

Secretariat of the Commission for Environmental Cooperation

Determination of the Secretariat 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)
Part: United Mexican States
Date of submission: 2 February 2023
Date of determination: 6 March 2023
Submission No.: SEM-23-002 (*Avocado Production in Michoacán*)

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA) and the Environmental Cooperation Agreement (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 Commission for Environmental Cooperation (“CEC Secretariat”)¹ remains responsible for implementing the SEM process, as stipulated in the ECA.²
2. Articles 24.27 and 24.28 of the USMCA provide a process for 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, it informs the CEC Council and the

¹ The Commission for Environmental Cooperation (CEC) was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), an instrument signed by Canada, Mexico, and the United States (the “Parties”). The constituent bodies of the CEC are its Council, Secretariat, and Joint Public Advisory Committee (JPAC).

² The Secretariat takes the view that although the provisions governing the SEM process are set forth in Chapter 24 of the USMCA, certain related procedures are also established under the Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada (ECA), namely: the Secretariat’s role in the implementation of the Submissions on Enforcement Matters process, the Council’s role in exchanging information with the Environment Committee, the preparation and publication of factual records, and the Council’s cooperation activities. The Secretariat is mindful of ECA Article 2(3) which states in part: “The Commission will continue to operate under the modalities in place as of entry into force of this Agreement, including its rules, policies, guidelines, procedures, and resolutions, to the extent these modalities are consistent with this Agreement.” Environmental Cooperation Agreement, Articles 2(3); 4(1)(1)–(m); 4(4); and 5(5).

- Environment Committee,³ 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.⁵
 4. The Submitter states that Mexico is failing to effectively enforce its environmental laws to the protect forest ecosystems and water quality from the adverse environmental effects of avocado production in Michoacán, Mexico.
 5. According to the Submitter, Mexico is failing to effectively enforce various legal provisions and regulatory instruments in force in Mexico:
 - i) the Constitution of the United Mexican States (“the **Constitution**”);
 - ii) the General Act on Ecological Balance and Environmental Protection (**LGEEPA**);
 - iii) the General Act on Sustainable Forest Development (**LGDFS**);
 - iv) the National Waters Act (**LAN**);
 - v) the Sustainable Rural Development Act (**LDRS**);
 - vi) the General Wildlife Act (**LGVS**), and
 - vii) the General Climate Change Act (**LGCC**)
 6. After reviewing the submission, the Secretariat considers that the submission does not meet all the admissibility requirements of USMCA Article 24.27(2), and hereby notifies the Submitter. In particular, additional information is required to confirm that the matter has been communicated in writing to the Party.
 7. As of the date of this determination, the Submitter has 60 days to submit a revised submission. In the event that the revised document is not received by 4 May 2023, the Secretariat will close the SEM-23-002 submission (*Avocado Production in Michoacán*). The reasons for the Secretariat’s determination are set out in section III: Analysis.

II. SUMMARY OF THE SUBMISSION

8. In the submission SEM-23-002 (*Avocado Production in Michoacán*), the Submitter asserts that Mexico is failing to effectively enforce its environmental laws to protect forest ecosystems and water quality from the adverse environmental effects of avocado production in Michoacán, Mexico.
9. The submission asserts that Mexico is failing to protect forest and water resources affected by the environmental impact and deforestation that the uninterrupted expansion of avocado plantations has caused in Michoacán. Specifically, the Submitter contends that Mexico has not complied with the provisions of the Political Constitution of the United Mexican States and

³ The Environment Committee is established by USMCA Article 24.26(2) and its role is to “oversee the implementation” of USMCA Chapter 24.

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 USMCA Article 24.27(1) (2 February 2023), at: <<https://bit.ly/3ZtpqIK>> [Submission].

several federal laws focused on environmental impact assessment, forest conservation, sustainable development, water quality, climate change, and environmental protection.

10. The Submitter argues that forests play a vital role serving as the habitat of wild flora and fauna; sustaining biodiversity; contributing to climate change mitigation; preserving soil; filtering water, and recharging aquifers, among other ecological services. It also highlights the remarkable growth of avocado farming in Michoacán in recent decades, having become the principal exporter of avocado in the world, with most of its production destined for the United States. While the Submitter acknowledges that not all avocado producers have the same environmental impact — or to the same degree — the Submitter refers to research showing the serious environmental effects of a high percentage of avocado plantations in Michoacán, as well as the accelerated rate of associated deforestation (one of the highest in Mexico and throughout Latin America).

III. ANALYSIS

11. Under Article 24.27(2), the CEC Secretariat may consider any submission asserting that a Party is failing to effectively enforce its environmental laws, provided that the eligibility requirements are met. The Secretariat reiterates, as it has stated previously in determinations issued in accordance with NAAEC Articles 14 and 15⁶ and the USMCA⁷ that the requirements of USMCA Articles 24.27(1), (2), and (3) are not intended to be an insurmountable procedural screening device, and they must therefore be given a broad interpretation consonant with Chapter 24 of the Agreement.⁸ The Secretariat reviews the submission with that perspective in mind.

A. Article 24.27(1)

12. Article 24.27(1) of the USMCA provides that any person of a Party may file a submission asserting that a Party is failing to effectively enforce of its environmental laws.
13. Article 1.5 of the USMCA⁹ defines the term *person of a Party* as “a national of a Party or an enterprise of a Party.” In turn, *national* means “a natural person who has the nationality of the Party...or a permanent resident of a Party.” *Enterprise* means “an entity constituted or organized under applicable law [the law of a Party], whether or not for profit, and whether

⁶ SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998) and SEM-98-003 (*Great Lakes*), Article 14(1) and (2) Determination (8 September 1999).

