

Secretariat of the Commission for Environmental Cooperation

**Secretariat Determination in accordance with Articles 24.27(2) and (3) of the
United States-Mexico-Canada Agreement**

Submitter: Name Withheld Pursuant to ECA Article 16(1)(a)
Party: United Mexican States
Original submission: 2 February 2023
Date of revised submission: 25 April 2023
Date of determination: 24 May 2023
Submission No.: **SEM-23-002** (*Avocado Production in Michoacán*)

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA or “the Agreement”) and the Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada (ECA) entered into force. After this date, the Submissions on Enforcement Matters (SEM) process originally established by Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) is governed by USMCA Articles 24.27 and 24.28. The Secretariat of the Commission for Environmental Cooperation (“CEC Secretariat”)¹ remains responsible for implementing the SEM process, as stipulated in the ECA.²
2. The SEM mechanism allows any national of a Party or entity organized under the laws of a Party to file a submission asserting that a Party to the USMCA is failing to effectively enforce its environmental laws. The CEC Secretariat initially reviews submissions based on the requirements set out in USMCA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements, it then determines, in accordance with the criteria of Article 24.27(3), whether the submission merits a response from the Party in question. In light of the Party’s response, the Secretariat then determines whether the matter warrants the preparation of a factual record and, if so, so informs the CEC Council and the Environment Committee,³

¹ The Commission for Environmental Cooperation was created in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), signed by Canada, the United States, and Mexico (the “Parties”). Pursuant to ECA Article 2(3), the Commission for Environmental Cooperation (CEC) “will continue to operate under the modalities in place as of entry into force of [the ECA].” The constitutive bodies of the CEC are the Council, the Secretariat, and the Joint Public Advisory Committee (JPAC).

² While the provisions governing the SEM process are now in Chapter 24 of the USMCA, some related procedures are also set out in the ECA, namely: the role of the Secretariat in the implementation of the submissions process; the role of the Council in exchanging information with the Environment Committee; the preparation and publication of factual records; and the Council’s cooperative activities arising from such records. ECA, Articles 2(3), 4(1)(l), 4(1)(m), 4(4) and 5(5).

³ The Environment Committee was established by USMCA Article 24.26(2) and its role is to supervise the implementation of Chapter 24 of the Agreement.

providing its reasons as prescribed by USMCA Article 24.28(1); otherwise, it terminates the review of the submission.⁴

3. On 2 February 2023, a Mexican citizen (“the Submitter”), who requested the confidentiality of their data in accordance with Article 16(1)(a) of the ECA, filed a submission with the Secretariat, in accordance with Article 24.27(1) of the USMCA, asserting that Mexico is failing to effectively enforce its environmental laws with regard to the protection of forest ecosystems and water quality from the adverse environmental impacts of avocado production in Michoacán, Mexico.⁵
4. On 6 March 2023, the Secretariat determined that submission SEM-23-002 (*Avocado Production in Michoacán*) did not meet all the eligibility requirements and criteria set out in USMCA Article 24.27 and notified the Submitter in its determination under Articles 24.27(2) and (3).⁶
5. The Secretariat found that the Submitter must provide information to substantiate that the matter has been communicated in writing to the Party in order to satisfy Article 24.27(2)(e).
6. On 25 April 2023, the Secretariat received the information requested by the Secretariat in its determination.⁷
7. After examining the documentation provided by the Submitter, the Secretariat determines that the submission now meets all the eligibility criteria set out in paragraphs (1) and (2) of USMCA Article 24.27 and determines that it merits a response from the Government of Mexico under paragraph (3). The Secretariat supplements its reasoning in its determination from 6 March 2023 as follows.

II. ANALYSIS

8. The CEC Secretariat may consider any submission asserting that a Party to the USMCA is failing to effectively enforce its environmental laws. The Secretariat reiterates that the requirements of USMCA Articles 24.27(1), (2), and (3) are not intended to be an insurmountable procedural screening device⁸ and must therefore be given a broad interpretation consistent with the objectives of Chapter 24 of the USMCA.⁹ The Secretariat reviewed the submission with that perspective in mind.

