



Sea Turtles
Determination Article 17.8.1

CAALA/07/001/06/REC
DISTRIBUTION: General
ORIGINAL: Spanish

Determination according to Article 17.8.1 of the Dominican Republic, Central America, and United States of America Free Trade Agreement (CAFTA-DR)

Petitioner: Humane Society International –HSI- (US)
Party Involved: Dominican Republic
Date of the Revised Petition’s Receipt: October 1st, 2007
Determination date: August 8, 2008
Submission Number: **CAALA/07/001 (Sea Turtles)**

I. EXECUTIVE SUMMARY

Articles 17.7 and 17.8 of the Dominican Republic, Central America, and United States of America Free Trade Agreement (CAFTA-DR), and the Understanding and the Agreement Establishing the Secretariat for Environmental Matters, established a mechanism in which any person of a Party may file before the Secretariat for Environmental Matters of CAFTA-DR (SEM), submissions asserting that a Party is failing to effectively enforce its environmental laws. The SEM first examines these submissions based on the requirements laid out in article 17.7.2 of CAFTA-DR, and if it considers that the submission meets these requirements, it should determine according to the criteria established in Article 17.7.4, whether the submission merits requesting a response from the Party involved. Based on the Party’s response, the SEM informs the Council if the submission merits the preparation of a factual record, providing its reasons. The Secretariat shall discard the submission if considers that it does not merit the preparation of a factual record.

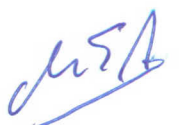
On May 9th, 2007, Mrs. Marta M. Prado filed on behalf of Humane Society International (Petitioner) and before the SEM a submission pursuant to articles 17.7 and 17.8 of CAFTA-DR. The submission asserted that the Government of the Dominican Republic had failed to effectively enforce the General Law of Environment and Natural Resources (Law 64-00) and the Decree 752-01, regarding the protection of sea turtles in danger of extinction.

On August 30th, 2007, the Secretariat determined that even though the submission met the requirements established in letters a), b), d), e), and f) of article 17.7.2, the submission as a whole did not provide enough information for the SEM to revise it, and thus it did not comply with requirement c) of this article. Specifically, the SEM determined that the submission did not have enough information to allow it to consider whether private remedies available under the Party's laws had been pursued. Accordingly, the SEM granted the Petitioner 30 days to send a Revised Submission. In October 1st, 2007, the Petitioner filed such Revised Submission, adding information regarding the pursuing of the private remedies available to the public according to the Party's laws.

On December 5th, 2007, the Secretariat determined that the Revised Submission met all the requirements set out in Article 17.7.2, and that based on the provisions established in Article 17.7.4 it merited requesting a response from the Dominican Republic. The Government of the Dominican Republic was notified of this determination on December 14th, 2008.

Prior to its response, and according to Article 17.7.5 of CAFTA-DR, the Dominican Republic invoked exceptional circumstances and requested an extension of its response period from 45 to 60 days. The concrete exceptional circumstance invoked was the arrival of two tropical storms in November and December of 2007, which severely affected the country. On February 13th, the Party sent by electronic means its response to the Sea Turtles Revised Submission, signed by the Secretary of State for the Environment and Natural Resources, Mr. Omar Ramírez, along with many annexes including an Action Plan. In this context, the Party's response was delivered on day number 61 after the SEM notification requesting it. Afterwards, on April 3rd, a note was formally received by mail, signed by the Dominican Republic Secretary of State for Foreign Affairs, containing the formal response along with many annexes, adding a copy of each document mentioned. In this response, the Dominican Government accepts that it is important to complete the inventory, and that this would be the first activity within a group of actions that will be promoted at all levels, including the search for subsistence alternatives to all affected people. The response included the commitment of the implementation of an Action Plan for the Protection of Sea Turtles that year after year contributes to achieve the objective of eradicating the illegal trading of products manufactured from sea turtles and its parts across the country. As a support to this affirmation, the response contained the 2008-2010 Action Plan. Taking into account the complexity of the issue, the Dominican Republic asserted in its response that the support from everyone is needed, from NGOs, civil society, international cooperation, supporting countries, and by any other competent entity.