⁷ SEM-20-001 (*Loggerhead turtle*), Determination in accordance with Articles 24.27(2) and (3) (8 February 2021), §8, online at <[http://www.cec.org/wp-content/uploads/wpallimport/files/20-1-det_24.27\(2\)\(3\)_en.pdf](http://www.cec.org/wp-content/uploads/wpallimport/files/20-1-det_24.27(2)(3)_en.pdf)>; SEM-21-001 (*Fairview Terminal*), Determination in accordance with Articles 24.27(2) and (3) (9 March 2021), §6, online at <http://www.cec.org/wp-content/uploads/wpallimport/files/21-1-det_en.pdf>; SEM-21-002 (*Vaquita Porpoise*) Determination in accordance with Articles 24.27(2) and (3) (8 September 2021), §8, online at <http://www.cec.org/wp-content/uploads/wpallimport/files/21-2-det_en.pdf>.

⁸ Cf. USMCA Article 24.2.

⁹ The Secretariat is mindful of the adoption of the Amending Protocol to the Agreement between the United Mexican States, the United States of America and Canada (“the Protocol”), by which provisions were added to chapters 1 and 24, so that the numbering of some articles of the Protocol was revised. This is the case with Article 1.5, “General definitions,” initially Article 1.4, but then renumbered in accordance with the Protocol. Thus, in the case of the Spanish version, it is necessary to consult the USMCA and its Protocol.

privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization.”

14. The Submitter is a natural person of Mexican nationality and therefore qualifies as *a person of a Party* in terms of the definition of Article 1.5 and for the purposes of USMCA Article 24.27(1).

B. Environmental laws in question

15. The next criterion in Article 24.27(1) is whether the submission identifies an “environmental law” within the meaning of the USMCA.

16. USMCA Article 24.1 provides the following definition:

E]nvironmental law means a statute or regulation of a Party, or provision thereof, including any that implements the Party’s obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human 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, or wastes, and the dissemination of information related thereto; or
- c) the protection or conservation of wild flora or fauna,¹ including endangered species, their habitat, and specially protected natural areas,²

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources.¹⁰

¹ The Parties recognize that “protection or conservation” may include the protection or conservation of biological diversity.

² For the purposes of this Chapter, the term “specially protected natural areas” means those areas as defined by the Party in its law.

[S]tatute or regulation means: “(b) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government.”¹¹

17. Although a law may be intended to protect the environment or human health, some of its provisions may not be directly enforceable by federal authorities or it may lack the necessary specificity to be enforced directly. It is also possible that the cited provisions do not relate to the matter raised in the submission. The Secretariat assessed whether the legal provisions cited in the submission correspond to environmental laws within the meaning of the USMCA and whether they are applicable to the issues raised by the Submitter. The Secretariat determined that some individual provisions of laws and regulations to which the Submitter refers—but not all—meet the eligibility criteria. The Secretariat provides its reasoning below.
18. The laws cited by the Submitter include the Constitution, LGEEPA, LGVS, LGDFS, LDRS and LGCC (see Table 1).

¹⁰ USMCA Article 24.1.

¹¹ Id.

Table 1. Legal instruments and their provisions cited in the submission

Title	Acronym or abbreviation	Provisions cited
Political Constitution of the United Mexican States	Constitution	Article 4
General Act on Ecological Balance and Environmental Protection	LGEEPA	Articles 5(II), (IX), (IX) [<i>sic</i>]; 15(III), (IV), (IX), (XII), (XVII); 19; 20 <i>bis</i> 1; 21; 78; 79, 88; 98; 99; 100, and 159 <i>bis</i>
General Wildlife Act	LGVS	Articles 1, 4, 5, 6, 9, 18, 19, 20, 70, 106, and 107
General Act on Sustainable Forest Development	LGDFS	Articles 93, 94, 96, 97, 98, and 99
National Waters Act	LAN	Articles 7 <i>bis</i> XI; 9(XVI), (XXXVI); 14 <i>bis</i> 5 (IX), (X), (XI), (XII), (XVI), (XVII); 16; 21; 25; 28; 29; 49; 50; 51; 52; 53; 54; 64; 119, and 120
Sustainable Rural Development Act	LDRS	Articles 1, 2, 4, 5(V), 12, 13, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, and 177
General Climate Change Act	LGCC	Articles 7(VI)(a), (XXII), (XXV); 26(I), (III), (IV), (VIII), (IX), (XI), (XIII)

a) Political Constitution of the United Mexican States

19. **Article 4** of the Constitution establishes the human right to equality between women and men; to free recreation of children; to nutritious, adequate and quality food; to health; to a healthy environment for development and well-being; to access, provision and sanitation of water; to decent and decent housing; to identity; and to be immediately registered at birth. The Secretariat determines that only the fifth and sixth paragraphs — which recognize the human right to a healthy environment and to water and sanitation, respectively — qualify as environmental law in accordance with the definition of environmental law in USMCA Article 24.1.

b) General Act on Ecological Balance and Environmental Protection

20. All the provisions of the LGEEPA cited by the Submitter qualify as environmental law under USMCA Article 24.1 because they have as their purpose the protection of the environment or human health. However, not all of them relate to the matters raised in the submission so analysis of the effective enforcement of those provisions is not relevant.
21. The following provisions of the LGEEPA, although they may have the character of environmental law, are not linked to the Submitter’s assertions and therefore are not relevant to the Secretariat’s analysis:
- i. **Article 15(XVII)**, regarding the responsibility of the authorities to promote the preservation and restoration of the balance of regional and global ecosystems with other countries;
 - ii. **Article 19(IV), (VI)**, relating to the balance between human settlements and the environment, and the modalities of protected natural areas, both elements to consider in the formulation of ecological land-use planning;

