sourcing illegal timber.⁶ This trade also puts law-abiding, sustainable forestry industries in the U.S. at a disadvantage, as they cannot compete with cheaper imported merchandise that is not subject to adequate legal and management standards.

In addition, there are other implications for international buyers. The regions where flooring exporters source their timber [the Amazon and the Pacific], to this day are still controlled by illegal armed groups,⁷ which impose their own rules. These rules include paying armed groups so-called "Security Taxes" to enable the harvest, transport, and processing of the timber in the region.

E. Communicating the matter to relevant authorities in Colombia, as required by Article 18.8.2.(e)

As mentioned above, part of EIA-US's work focuses on bringing the findings of our investigations to the attention of the competent authorities and/or stakeholders with the objective of improving forest governance in the countries. As part of this work, EIA-US shared the findings described here on [REDACTED], with the *Procuraduría General de la Nación* [REDACTED]

⁵ Provisions of articles 64 to 68 of Decree 1791 of 1996.

⁶ OECD, *The Economics of Illegal Logging and Associated Trade*, 2007. Available [here](#).

⁷ *El Espectador*, *Caquetá, 27 días en paro: viaje al territorio en disputa entre disidencias de FARC*. February 18, 2024. Available [here](#).

El Espectador, *Cese al fuego: 236 violaciones a los derechos humanos se cometieron en 2023*. February 5, 2024. Available [here](#).

[REDACTED] The office of the *Procurador Delegado* has jurisdiction to perform preventive and judicial interventions with respect to environmental conservation and protection, and ensures proper compliance with legislation and environmental management, as well as the preservation of strategic ecosystems and the sustainable development of the territories.⁸

[REDACTED]

F. Widening the scope and time frame of the *Factual Record*

EIA-US sent access to information requests to the CARs that EIA-US considers to manage the most important forest resources in the country, however, some of them, such as Codechoco, did not respond to repeated requests for information. Therefore, it would be relevant for the Secretariat to consider sending access to information requests to [all](#) CARs in the country, in order to have a broader perspective on non-compliance with the regulations mentioned in this Submission. Likewise, EIA-US considers it important to include within the scope of the authorities, the EPA of Buenaventura, which is the third most important port in terms of export of forest products.

Likewise, the evidence submitted by EIA-US refers to a timeframe ranging from January 2016 to May 2023, but it would be appropriate to extend the timeline to the date of filing of this Submission.

G. Confidentiality

The information contained in this communication -including its annexes- including the names of EIA-US employees, their positions, those of Agenda Propia or officials of the *Procuraduría General de la Nación*, and/or e-mail addresses-, **is requested to be kept under strict confidentiality**. The above is requested both for the communications that the Secretariat may send to the Colombian authorities, as well as for the information made public related to this Submission in the Secretariat's records.

⁸ Scope of work of the *Procuraduría Delegada Para Asuntos Ambientales y Agrarios*. Available [here](#).

H. Conclusion and point of contact

EIA-US's investigations show there is non-compliance with environmental regulations governing exports of second transformation forest products in Colombia. For this reason, in accordance with Chapter 18 of the U.S.-Colombia Trade Promotion Agreement, EIA-US request that once an analysis of this Submission has been undertaken and that the procedural steps are followed, the Secretariat **recommends to the Environmental Affairs Council that a Factual Record be prepared** on the facts described in this Submission.

In case there are any questions, clarifications or follow ups related to this Submission, please contact [REDACTED]

Sincerely,

[REDACTED]

Environmental Investigation Agency