After considering the submission in light of the Dominican Republic response, the Secretariat concludes that the response leaves unresolved central issues that are included in the Sea Turtles Revised Submission. These central issues are related to the commitment and the technical and financial feasibility needed to complete the inventories of businesses that trade with sea turtles products, to make possible the identification of whether these products were manufactured with turtles coming from before the prohibition established in 2001. In this report to the Council, the SEM provides its reasoning to determine that this case merits the preparation of a factual record.



II. SUMMARY OF THE SUBMISSION

This section summarizes the original submission filed in May 9th, 2007, and the revised submission filed in October 1st, 2007.

A. The Original Submission

The Petitioner asserts that the Government of the Dominican Republic has failed to effectively enforce some domestic environmental laws aimed at the protection of sea turtles in danger of extinction. The Petitioner, based on reports rendered by a Non-Governmental Organization and direct reports rendered by contacts of the Petitioner in the Dominican Republic, asserts that many ornamental products made from sea turtles in danger of extinction are still being openly traded in street markets, souvenirs shops, markets, and jewelry stores visited by tourist throughout the Dominican Republic. The Petitioner asserts that many products such as wallets, jewel cases, bracelets, rings, hair ribbons, hairpins, combs, picture frames, dishes, silverware, washbasins, letter openers, cigarette cases, and young filled turtles, are made from turtle shells. The Petitioner asserts that by failing to complete an inventory of products manufactured from sea turtles as it is required by domestic law, the Dominican Republic is failing to effectively enforce the sea turtle protection laws which prohibit the trade of products made from sea turtles in danger of extinction which are captured and kill within the country after July 31st, 2001.

Specifically the Petitioner indicates that the Article 140 of the General Law of Environment and Natural Resources (Law 64-00) establishes that “it is forbidden to hunt, fish, capture, harass, mistreat, kill, trade, import, export, manufacture or made handicrafts, show, or illegally posses...” “flora and fauna species declared threatened or in danger of extinction by the Dominican State or by any other country according to the international agreements subscribed by the Dominican State...”.¹

In addition, the Petitioner emphasizes that in order to enforce such article “and to provide specific protection for the endangered sea turtles, the Government of the Dominican Republic issued the Decree 752-01...”, which establishes a ten-year prohibition to “capture, kill, collect eggs, or trade products from green turtles, hawksbill turtles, loggerhead and leatherback turtles”². Moreover, the Petitioner asserts that Article 3 of Decree No. 752-01 requires that the Office of the Undersecretary of State for Marine and Coastal Resources and the Main Directorate of Wildlife and Biodiversity compile inventories of products sold or used in artisan or commercial establishments that are made from protected sea turtles.³

The Petitioner affirms that “without a proper inventory, the Government of the Dominican Republic will not have any instrument to realize if the products traded in handicraft shops and commercial stores, come from turtles killed before or after the prohibition set out in the Decree 752-01, or from turtles certified by the Government to have died by natural causes, or if the products are imported or produced within the country”.⁴

Regarding the private remedies available to the public, the Petitioner emphasized that “according to best belief and knowledge of the Petitioner and after completing a legal investigation within the Dominican Republic, there is not any judicial resolution or administrative procedure requesting the

¹ Page 2 of the original submission

² Ídem.

³ Ídem.

⁴ Page 4, paragraph 5 of the Original Submission.



Government of the Dominican Republic the enforcement of the Law No. 64-00 or the Decree 752-01 to provide wider protections for the endangered sea turtles.”⁵ Furthermore, the Petitioner stated that “HSI considers that the process for submissions regarding the enforcement of the law established in article 17.7 of CAFTA-DR offers a better chance to draw attention to the failure of the Dominican Republic to effectively enforce its sea turtles protection laws...” and that “in addition, as noted above, the Government of the Dominican Republic has failed to respond to our letter of April 4, 2007, outlining the concerns expressed in this submission, Thus we have no reason to believe that bringing a lawsuit in the Dominican Republic would result in an adequate response to our inquiry or that we would receive any more favorable treatment than was granted to our letter ...”⁶. They mention that “in addition, the Secretariat of the CEC⁷ has agreed with a petitioner that it might be “unfeasible and unreal, for individual and non-governmental institutions with limited resources, to seek in private remedies available to the public, the solution to a transnational, wide, and complex issue.””⁸