- iii. **Article 79(III), (IV), (V), (VII), (VIII), and (X)**, providing the criteria for the preservation and sustainable use of wild flora and fauna with respect to endemic, endangered, endangered or subject to special protection; trafficking in species; establishment of biological rehabilitation stations; investigation of genetic material of flora and fauna; traditional biological knowledge; and participation of communities;
 - iv. **Article 88(II)**, concerning the sustainable use of natural resources of aquatic ecosystems;
 - v. **Article 89(I), (IV), (VI), (VII), (VIII), (IX), and (X)**, referring to the criteria for the sustainable use of water and aquatic ecosystems to be taken into account in the formulation of the National Hydraulic Program, the establishment of vein zones, the operation of drinking water and sewage systems, the water-reuse policy for Mexico City, the protection of aquatic species, concessions for aquaculture activities and the creation of fishing protection areas;
 - vi. **Article 99(I), (II), (III), (VI), (X), and (XI)**, establishing that ecological criteria for the preservation and sustainable use of the soil are to be considered in: support for agricultural activities; establishment of population centers; establishment of uses in urban development plans; determination of limits for grazing coefficients; granting and management of forest harvesting permits, and activities for extraction of subsoil materials and use of mineral substances, as well as other actions that alter forest cover and soils;
 - vii. **Article 100**, providing that authorizations for the use of forest resources include the obligation of sustainable utilization.
22. The remaining LGEEPA provisions cited by the Submitter that relate to their assertions are analyzed below.
23. It should be noted that some of the above-mentioned provisions relate to the ecological land-use planning. In this regard, they are considered to qualify as environmental law under USMCA Article 24.1 because its purpose is to “regulate or induce land use and productive activities, in order to achieve the protection of the environment and the preservation and sustainable use of natural resources, based on the analysis of deterioration trends and potential of use thereof.”¹² Ecological land-use planning is an important tool to ensure sustainable development that allows the protection and conservation of biodiversity in the long term, in accordance with USMCA Article 24.1.
24. **Article 5 of the LGEEPA** lists the powers of the Federation, including: the implementation of environmental policy instruments and the regulation of actions for the preservation and restoration of ecological balance and environmental protection carried out on property and in areas under federal jurisdiction (**section II**), and the formulation, implementation and evaluation of the general ecological land-use planning (**section IX**). The Secretariat determines that both sections (II and IX) of Article 5 of the LGEEPA qualify as environmental law in accordance with USMCA Article 24.1, since their main purpose is the protection of the environment through the allocation of federal powers in the restoration of ecological balance and the protection and preservation of natural elements, including soil, biodiversity and wildlife.

¹² LGEEPA, Article 3(XXIV).

25. **Article 15** sets out the principles for the formulation and administration of environmental policy, including the responsibility of authorities and individuals to protect ecological balance (**section III**); the obligation to prevent, minimize or repair damage and assume the corresponding costs by those who perform works or activities that affect or may affect the environment (**section IV**); coordination between public agencies and entities at different levels of government and consultation with the public (**section IX**) and the right of everyone to enjoy an environment suitable for their development, health and well-being (**section XII**). The Secretariat determines that LGEEPA's Article 15, sections III, IV, IX and XII qualify as environmental law, since their main purpose is the protection of the environment through principles for the formulation of environmental policy that underscore the protection and conservation of the soil, wildlife and its habitat.
26. **Article 19** sets out criteria to be considered in the formulation of land use planning, such as the nature and characteristics of ecosystems (**section I**); the purpose of each zone or region in terms of natural resources and economic activities (**section II**); the imbalances in ecosystems due to human activities or natural phenomena (**section III**); the environmental impact of human activities (**section V**); and the presence of hydrographic and aquifer basins (**section VII**). The Secretariat determines that LGEEPA's Article 19 sections I, II, III, V and VII qualify as environmental law, since their main purpose is the protection of the environment through criteria for the formulation of the ecological land-use planning.
27. Article **20 bis 1** states that the Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat) should technically support the formulation and implementation of regional and local ecological land-use planning programs; states that federal entities and municipalities may participate in consultations and issue recommendations for the formulation of such programs; notes that there will be ecological land-use planning committees as bodies for public participation, integrated with the participation of individuals, organizations, groups and public, private, academic and research institutions, and will allow for the existence of coordination and consultation agreements in which it may be determined whether the opinions of the committees are binding on public policies in the area of ecological land use planning. The Secretariat determines that Article 20 bis 1 of the LGEEPA qualifies as environmental law, since its main purpose is the protection of the environment through provisions aimed at establishing mechanisms for the formulation of the ecological land-use planning.
28. **Article 21** states that the federal government and the federal entities shall design and implement economic instruments that encourage the fulfillment of the objectives of environmental policy, with the aim of promoting change in the behavior of persons engaged in industrial, commercial and service activities (**section I**); encouraging the incorporation of reliable and sufficient information on environmental consequences, benefits and costs (**section II**) into the economy's price system; granting incentives to those who undertake actions for the protection, preservation or restoration of ecological equilibrium (**section III**); promoting greater social equity in the distribution of costs and benefits associated with environmental objectives (**section IV**). and to seek their joint use with other environmental policy instruments (**section V**). The Secretariat determines that Article 21 of the LGEEPA qualifies as environmental law, since its main purpose is the protection of the environment through economic instruments that promote the change of behavior of people to carry out actions to protect and preserve the ecological balance.