III. USMCA Article 24.27(2)(e)

9. In its determination dated 6 March 2023, the Secretariat found that submission SEM-23-002 satisfies USMCA Article 24.27(1), Article 24.27(2)(a)-(d), and Article

⁴ More details on the various stages of the Submissions on Enforcement Matters process, the public registry of submissions, and previous Secretariat determinations and factual records can be found on the CEC website at <<http://www.cec.org/submissions-on-enforcement>>.

⁵ SEM-23-002 (*Avocado Production in Michoacán*), Submission under Article 24.27(1) of USMCA (2 February 2023), at: <<https://bit.ly/3BsdE7f>> [Submission].

⁶ SEM-23-002 (*Avocado Production in Michoacán*), Determination in accordance with Articles 24.27(2) and (3) of the USMCA (6 March 2023), at: <<https://bit.ly/41xYLLc>> [First Determination].

⁷ SEM-23-002 (*Avocado Production in Michoacán*), Additional Information for Submission under Article 24.27(1) of USMCA (25 April 2023), at: <<http://bit.ly/3TGwKwZ>> [Additional Information for Submission].

⁸ SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998); SEM-98-003 (*Great Lakes*), Article 14(1) and (2) Determination (8 September 1999); SEM-20-001 (*Loggerhead Turtle*), Article 24.27(2) and (3) Determination (8 February 2021).

⁹ USMCA Article 24.2.

- 24.27(3).¹⁰ The Secretariat found that the submission did not satisfy the criterion of Article 24.27(2)(e), to indicate whether the matter has been communicated in writing to the relevant authorities of the Party.¹¹
10. The Secretariat found that “[w]ithout a communication from the Submitter or a third party, or alternatively an explanation as to why it was impossible to communicate the matter raised in the submission to the relevant authorities, the submission does not satisfy the requirement of Article 24.27(2)(e).”¹² The Secretariat advised that “a request for information alone does not meet the requirement set by the USMCA.”¹³
 11. The Secretariat requested the Submitter provide “information on communication of the matter to the relevant authorities of the Government of Mexico, or the reasons why it has not been possible to do so.”¹⁴
 12. The additional information supplementing the submission discusses **Agreement 390** adopted by the Congress of the State of Michoacán on 24 May 2017 regarding the environmental problems caused by avocado production in the region.¹⁵ Agreement 390 urges the heads of relevant federal agencies as well as corresponding state agencies to
...to set up, as soon as possible and within the scope of their respective competencies, a Roundtable Dialogue with the participation of avocado producers in the State, marketers and/or packers, academics and experts to define the mechanisms that will allow, within the legal framework, the proper operation of the avocado orchards.¹⁶
 13. The federal agencies named in Agreement 390 include the Ministry of Environment and Natural Resources (*Secretaría del Medio Ambiente y Recursos Naturales*—Semarnat), Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa), National Forestry Commission (*Comisión Nacional Forestal*—Conafor) and the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (*Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación*—Sagarpa).¹⁷
 14. Agreement 390 also set out the principal objectives for the Roundtable Dialogue, which include addressing orchards that do not have proper change in land use authorization to ensure they are operating in accordance with environmental laws and regulations; addressing the “environmental emergency” in the State with economic contribution agreements with sectors of the agricultural industry that benefit from the use of environmental services, and the creation of a “green fund” between the state government and avocado producers to mitigate and adapt to climate change.¹⁸
 15. The additional information supplementing the submission included the written communications sent directly to the heads of the federal agencies— Semarnat, Profepa, Conafor, Sagarpa—named in Agreement 390.
 16. The additional information provided by the Submitter also discusses **Recommendation R-103** “Regulation of the Change in Land Use in Relation to the

¹⁰ First Determination at §§ 14-79.

¹¹ Id. at §§ 53-56.

¹² Id. at § 55.

¹³ Id.