B. The Revised Submission

On October 1st, 2007, the Petitioner filed a Revised Submission in which he stated that “in deciding whether to request a response, the Secretariat shall only be “guided by” the above factors; they are not requirements like the factors under Article 17.7.2. The presence or absence of evidence or the degree of evidence available regarding these factors is therefore not, nor should it be, determinative of whether the Secretariat requests a response.”⁹ Moreover, the Petitioner indicated that “support for this interpretation can be found in article 17.7.5 (b)(ii), which requires the responding party to indicate whether the complaining party has pursued private remedies in connection and if such remedies are available to the complaining party. If pursuit of private remedies and evidence thereof were required under Article 17.7.2 or Article 17.7.4 prior to the secretariat requesting a response from the party allegedly failing to enforce its laws, then it would be unnecessary for the agreement to require the responding party to furnish the exact same information at a later date pursuant to Article 17.7.5(b)(ii).”¹⁰

Regarding pursuit of private remedies, the Revised Submission included new information indicating that the pursuit of redress under Law No. 64-00 would entail great expense and devotion of resources by HIS, and that any resulting remedy would likely fall short of addressing the large-scale problem alleged in the submission.¹¹ The Submitter noted that the CEC Secretariat deemed similar explanations reasonable in a determination on the Coal-Fired Power Plants submission. The Submitter stated that in that case, the CEC Secretariat acknowledged that the submitters were trying to address “environmental law enforcement as regards the cumulative and widespread impacts of pollution from coal fired power plants on environmental and human health, making their assertions particularly well-suited to the SEM process.”¹²

⁵ Page 8, paragraph 4 of the Original Submission.

⁶ Page 8, paragraph 5 of the Original Submission

⁷ Commission for Environmental Cooperation created by the North American Agreement on Environmental Cooperation (NAAEC)

⁸ Pages 7 y 8 of the Official Submission

⁹ Pages 3, paragraph 6 of the Revised Submission

¹⁰ Pages 3 y 4 of the Revised Submission

¹¹ Page 12 and 13 of the Revised Submission

¹² Page 12 of the Revised Submission and Coal-fired Power Plants - A14/SEM/04-005/48/ADV, Secretariat of the Commission for Environmental Cooperation, Notification to the Council that it merits the preparation of a factual record according to article 15 (1) (Dec 5th, 2005), pages 15-16



The Submitter noted that “the CEC referred to one of its prior determinations in this respect, which found ‘the larger the scale of the asserted failure, the more likely it may be to warrant developing a factual record, other things being equal’”. HIS stated that they are “faced with similar challenges in this case”, as “the information available to HIS and detailed in this submission documents the country-wide effects of the Government’s failure to enforce its environmental laws”. HSI stated that while they “could pursue dozens or even hundreds of lawsuits against these vendors under Law 64-00, such an endeavor vastly exceeds the limits of HIS’s human and monetary resources. Moreover, HIS does not believe that redress under Law 64-00 is the appropriate remedy in this case...” as “to HIS knowledge, remedies under Law 64-00 are included in Article 178. This provision allows persons or associations of citizens to bring a cause of action before the relevant authorities for violations of the law, such as the illegal hunting or sale of certain species...” and “here, HIS is not seeking redress against an individual hunter or vendor, but instead is seeking proper enforcement of the laws governing all hunters and vendors.”¹³

Accordingly, HIS argues that

“a more appropriate vehicle for seeking redress, therefore, as was the case in the CEC matter involving air and water pollution, is the development of a factual record. It is HIS’s sincere hope that a factual record would be useful in identifying the precise scope of the problem, and the areas where enforcement is needed. This would assist the Dominican Republic in its efforts to conduct the required inventories, thereby also alleviating some of the cost burden that appears to be a present obstacle to proper enforcement. Moreover, a factual record that details the magnitude of the problem will help foster the political will of the Government to dedicate the necessary funding to the appropriate ministries so they can conduct the required inventories and ensure proper enforcement of the law.”¹⁴

The Submitter also highlights that publication of two TRAFFIC reports documenting the Government’s alleged failure to enforce its sea turtle protection laws, the first of which was published in 2001, indicates that “the Government was on notice of this enforcement issue prior to HIS’s April 2007 letter”.¹⁵

III. SUMMARY OF THE DOMINICAN REPUBLIC’S RESPONSE

The Dominican Republic (DR) responded the HSI submission on February 13th, 2008, through the Secretariat of State for the Environment and Natural Resources, via a letter that was sent to the SEM by email, which was later sent by certified mail and received by the SEM on April 3rd, 2008, accompanied with a letter from the Minister of Foreign Affairs, including a larger number of exhibits.