29. **Article 78** states that Semarnat shall formulate and implement ecological restoration programs with respect to areas with degradation or desertification processes, or serious ecological imbalances. The Secretariat determines that Article 78 of the LGEEPA qualifies as environmental law according to USMCA Article 24.1, since its main purpose is the protection of the environment through provisions aimed at the environmental restoration of areas that present ecological degradation or imbalance.
30. **Article 79** provides that for the preservation and sustainable use of wild flora and fauna certain criteria shall be considered, namely: the conservation of biodiversity and natural habitat (**section I**); the continuity of evolutionary processes of flora and fauna and other biological resources (**section II**); the participation of public, private and private sectors in the preservation of biodiversity (**section VI**); and the development of alternative productive activities for rural communities (**section IX**). The Secretariat determines that LGEEPA Article 79 sections I, II, VI and IX qualify as environmental law under USMCA Article 24.1, since their main purpose is the protection of the environment through measures aimed at the preservation of biodiversity.
31. **Article 88** lists the criteria for the sustainable use of water and aquatic ecosystems, namely: the obligation of the State and society to protect aquatic ecosystems and the balance of elements involved in the hydrological cycle (**section I**); the protection of soils and forest and jungle areas, the conservation of base flows and aquifer recharge capacity, as necessary to maintain the integrity and balance of the hydrological cycle (**section III**), and the preservation and sustainable use of water as the responsibility of users (**section IV**). The Secretariat determines that LGEEPA Article 88 sections I, III and IV qualify as environmental law under USMCA Article 24.1, since their main purpose is the protection of the environment, through provisions for sustainable use of water.
32. **Article 89** provides that the criteria for the sustainable use of water and aquatic ecosystems shall be taken into account when granting of concessions, permits and authorizations for the use of natural resources or carrying out activities that affect or may affect the hydrological cycle (**section II**); the granting of authorizations for the diversion, extraction or derivation of nationally owned waters (**section III**); the suspension or revocation of authorizations under the LAN in cases of works or activities that damage the hydric resources or affect the ecological balance (**section V**), all different production sectors, and practices that affect water quality (**section XI**). The Secretariat determines that Article 89: sections II, III, V and XI of the LGEEPA qualifies as environmental law according to USMCA Article 24.1, since their main purpose is the protection of the environment through provisions aimed at sustainable use of water.
33. **Article 98** of the LGEEPA sets out the criteria to be considered for the preservation and sustainable use of the soil, including: that the use is compatible with its natural function and does not alter the balance of ecosystems (**section I**); that its physical integrity and productive capacity are maintained (**section II**); that practices that favor erosion, degradation or modification of its characteristics are avoided (**section III**); that measures to prevent or reduce its erosion and deterioration are implemented (**section IV**); that regeneration, recovery and rehabilitation actions are carried out in areas affected by degradation or desertification phenomena (**section V**) and include regeneration actions with respect to works that may cause severe soil deterioration (**section VI**). The Secretariat determines that Article 98 of the LGEEPA qualifies as environmental law according to USMCA Article 24.1, since its main purpose is the protection of the environment through provisions aimed at sustainable land use.

34. **Article 99** of the LGEEPA provides that ecological criteria for the preservation and sustainable use of land shall be considered in: the identification of uses, reserves and destinations in forest lands (**section IV**); the establishment of forest areas and reserves (**section V**); provisions, technical guidelines and programs for the protection and restoration of soils in agricultural, forestry and hydraulic activities (**section VII**); the establishment of land conservation districts (**section VIII**); forest management of the territory's hydrographic basins (**section IX**); and the ecological planning. The Secretariat determines that Article 99: sections IV, V, VII, VIII, IX, and XII qualify as environmental law according to USMCA Article 24.1, since their main purpose is the protection of the environment through sustainable land use.
35. **Article 159 bis of the LGEEPA** provides that the Semarnat shall develop a National System of Environmental Information and Natural Resources to record and disseminate national environmental information and that it shall be available for consultation. It also notes that such a system should contain, inter alia, information on the inventory of natural resources in national territory and data on monitoring of air, water and soil. The Secretariat determines that this provision qualifies as an environmental law in accordance with USMCA Article 24.1, since its main purpose is the protection of the environment through provisions aimed at access to information about natural elements.
- c) **General Wildlife Act**
36. The following provisions of the LGVS, although they may have the character of environmental law because they are focused on the protection of the environment or human health, are not linked to the Submitter's assertions and therefore are not relevant to the Secretariat's analysis:
- i. **Article 5(I), (III), (IV), (VI), (VII), (VIII), and (IX)**, which state that conservation is the objective of the national wildlife policy and its habitat, for which it should be envisaged: the conservation of genetic diversity, as well as the protection, restoration and integrated management of natural habitats; the application of scientific, technical and traditional knowledge in the field of wildlife; the dissemination of information on wildlife and its habitat; the incentives for taking wildlife and their habitat; the processes for assessing information on the biology of species and their habitat; improvement of the quality of life of wildlife specimens in captivity, and criteria for the imposition of penalties for wildlife trafficking;
 - ii. **Article 9(III), (V), (VI), (VII), (VIII), (IX), (X), (XI), (XII), (XIII), (XIV), (XV), (XVI), (XVI), (XVII), and (XX)**, on the powers of the federation in matters relating to: identification of endangered species and populations; issuance of relevant standards; attention to issues relating to the conservation and sustainable use of national wildlife; promotion of wildlife markets based on sustainability criteria; national policy on wildlife information and dissemination; education, training and research on wildlife; promotion, registration and monitoring of technical units for the Conservation of Wildlife; the granting, suspension and revocation of authorizations and administrative acts related to the use, release, hunting for sport, conservation, transfer, import, export and transit of wildlife specimens; the management, control and remediation of problems associated with specimens and feral or harmful populations; the establishment and implementation of wildlife health measures; the establishment of refuge areas for aquatic species; the dignified and respectful treatment of wildlife; and the management and relocation of wildlife specimens outside their natural habitat;