¹⁴ Id. at § 81.

¹⁵ Agreement 390, Congress of the State of Michoacán (24 May 2017) available at: <<http://congresomich.gob.mx/file/Acuerdo-390.pdf>>.

¹⁶ Id. Original Spanish.

¹⁷ Id.

¹⁸ Agreement 390 at the Second Article, subsections II, III, and V.

Expansion of the Area Dedicated to the Avocado Cultivation,” produced by the State of Michoacán Ecology Council (*Consejo Estatal de Ecología de Michoacán—Coeeeco*) in June 2016.¹⁹ Recommendation R-103 discusses the trend of changes in land use in the pine-oak forests of Michoacán for avocado plantations and related environmental issues in the region.

17. Recommendation R-103 specifically mentions the increase in deforestation in the state of Michoacán caused by cutting down forests to grow and harvest avocados;²⁰ the loss of 70% of the lakes, lagoons, rivers, streams, and marshes and the issue of water pollution of surface water bodies;²¹ the almost total absence of native pollinators in the areas where avocado orchards have been planted and the risks to biodiversity, pollination, soil conservation and the ecological balance posed by the increase of avocado orchards in the region;²² the environmental effects of unauthorized changes in land use like landscape fragmentation, loss of biodiversity, introduction of invasive species, changes to hydrological cycles, soil erosion, and climate change;²³ the significant magnitude of deforestation in Michoacán—“from 1970 to date, temperate forests have been reduced by 74 percent;”²⁴ the extent of the change in land use without legal authorization— “there is no record of any authorization for a change in land use for agricultural purposes in the area since 1980;”²⁵ the loss of ecosystem services that benefit the population of the state like water capture, retention and distribution as well as soil retention to prevent landslides and floods;²⁶ the connection between forest fires, illegal logging and land use change as the main cause of forest loss;²⁷ and the importance of following the process for authorizing change in land use of forest lands under the General Act on Sustainable Forest Development (*Ley General de Desarrollo Forestal Sustentable*) “to prevent economic pressures from becoming a valid justification for failing to enforce Mexico’s laws.”²⁸
18. The Submitter highlights that Coeeeco’s meetings were attended by representatives from Semarnat, Profepa, Conagua, and Conafor, and the Director of the Forestry Commission of the State of Michoacán—who is a member of Coeeeco—was responsible for contacting federal environmental agencies to notify them of Recommendation R-103.²⁹
19. Agreement 390 and Recommendation R-103 demonstrate that the issues raised in the submission were communicated in writing to the relevant authorities of the Party.
20. The additional information supplementing the submission discusses other written communications to relevant authorities in Mexico to demonstrate communication of the issues raised in the submission. Those additional documents are as follows:

¹⁹ Recommendation R-103 “Regulation of the Change in Land Use in Relation to the Expansion of the Area Dedicated to the Avocado Cultivation” by the State of Michoacán Ecology Council (*Consejo Estatal de Ecología de Michoacán—Coeeeco*) (June 2016), at: <<https://bit.ly/41MiAPe>> [Recommendation R-103]. Additional Information for Submission at paras 17-21.

²⁰ Recommendation R-103 at Second Consideration.

²¹ Recommendation R-103 at Third Consideration.

²² Recommendation R-103 at Fourth Consideration.

²³ Recommendation R-103 at Fifth Consideration.

²⁴ Recommendation R-103 at Sixth Consideration.

²⁵ Recommendation R-103 at Seventh Consideration.

²⁶ Recommendation R-103 at Eighth Consideration.

²⁷ Recommendation R-103 at Ninth Consideration.

²⁸ Recommendation R-103 at Tenth Consideration.

²⁹ Additional Information for Submission at para 21.