Within its response the DR stated that it responds “even though the SEM does not count with approved procedures to process the public submissions...”¹⁶ and added that “it must be emphasized

¹³ Page 13, paragraph 1 of the Revised Submission

¹⁴ Page 13, paragraph 2 of the Revised Submission

¹⁵ Page 13, paragraph 3 of the Revised Submission

¹⁶ Page 1, paragraph 1 of the DR Response



that its country's domestic environmental laws are very recent..."¹⁷, expressing that "it has a firm decision to enforce, on a short term, the laws with the purpose of eradicating the exploitation and usage of sea turtles."¹⁸ In addition, the Dominican Republic reported that "they are carrying out efforts to enforce the domestic laws and the commitments acquired in multilateral environmental agreements and free trade agreements"¹⁹

The Party stated that "even though HSI argues that there is a failure by the Government of the Dominican Republic to effectively enforce its environmental laws regarding sea turtles, evidences show that the highest levels of growth in the world of the Hawksbill Turtles have been registered in Cabo Rojo marine area (adjacent area to the Jaragua National Park) and in Bahia de las Aguilas (inside the Jaragua National Park)."²⁰ The Dominican Republic accepts the TRAFICC report on the trade and usage of products derived from sea turtles, but also affirms that two partial inventories of products derived from sea turtles have been performed in the last two years, and that currently the Government is performing an inventory of sales points and availability of these articles in Santo Domingo, Puerto Plata y Romana. In addition, it is mentioned in its response that another inventory was performed in 2007 with the support of AECI²¹. The Party indicates that a decade ago, sub-aquatic inventories to determine the density of the population and the dynamic growth are performed at Jaragua National Park, by Group Jaragua-Project Hawksbill Turtles.²²

The Party states that its preservation efforts are shown in the park rangers and inspectors who make their sea turtle control rounds throughout the Dominican Republic's beaches. The Party also mentions that they have an Attorney General Office for the Defense of the Environment and Natural Resources, which is supported by the Navy, hotels, tour guide associations, community groups, and NGOs, which allows it to develop an outreach program, to perform beach control actions, to have a complaint system, and to have a monitoring and control of the 60-meter strip established by Law 305-1968²³

The Party, in its response, argues that the Government of the Dominican Republic, in cooperation with HSI, developed the first national workshop of identification and training of stakeholders which work with the CITES agreement, and that they are standing by for coordinating efforts to launch a bi-national workshop with Haiti. The Party also emphasizes that they are complying with the CITES agreement, because in the current administration no imports or exports licenses have been authorized. In addition, the Party mentions that even though the internal trade has not been eradicated, they depend on the other Governments of the region to be informed regarding imports to those countries originated from DR.²⁴

In its response, the Dominican Republic indicates that it recognizes the severity of this issue as the inventory "would be the first activity of a set of actions that must be performed for the protection of sea turtles."²⁵ The Party argues that they are aware of problem and its severity and that it has advanced on its solution, but indicates that it needs everyone's support, NGOs, Civil Society,

¹⁷ Page 4, paragraph 2 of the DR Response

¹⁸ Page 4, paragraph 3 of the DR Response

¹⁹ Page 4, paragraph 4 of the DR Response

²⁰ Page 5, paragraph 4 of the DR Response

²¹ Acronym of the Spanish Agency for International Cooperation

²² Pages 4 and 7 of the DR Response

²³ Page 6 of the DR Response

²⁴ Page 7, paragraph 3 of the DR Response

²⁵ Page 7, paragraph 5 of the DR Response

International Cooperation, and supporting countries, in order to face the problem on its entirety, and that in this way through a joint effort and the implementation of the 2008-2015 Action Plan for the Protection of Sea Turtles, the trade of sea turtles and its products can be stopped.²⁶