- iii. **Article 107**, which states that any person may report any damage to wildlife or its habitat to the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente—Profepa*) and that this authority may exercise liability for damage.
37. The Submitter cites some provisions of the LGVS that relate to the claims of the submission and qualify as environmental legislation in accordance with USMCA Article 24.1, since they have as their main purpose the protection of the environment through the protection and conservation of wildlife and its habitat. The following is a summary of the provisions for analysis:
- i. **Article 1 of the LGVS** provides that the purpose of the Act is to establish the concurrence of the federal government, states, and municipalities with regard to the conservation and sustainable use of wildlife and its habitat in the national territory. Notwithstanding the legal nature of this provision, the Secretariat will only consider it to guide its analysis on the exercise of authority in wildlife matters.
 - ii. **Article 4 of the LGVS** establishes, inter alia, the general duty of all inhabitants of the country to preserve wildlife and the prohibition of any act involving its destruction, damage or disturbance, to the detriment of the interests of the Nation. Given the generality of the provision, it will only guide the Secretariat's analysis, especially the first paragraph, which has as its main purpose the protection of wildlife and its habitat.
 - iii. **Article 5 of the LGVS** states that the objective of the national policy on wildlife and its habitat is conservation through the protection and requirement of optimal levels of sustainable use, in order to maintain and promote the restoration of its diversity and integrity. It provides that the formulation and conduct of this policy shall observe the principles laid down in Article 15 of the LGEEPA, and that it shall provide, inter alia, for preventive measures for the maintenance of conditions conducive to the viability and continuity of ecosystems, habitats and populations in their natural environments (**section II**). It also states that owners and occupants of the lands where wildlife is distributed should be encouraged to participate in the conservation, restoration and benefits derived from sustainable use (**section V**).
 - iv. **Article 6 of the LGVS** states that the design and implementation of national wildlife policy and its habitat shall be carried out by the federal entities, municipalities, districts of Mexico City and federal government.
 - v. **Article 9 of the LGVS** lists the powers of the federation in terms of: formulation, administration, and evaluation of the national policy on the conservation and sustainable use of wildlife and its habitat (**section I**); regulation of such conservation and sustainable use (**section II**); attention to matters not under the jurisdiction of the federal entities (**section IV**); issuance of recommendations to the competent state authorities to promote compliance with the legislation on the conservation and sustainable use of wildlife and its habitat (**section XVIII**), as well as the imposition of security measures and administrative penalties (**section XXI**).
 - vi. **Article 18 of the LGVS** provides that owners and occupants of the lands where wildlife is distributed shall have the right to sustainably use the animals, as well as the obligation to contribute to the conservation of the habitat as set forth in the LGVS. These individuals, as well as the third parties carry out harvesting in such

lands, will be jointly and severally responsible for negative effects that this may have for the conservation of wildlife and its habitat.

- vii. **Article 19 of the LGVS** provides that authorities engaged in activities involving the use of land, water and other natural resources shall comply with the provisions of the LGVS and ensure that negative effects on wildlife and its habitat are avoided or minimized.
- viii. **Article 20 of the LGVS** states that Semarnat will design and promote criteria, methodologies and procedures to identify the values of biodiversity and the environmental services it provides, while harmonizing the conservation of wildlife and its habitat, on the one hand, and the sustainable use of environmental goods and services, on the other.
- ix. **Article 70 of the LGVS** states that when problems of destruction, pollution and degradation of wild habitat occur, Semarnat shall formulate and implement programs of prevention, emergency care and restoration for the recovery and restoration of conditions conducive to the continuity of natural wildlife processes.
- x. **Article 106 of the LGVS** establishes the obligation to repair or compensate for any direct or indirect damage to wildlife or its habitat.

d) General Act on Sustainable Forest Development

38. The Submitter cites some provisions of the LGDFS that relate to the claims in the submission and qualify as environmental law in accordance with USMCA Article 24.1, since they have as their main purpose the protection of the environment through provisions for the protection of the soil in forest lands, as habitat of wildlife. The summary of the provisions for analysis is presented below:
- i. **Article 93 of the LGDFS** provides that Semarnat may only authorize the change of land use on forest land by exception, after the opinion of the members of the State Forest Council and based on technical and supporting studies. Such studies should demonstrate that the biodiversity of the ecosystems that will be affected is maintained and that in areas affected by the removal of forest vegetation soil erosion, carbon storage capacity, the deterioration of water quality or the reduction of its uptake will be mitigated. In land-use change authorizations—which are subject to the provisions of ecological management programs, Mexican official standards and other applicable legal provisions—Semarnat must provide a substantiated and reasoned response according to the technical opinions of the members of the State Forestry Council. In addition, a rescue and relocation program for affected species should be integrated.
 - ii. **Article 94 of the LGDFS** states that land use change authorizations must be registered in the National Forest Registry.
 - iii. **Article 96 of the LGDFS** states that holders of land use change authorizations shall submit periodic reports on the implementation and development of land use, in accordance with the provisions of the LGDFS and its regulations.
 - iv. **Article 97 of the LGDFS** provides that land use change authorization may not be granted on forest land where loss of forest cover was caused by fire, logging or clearing for 20 years and until it is proven to Semarnat that forest vegetation has regenerated.