21. **Opinion 1** issued 4 July 2017 by the Third Committee: Public Finance and Credit, Agriculture and Development, Communications and Public Works of the Senate of the Republic of Mexico, Opinion with Point of Agreement which urges Profepa, in coordination with Conafor and the Government of the State of Michoacán, to investigate the alleged changes in land use in Michoacán. The Opinion emphasizes the importance of promoting the sustainable cultivation and harvest of avocados as well as preserving the use of forest land to uphold the right to a healthy environment, as set out in Article 4: fifth paragraph of the Political Constitution of the United Mexican States, by ensuring compliance with the federal and state legal framework.³⁰
22. **Email dated 15 March 2023** from the Coordinator of Michoacán Environmentalists (*Ambientalistas Michoacanos*) to the head of Semarnat, and the email address for citizen affairs at Semarnat on 15 March 2023.³¹ The email describes the alleged lack of enforcement of environmental law in relation to avocado production in Michoacán, the serious environmental effects that are occurring, and it requests the Secretary intervene to address these issues. Confirmation of receipt of the communication was sent on 17 March 2023.³²
23. Record of at least 35 **citizen complaints** that have been filed between 2012-2021 that relate to forest logging, tree felling, fires or change in land use, for the purpose of—in all cases—planting avocado trees.³³
24. The additional information also references public documents and reports created, supported and/or published by various federal agencies and entities to demonstrate their awareness of the issues raised in the submission.³⁴
25. The documents discussed in the additional information supplementing the submission describe, analyze, and refer to the same environmental and legal issues related to the production of avocados in Michoacán that are raised in the submission.
26. Having confirmed that the additional information filed by the Submitter meets the criterion of Article 24.27(2)(e) and the submission satisfies Article 24.27(3), the Secretariat concludes that the submission merits a response from the Party.

IV. DETERMINATION

27. For the reasons stated above, the Secretariat determines that submission SEM-23-002 (*Avocado Production in Michoacán*) satisfies the eligibility criteria listed in Article 24.27(2) of the USMCA and warrants a response from the Government of Mexico, in accordance with Article 24.27(3), regarding the effective enforcement of the environmental laws listed below:
 - i. Article 4: fifth and sixth paragraphs of the **Political Constitution of the United Mexican States**;

³⁰ Opinion 1, Third Committee: Public Finance and Credit, Agriculture and Development, Communications and Public Works, Senate of the Republic of Mexico (4 July 2017), Consideration C, p. 4 at: <<https://bit.ly/3leGifM>>, Additional Information for Submission at para 16.

³¹ The Submitter states that the communication of the matter raised in the submission was sent to the following e-mail addresses at Semarnat: <atención.ciudadana@semarmat.gob.mx> and <contacto.ciudadano@semarnat.gob.mx>.

³² Additional Information for Submission at para 23.

³³ Id. at paras 26-27.

³⁴ Id. at paras 28-34.

- ii. Articles 5(II), (IX); 15(III), (IV), (IX), (XII); 19(I), (II), (III), (V), (VII); 20 *bis* 1; 21; 78; 79(I), (II), (VI), (IX); 88(I), (III), (IV); 89(II), (III), (V), (XI); 98; 99(IV), (V), (VII), (IX), (XII), and 15 *bis* of the **General Act on Ecological Balance and Environmental Protection**;
- iii. Articles 1, 4, 5(II), (V); 6; 9(I), (II), (IV), (XVIII), (XXI); 18; 19; 20; 70, and 106 of the **General Wildlife Act**;
- iv. Articles 93, 94, 96, 97, 98, and 99 **General Act on Sustainable Forest Development**;
- v. Articles 7 *bis*(XI); 9(XXXVI); 14 *bis* 5(IX), (X), (XI), (XII); 119(III), (VIII), (XVII), (XVIII) of the **National Waters Act**;
- vi. Articles 165, 170 and 172 of **Sustainable Rural Development Act**, and
- vii. Article 26(I), (III), (IV), (XI) of the **General Climate Change Act**.

28. In accordance with Article 24.27(4) of the USMCA, the Party may provide a response to the submission within 60 days of receiving this determination, i.e. by **24 July 2023**.

Submitted respectfully for your consideration,

Secretariat of the Commission for Environmental Cooperation

(original signed)

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