At the end of the response, the Party indicates its concern with the HSI assertion “that the preparation of a factual record would be helpful to the Government of the Dominican Republic in its efforts to enforce the laws, due to the information gathering necessary for the Government to understand the magnitude of the problem and the deficiencies on its implementation...”²⁷ The Party affirms that this does not match with SEMARENA’s will, which is committed to the search of solutions and to work in support of the conservation of natural resources and biodiversity, and that it does not reflect either the work performed towards a better enforcement of the Environmental Cooperation Agreement. Due to this reason, the Party hopes that the submitted response “helps to solve the concerns expressed by Humane Society International, and to recognize the efforts by the Government of the Dominican Republic to protect the environment and natural resources, and to achieve the objective of Chapter 17, which is the effective enforcement of the environmental laws...”²⁸

Afterwards²⁹, the Dominican Republic highlighted that “the priority for this State Secretariat, as stated in the Action Plan for the Effective Protection of Sea Turtles is to complete the inventory of commercial establishments which trade sea turtles by-products, parts and derivatives. We understand its importance, because it is mandated by law and because it is the starting point for a series of actions to be implemented within the Action Plan for the Protection of Sea Turtles, and as it is contemplated in the document of regional priorities (Road Map) which was prepared in the framework of CAFTA-DR’s Regional Cooperation.”³⁰

In relationship with the commitment to provide national funds for completing the inventory, the expanded response highlighted that “to complete the inventory of establishments which trade with Sea Turtles by-products, parts and derivatives, the Secretariat is channeling funds from the national budget for these purposes. The United States Agency for International Development has also supported the initiative and we have their financial support for these purposes.”³¹ Additionally, the expanded response mentioned that “the Secretariat has a total of approximately twenty three millions of pesos, within its budget for Biodiversity Protection, which are being utilized in the implementation of the Action Plan for the Protection of sea turtles.”³²

IV. ANALYSIS

This determination is oriented to comply with the general purposes of Chapter XVII of CAFTA-DR, therefore, it must contribute to the better enforcement of the environmental laws of the Party allegedly failing to do so. When analyzing this case the principles that shall be considered must be

²⁶ Ibidem.

²⁷ Page 7, paragraph 4 of the DR Response

²⁸ Page 8, paragraph 2 of the DR Response

²⁹ On July 29, 2008, the Dominican Republic sent via email an extended response, signed by the Secretary of State for the Environment and Natural Resources, Lic. Omar Ramírez.

³⁰ Page 1, paragraph 6 of the DR Expanded Response

³¹ Page 2, paragraph 2 of the DR Expanded Response

³² Page 2, paragraph 3 of the DR Expanded Response



derived from this legal framework and its purposes. In the same way, the Dominican Republic environmental laws' objectives and its principles shall be a compulsory reference when analyzing this case. Finally, determinations in cases processed by the Secretariat of the North American Commission for Environmental Cooperation (CEC) were considered to be an informal source of guidance for considering whether a factual record is warranted in this case.

To perform objectively this task, the SEM shall analyze the original submission, the revised submission, the Party's response, and all the material introduced to the process to determine: a) What are the relevant factual matters raised in the submission?, b) Has the Dominican Republic convincingly and entirely responded?, d) Would a factual record help resolve central factual questions raised in the submission and left open in the response?, and e) Would proceeding with a factual record contribute to a better enforcement of the Dominican Republic's environmental laws?