- v. **Article 98 of the LGDFS** states that those interested in the change of use in forest lands must verify that they made the corresponding deposit to the Mexican Forest Fund for environmental compensation in order to carry out restoration actions of the affected ecosystems, preferably in the same hydrographic basin where the authorized project is located.
- vi. **Article 99 of the LGDFS** states that Semarnat will coordinate with the Ministry of Agriculture and Rural Development, with the participation of the National Forestry Commission, on the land use policy to stabilize its agricultural use, develop sustainable practices and prevent agricultural production from growing at the cost of forest lands.

e) National Waters Act

39. The following provisions of the LAN, although they may have the character of environmental law because they are focused on the protection of the environment or human health, are not linked to the Submitter's assertions and therefore are not relevant to the Secretariat's analysis:
- i. **Article 9(XVI)**, provides that regulating irrigation services is one of the many powers of the National Water Commission (Conagua);
 - ii. **Article 14 bis 5 (XVI) and (XVII)**, states that water users must pay for their extraction, use or enjoyment and that natural persons or legal entities who pollute water resources are responsible for restoring their quality (applying the "polluter pays" principle);
 - iii. **Article 16**, defines the regime of ownership of national waters, which may be subject to concessions for extraction, use or enjoyment;
 - iv. **Article 21**, establishes the requirements for applications for granting concessions or allotments for the extraction, use or enjoyment of national waters;
 - v. **Article 25**, refers to the term or validity of the grant of a concession or allocation certificate regulated by the LAN;
 - vi. **Articles 28 and 29**, determine the rights and obligations of the holders of concessions granted in terms of the LAN;
 - vii. **Article 48**, states that holders of agricultural, livestock or forest land have the right to extract or use the national waters granted to them (including irrigation concessions);
 - viii. **Article 49**, provides that the rights of extraction, use or enjoyment of water for agricultural, livestock or forestry use may be transmitted;
 - ix. **Articles 50, 51, 52, 53 and 54**, refer to natural persons or legal entities who may be granted concessions for agricultural use (including irrigation units or districts) and requirements for the administration and operation of the corresponding rights of extraction, use or enjoyment;
 - x. **Article 64**, on the integration of irrigation districts;
 - xi. **Article 119(I), (II), (IV), (V), (VI), (VII), (IX), (X), (XI), (XII), (XIII), (XIII), (XV), (XVI), (XVI), (XIX), (XXI), (XXI), (XXII), (XXIII), and (XXIV)**, describe the faults by which Conagua may impose sanctions on the extraction, use, and

enjoyment of national waters, including: the discharge of wastewater into receiving bodies that are national goods; the extraction, use or enjoyment of national wastewater without compliance with Official Mexican Standards; the occupation or use of national resources by Conagua; the alteration of hydrological infrastructure without proper authorization; the execution of projects or facilities with negative effects (or the failure to prevent them); the lack of, or inadequate installation (outside the norm), of devices for recording and measuring the volume of water extracted or used; the extraction of groundwater with a permit; the obstruction of inspection visits; the failure to provide required data and information; the failure to comply with the volumes required for dilution by wastewater discharge; the provision of water of insufficient quality for human consumption; the deposit of contaminants in national waters; the failure to comply with obligations under concession titles and permits; the failure to register water rights in the public registry, the improper closure of wells and inadequate water supply or lack of adjustment of pumping in cases of transfer of rights; the modification or diversion of national channels, vessels or streams without the corresponding permit; the alteration of authorized characteristics or volumes of wastewater discharges; the non-compliance with the required chronological records; and the extraction, use or enjoyment of national resources by Conagua, either without the corresponding concession or in unauthorized quantity and form;

- xii. **Article 120**, which lists the amount of administrative penalties that Conagua may impose.

40. The Submitter cites some provisions of the LAN that, both qualify as environmental legislation under USMCA Article 24.1, since they have as their main purpose the protection of the environment through provisions for the protection of water, and are related to assertions about water consumption for avocado production activities in Michoacán. A summary of these provisions, which are to be analyzed, is presented below:

- i. **Article 7 bis** establishes environmental sustainability and the prevention of overuse of aquifers as a matter of public interest (**section XI**).
- ii. **Article 9** provides that the Conagua has the authority to monitor compliance with and implementation of the LAN, interpret it, apply sanctions, and exercise authority under it (**section XXXVI**).
- iii. **Article 14 bis 5** sets out the principles underpinning the national water policy, including: the conservation, protection and restoration of water in quantity and quality as a matter of national security, so that unsustainable use and adverse ecological effects must be avoided (**section IX**); water resources must be managed comprehensively by hydrological basin, based on sustainable use and considering their interrelation with air, soil, flora, fauna and other natural resources (**section X**); water provides environmental services that must be recognized, quantified and paid in terms of the LAN (**section XI**), and the use of water should be carried out efficiently, promoting its reuse and recirculation (**section XII**).
- iv. **Article 119** sets out the various misdemeanors for which Conagua may impose sanctions, including: extraction, use or enjoyment of national waters in volumes greater than authorized (**section III**); extraction, use or enjoyment of national waters without the respective title (**section VIII**); causing significant environmental damage

or resulting in imbalances in water resources (**section XVII**); and waste of water in contravention of the LAN and its regulations (**section XVIII**).