A. Analysis of the Original and Revised Submissions' main arguments

HSI is known for its global efforts to protect biodiversity and against cruelty in the treatment of animals. Within these efforts there are the ones aimed at the protection of all species of sea turtle. Thus, HIS oversees the legal advances about this topic in several countries like the Dominican Republic, and this is the reason why HIS mentioned in its submission Article 140 of the General Law of Environment and Natural Resources which establishes that "it is prohibited to hunt, fish, capture, mistreat, kill, traffic, import, export, sell, manufacture or produce traditional handicrafts, as well as exhibit and illegally possess" "species of flora and fauna that are found to be threatened or endangered by the Government of the Dominican Republic or any other country in accordance with international treaties signed by the Dominican Republic..."³³

To enforce this mandate the Government of the Dominican Republic issued Decree 752-01 which declared a ten-year total ban for the capture, killing and trade of any product derived from sea turtles.³⁴ For this purpose, Article 3 of the same Decree established the obligation to perform an inventory of products made of protected sea turtles used or sold in handicraft stores or other businesses. This is an obligation of the Dominican Republic's environmental institutions, and HSI argues that, at the moment, it has not been complied with, and this, day after day, contributes to increase the risk of depredation of these species.

The Submitter affirms that "without compiling proper inventories, there is no way for the Government of the Dominican Republic to ascertain whether products being sold in artisan stores and commercial establishments have come from turtles killed before or after enactment of 752-01, whether the products are imported or produced locally, or if the products come from turtles certified by the government as dying of natural causes"³⁵.

HSI considers, and its petition is oriented in that sense, that "a more appropriate vehicle for seeking redress..." is the development of a factual record. HIS states that it is its sincere hope that a factual record would be useful in identifying the precise scope of the problem, and the areas where enforcement is needed. HIS is further of the view that a factual record would assist the Dominican Republic in its efforts to conduct the required inventories, thereby also alleviating some of the cost

³³ Page 2 of the Original Submission

³⁴ Decree 752-01

³⁵ Page 4, paragraph 5 of the Original Submission



burden that appears to be a present obstacle to proper enforcement. Moreover, HIS asserts that a factual record that details the magnitude of the problem will help foster the political will of the Government to dedicate the necessary funding to the appropriate ministries so they can conduct the required inventories and ensure proper enforcement of the law.³⁶

Finally, it is derived from HIS's main request that clear planning and financing are needed to be able to effectively perform this inventory established in the environmental laws of the Dominican Republic. HSI requests the development of a factual record, because it considers that it would help to perform these inventories and its needed tasks.

B. Analysis of the DR response to the main arguments

The Secretariat for Environmental Matters makes its analysis based mainly on the contents of the original response by the Dominican Republic, due to the fact that the expanded response sent on July 29, 2008 is clearly outside the period set in Article 17.7 No. 5³⁷. Although the SEM recognizes the right of each Party to inform the SEM on the advances in each case, it is wary of encouraging late replies by the Parties to environmental submissions. Consequently, the great majority of the information presented in the note of July 29, 2008, would be analyzed in detail during the preparation of a factual record, if it is decided by the Council, by a vote of any Party, following this recommendation of a factual record by the SEM.

The Dominican Republic has acknowledged, both in its original response and in its expanded response, the truthfulness of the assertions expressed by the HSI in its original and revised submissions. Nevertheless, it has responded to the HSI main argument indicating that a "2008-2015 Plan of Action for the Protection of Sea Turtles" has been developed, and that it includes, as one of the first actions to be taken, the carrying out of the inventories which are the subject of the submission.³⁸ The expanded response of July 29, 2008, notes that during the week of August 4-8, 2008 a project will be prepared for the completion of the inventory, through regional funds.³⁹

The Government of the Dominican Republic considers that the development of a factual record is not the only alternative to carry out the inventory, because the solution to this problem is part of its administrative jurisdiction.

Although the Dominican Republic is correct in that the creation of the inventory is its responsibility, and not something that should be carried out through a factual record, neither the response nor the expanded response show a clear timeline for implementation, an assigned and available budget, nor the public official responsible for the "2008-2015 Action Plan for the Protection of Sea Turtles Protection." In light of the assertions of a lack of enforcement to date, independent presentation in a factual record of a detailed factual accounting of the current situation and the Dominican Republic's plans to address it is warranted.

C. Analysis on whether it merits developing a Factual Record

³⁶ Page 13, paragraph 2 of the Revised Submission

³⁷ The SEM reviewed all of the information included in the DR expanded response with the only purpose of identifying if the facts had changed in a way that makes unnecessary the preparation of a Factual Record.

³⁸ In its response, the Dominican Republic expressed a set of arguments which are not related directly to the submission's main argument, therefore, and with the purpose to follow the principle of congruence between the request and the answer, we will not analyze them.

³⁹ See page 2, paragraph 1 of the DR Expanded Response.

It is essential to determine, based on the documents and evidence presented, if the real circumstance of the failure to enforce the environmental laws of the Dominican Republic can be established, in other words, What is the concrete issue?, What has the Dominican Republic done in the past to solve the problem?, and What is it planning for the future?. Based on the presented facts, How will these plans solve the problem? How secure is the financing, and the participation of key stakeholders with the necessary experience for a successful solution of the lack of enforcement? How clear is the authority and mandate to oversee the solution to this asserted lack of enforcement? To be able or not to determine the clarity and credibility of these factual elements shall be the main criterion to define the necessity and pertinence of a factual record.

The concrete problem refers to the general framework of the environmental law in the Dominican Republic, which explicitly establishes the prohibition to hunt, fish, capture, mistreat, kill, traffic, import, export, sell, manufacture or produce traditional handicrafts as well as exhibit and illegally possess species declared as threatened or endangered (article 140, Law 64-00). This provision was confirmed by the total prohibition declared, until 2011, by the Dominican Government (Decree 752-01, on July 2001) with purpose of protecting sea turtles. Furthermore, sea turtles have an additional level of protection, due to the fact that Dominican Republic is signatory of the CITES Agreement since 1986, which entered into force, within the Republic, in 1987.⁴⁰

It is noticeable that these Dominican Republic laws, regarding the protection of sea turtles, can only be enforced if there is enough reliable information on which products have been obtained from turtles killed before the set prohibition or from turtles that died because of natural causes which exploitation has been authorized by the competent public agency. The Dominican Republic's measures of control and surveillance will have a very limited effectiveness if the officials in charge of such measures cannot distinguish between the products derived from lawfully acquired sea turtles, from those acquired in violation of the environmental laws in force.

The evidence presented shows that in 2006, TRAFICC⁴¹ performed a field investigation on the level of enforcement of sea turtles protection laws. This Report show that 5 years after declaring the total prohibition, 249 out of 414 investigated businesses, trade with sea turtle products and byproducts in the open and at public sight⁴², at the sight of Dominican authorities, which implies a continuous failure to enforce the domestic environmental laws. The Dominican Republic has not denied this argument, in their response; they only confirmed the fact that in the past, partial inventories of the sea turtle products have been performed.

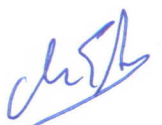
These inventories, which should have been performed by the Dominican Republic its entire territory since the issuing of Law 64-00 and Decree 752-01 have not been performed—according to the response- and until before the HSI submission, apparently, there were no plans to implement them. Nevertheless, this determination cannot make statements about the motives of this failure to enforce the environmental laws of the Dominican Republic, but it can only state that such a failure happened.

On the other hand, neither the response by the Dominican Republic, nor its expanded response, have questioned HIS's argument that “after conducting legal research in the Dominican Republic, there

⁴⁰ Cfr. <http://www.cites.org/esp/disc/parties/alphabet.shtml>

⁴¹ REUTER Adrian and Crawford Allan. (2006) **Tourist, Turtles and Trinkets: a look at the trade in marine turtle products in the Dominican Republic and Colombia**. TRAFICC

⁴² The study reported 500,000 identified products.



have not been any court actions or administrative proceedings requesting the Government of the Dominican Republic to enforce Law No. 64-00 or Decree No. 752-01 to provide greater protections for endangered sea turtles”⁴³ and thus this is a reason why they request the development of a factual record. In any case, it has been considered in other cases dealt by the Commission on Environmental Cooperation of North America-CEC “that the availability of private remedies do not limit continuing with the consideration of the submission or the recommendation of a factual record.”⁴⁴ Due to the mentioned whereof, this argument is still valid and has been implicitly accepted by the Party.

The Dominican Republic assertion that the inventories established by article 3 of the Decree No. 752-01 have been identified as a priority, through its incorporation to the “2008-2015 Action Plan for Sea Turtles Protection” is not supported by convincing evidence. There is no information that may lead to a reasonable conclusion that the human, economical, and logistic resources have been assigned for this task. They have not presented any administrative resolution that shows legal commitment to such asseveration, and the current risk situation for sea turtles leads necessarily to consider that the risk will persist in this case.