f) Sustainable Rural Development Act

41. The following provisions of the LDRS, although they may have the character of environmental law because they are focused on the protection of the environment or human health, are not linked to the Submitter's assertions and therefore are not relevant to the Secretariat's analysis:
- i. **Article 1**, states that LDRS, a statutory provision of the Constitution, is intended to promote the sustainable rural development of the country and promote an adequate environment, with sustainable rural development being a matter of public interest;
 - ii. **Article 2**, provides for the subjects obligated to comply with LDRS (ejidos, communities and organizations or associations of rural producers);
 - iii. **Article 4**, states that, in order to achieve sustainable rural development, a process of social and economic transformation will be promoted that recognizes the vulnerability of the sector;
 - iv. **Article 5(V)**, mentions that the federal government, in coordination with the governments of the federal and municipal entities, will promote policies, actions and programs with objectives such as assessing the economic, environmental, social and cultural functions of national agriculture;
 - v. **Article 12**, states that the direction of national development and the conduct of sustainable rural development policy shall be exercised through units and entities of the Federal Government;
 - vi. **Article 13**, lists the guidelines of short-, medium- and long-term sectoral programs for sustainable rural development;
 - vii. **Article 164**, states that sustainability will be a guiding criterion in promoting productive activities to achieve the reasonable use of natural resources, their preservation and improvement, with economic viability;
 - viii. **Articles 166, 167, 168, 169, 171, 173, 174, 175, 176 and 177**, provide for the coordination of the authorities to achieve the sustainability of rural production, through measures for the allocation of livestock; productive development programs to reduce the risks of fire use and pollutant emissions; the creation of a culture of water care; the adoption of technologies to optimize energy and water use; the transformation of productive activities in favor of sustainable farming practices, forestry and sustainable practices and the restructuring of rural production units, with support to the organization and rights of agricultural centers and rural owners, including those settled in protected natural areas, who will have priority in obtaining permits, authorizations and concessions for works or activities related to the criterion of sustainability and the conservation of natural resources.
42. The Submitter cites some provisions of LDRS that qualify as environmental legislation under USMCA Article 24.1, because they have as their main purpose the conservation of the soil as habitat of wildlife, and they relate to the assertions in the submission, specifically:
- i. **Article 165**, states that the federal, state and municipal governments shall promote the most suitable land use according to the characteristics and productive potential of

the location, as well as the most appropriate production processes for the conservation and improvement of the land and water;

- ii. **Article 170**, states that the competent authority shall determine priority areas of productive reconversion, where the fragility, degradation or overuse of natural resources so warrants;
- iii. **Article 172**, provides that the policy and programs for promoting production shall give priority to the criterion of sustainability in relation to the use of resources, adjusted to market opportunities and taking into account the approaches of producers, with Semarnat the responsibility of establishing procedures for identifying fragile and preferably forest lands, where the State's support and actions are to be oriented to the selection of crops and sustainable techniques.

g) General Climate Change Act

- 43. The following provisions of the LGCC, although they may have the character of environmental law because they are focused on the protection of the environment or human health, are not linked to the Submitter's assertions and therefore are not relevant to the Secretariat's analysis:
 - i. **Article 7(VI) subparagraph (a)**, provides that the federal government is responsible for the establishment, regulation and implementation of actions to mitigate and adapt to climate change, in accordance with the LGCC, international treaties, and other applicable legal provisions for the preservation, restoration, conservation, management and sustainable use of natural resources, terrestrial, aquatic, marine and coastal ecosystems, among others;
 - ii. **Article 7(XXII), (XXV)**, on the attribution of the federation to call upon states and municipalities to develop actions for mitigation and adaptation to climate change, as well as to issue recommendations to promote action on climate change; and
 - iii. **Article 26(VIII), (IX), and (XIII)**, provide that the formulation of the national climate change policy shall observe principles, including: environmental responsibility for preventing, minimizing, mitigating, repairing, restoring and compensating damage arising from works or activities affecting the environment; the use of economic instruments for mitigation, adaptation and reduction of vulnerability to climate change; and progressivity in the gradual fulfillment of the targets set in accordance with the LGCC.
- 44. The remaining provisions of the LGCC mentioned (**Article 26: sections I, III, IV and XI**) qualify as environmental legislation under USMCA Article 24.1, because they have as their main purpose the protection of the environment through provisions for the prevention, reduction, or control of polluting emissions to the environment, and are also linked to assertions in the submission, so they are relevant to the Secretariat's analysis. These provisions of Article 26 establish that certain principles be observed in the formulation of national climate change policy: sustainability in the use or use of ecosystems (**section I**); caution, when there is a threat of serious or irreversible damage (**section III**); prevention, as the most effective means to avoid environmental damage and preserve the effects of climate change (**section IV**), conservation of biodiversity and ecosystems (**section XI**).
- 45. In short, the Secretariat considers that the following provisions qualify as environmental law in accordance with USMCA Article 24.27(1):

- i. Article 4: fifth and sixth paragraphs of the **Constitution**;
- 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 **LGEEPA**;
- iii. Articles 1, 4, 5(II), (V); 6; 9(I), (II), (IV), (XVIII), (XXI); 18; 19; 20; 70, and 106 of the **LGVS**;
- iv. Articles 93, 94, 96, 97, 98, and 99 **LGDFS**;
- v. Articles 7 *bis*(XI); 9(XXXVI); 14 *bis* 5(IX), (X), (XI), (XII); 119(III), (VIII), (XVII), (XVIII) of the **LAN**;
- vi. Articles 165, 170 and 172 of **LDRS**, and
- vii. Article 26(I), (III), (IV), (XI) of the **LGCC**.

C. Article 24.27(2) Requirements

46. Article 24.27(2) of the USMCA establishes five requirements that a submission must satisfy to be admissible. After examining the submission in accordance with these five requirements, the Secretariat has determined that the submission SEM-23-002 (*Avocado Production in Michoacán*) does not satisfy subparagraph (e), as set out below.