The General Law for the Environment and Natural Resources (Law 64-00) of the Dominican Republic, establishes that some of the instruments for the environmental and natural resources management are “the special and sectoral laws, international treatments, and agreements, and the rest of legal provisions oriented to protect the environment and natural resources, including the technical provision regarding the environment protection...” (Article 27.2 Law 64-00). The management of the “sea turtles” resource entails not only its use but also its protection. In this case, the use is limited to those turtles killed before the prohibition, or those who after the prohibition died of natural causes and its use has been lawfully authorized. This resource is in great danger of extinction, which lead us to remember that, according to article 8 of the Law 64-00, “the prevention criteria shall prevail over any other regarding the public or private management of the environment and natural resources (applying the principle 15 of the Río Declaration)⁴⁵, furthermore, the lack of absolute scientific certainty cannot be invoked as a reason to avoid taking the preventive and effective measures in all activities that produce a negative impact on the environment, according to the precaution principle”.

The Dominican Republic’s failure to complete the inventories and to effectively enforce the environmental laws regarding the protection of Sea Turtles constitutes one of these types of responsibilities. Additionally, the preparation of a factual record will provide a great opportunity to accelerate the process of obtaining the cooperation established in the Environmental Cooperation Agreement of CAFTA-DR to complete the inventories.

At this point of the analysis, the Party’s response and expanded response and the alternative presented, are not conclusive and do not constitute evidence to its short term feasibility. Studying the precedents from the Environmental Cooperation Commission for North America – CEC, we have reached the conclusion that a government response before an environmental submission, should be clear, direct and complete, and when this is not the case, when “the response leaves open central

⁴³ HSI Revised Submission, Page 12, paragraph 2°.

⁴⁴ Commission for Environmental Cooperation. **North American Environmental Law and Policy. Submissions on Enforcement Matters, September 2004 to August 2006.** Case SEM-04-005 page 170.

⁴⁵ UNITED NATIONS. **Río Declaration on Environment and Development, 1992.** Río de Janeiro, Brazil. Page 3 principle 15

issues”⁴⁶ alleged in the submission, there have always been recommendations to prepare a factual record to comply, among other things with the solution of these vacuums left by the response.

V. DETERMINATION

Inferred from the grounds whereof, the Revised Submission and the Dominican Republic Response, leave unanswered certain main questions regarding the effective enforcement of environmental laws oriented to the protection of sea turtles, specifically regarding the current status of the problem, already accepted by both parties. It is also important to determine, in a more concrete manner since the answer does not do it, the past efforts made by the Dominican Republic to complete the inventories and the causes of its failure to do so. On the other hand, the potential impact that the Plan of Action, proposed by the Dominican Republic, might produce over the problem is uncertain, based on the evidence presented.

Therefore, it is appropriate to consider that a factual record is necessary because: a) it is important to present in detail the facts that allow interested persons to understand entirely the real magnitude of the problem; b) it is essential to discover how past facts inform us if the Dominican Republic has contributed to solve the problem in the context of its domestic laws; and c) given the findings of this case, it is important to document objectively and to present in an objective manner, by means of an independent investigation, the detailed facts regarding the development and planned implementation of the Plan of Action, presented by the Dominican Republic to solve the problem.

Consequently, in pursuant of article 17.8.1 of CAFTA-DR and for the reasons indicated in this document, the SEM DETERMINES that it is necessary to inform to the Environmental Affairs Council that this case merits developing a factual record on the topic of the Revised Submission CAALA /07/001 (Sea Turtles).

Respectfully submitted to your consideration on August 8, 2008.



Miguel Araujo
General Coordinator

⁴⁶ Cfr. SEM-04-005 (Pages. 174, 177) SEM-04-007 (Page. 249) both in Commission for Environmental Cooperation. **North American Environmental Law and Policy. Citizens Submissions on Enforcement Matters. September 2004 to August 2006.** Also see: SEM 02-003 (Page. 143) in: Commission for Environmental Cooperation. **North American Environmental Law and Policy. Citizens Submissions on Enforcement Matters July 2002 to August 2004.**