The Secretariat may examine submissions under this article if it concludes that the submission:

- a. *is in writing in English, French, or Spanish;*
47. The submission is written in Spanish, thus satisfying the requirement set out in USMCA Article 24.27(2)(a).
- b. clearly identifies the person making the submission:*
48. The submission includes the name, address, e-mail address and telephone of the person submitting the submission: sufficient and adequate information to identify the Submitter, communicate with them and assess whether the Submitter meets the requirements of Article 24.27(1).
49. In this regard, the Secretariat determines that the submission satisfies USMCA Article 24.27(2)(b).
- c. provides sufficient information to allow for the review of the submission, including any documentary evidence on which the submission may be based and identification of the environmental law of which the failure to enforce is asserted;*
50. The submission includes quotes from various publications and studies, as well as links to download documentation that includes scientific information about the environmental impacts of avocado production in Michoacán, namely:
- i. Study of the possible impact of climate change on the main avocado-producing region where, supported by several climate databases, the changes to the main meteorological variables are quantified by comparing the current climatology (1961-

2010) and future scenarios in two representative greenhouse gas concentration pathways for 2030, 2050 and 2070.¹³

- ii. Studies of land cover change and land use processes at the regional level. The results indicate that, in a period of 18 years, 513,644 hectares (ha) of temperate forests and 308,292 ha of rainforests were lost in Michoacán, corresponding to deforestation rates of 1.8% and % per year, respectively. The study points to degradation of 20% of the surface area of forests and rainforests; it states that the most important changes occur in relatively remote areas with low demographic pressure and points out that alternative productive activities are not being developed for the local community, which indicates a lack of control of forestry activity.¹⁴
- iii. Cartographic and statistical analysis of land use changes in the Purépecha plateau during the last 30 years, with recommendations for the development of public policies aimed at improving the management of natural resources in the indigenous communities of the region.¹⁵
- iv. Evaluation of the effects of the change in land use from forestry to agriculture for avocado cultivation in the state of Michoacán with socioeconomic and environmental impact indicators. The report notes that this change in land use has led to a decrease in water filtration capacity and an increase in evapotranspiration, thus reducing the flow in springs and watercourses (for example, in Barranca del Cupatitzio and Pico de Tancítaro National Parks). In addition, this change has resulted in the loss of absorption of more than 0.5 tons of carbon per hectare per year; effects on climate regulation, and loss of biodiversity in forests.¹⁶
- v. Article on the loss of forest cover in pine-oak forests of the highlands of Michoacán, as a result of the conversion of natural forests to avocado orchards. It is suggested that this change in forest cover was facilitated by changes in land ownership and community forestry policies.¹⁷

¹³ See A. Álvarez Bravo, S. Salazar García, J. A. Ruiz Corral and G. Medina García (2017), “Scenarios of how climate change will change ‘Hass’ avocado growing areas in Michoacán,” *Mexican Journal of Agricultural Sciences*, National Institute of Forestry, Agricultural and Livestock Research (INIFAP), special publication No. 19, November-December 2017, pp. 4035-4048, at:

<<http://cienciasagricolas.inifap.gob.mx/index.php/agricolas/article/view/671>>.

¹⁴ See G. Bocco, M. Mendoza and O. R. Masera (2001), “The dynamics of land use change in Michoacán: a methodological proposal for the study of deforestation processes,” *Geographic Research*, Newsletter of the Institute of Geography, National Autonomous University of Mexico, No. 44, pp.18-38, at:

<www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S0188-46112001000100003>.

¹⁵ See C. Garibay Orozco and G. Bocco Verdinelli (2011), “Land Use Changes in the Purépecha Plateau (1976-2005),” Ministry of Environment and Natural Resources, National Institute of Ecology, National Autonomous University of Mexico and Center for Research in Environmental Geography, at: <<http://bit.ly/3IS31VC>>.

¹⁶ M. Bravo Espinoza, J. L. Sánchez Pérez, J. A. Vidales Fernández, J. T. Sáenz Reyes, J. G. Chávez León, S. Madrigal Huendo, H. J. Muñoz Flores, L. M. Tapia Vargas, G. Orozco Gutiérrez, J. Alcántar Rocillo, I. V. Fernández and E. Venegas González (2009), “Environmental and socio-economic impacts of the change of forest use to water gardens in Micaacán National Institute” Forestry, Agriculture and Livestock Research (INIFAP), special publication No. 2, December 2009, at: <www.inifapcirne.gob.mx/Revistas/Archivos/libro_aguacate.pdf>.

¹⁷ J. Barsimantov and J. Navia Antezana (2012), “Forest Cover Change and Land Tenure Change in Mexico's Avocado Region: Is Community Forestry Related to Reduced Deforestation for High Value Crops?,” *Applied Geography*, vol. 32, No. 2, pp. 844-853, at: <www.sciencedirect.com/science/article/abs/pii/S0143622811001706>.

- vi. Research on land use change between 2003 and 2008 in the Cupatitzio River sub-basin, located in the Transversal Volcanic Axis and the Balsas depression in Mexico. Soil samplings were carried out in 16 representative sites in the upper parts of the sub-basin, where the dynamics of avocado plantation have caused significant changes in areas covered by temperate forests.¹⁸
 - vii. Study examining the environmental impacts—regional and at the parcel scale—derived from avocado cultivation in Michoacán, Mexico. Four types of avocado producers were identified according to their characteristics and agricultural practices; intensification of avocado cultivation was found to have a significant impact on soil quality and biodiversity; sustainable agricultural practices are suggested to reduce negative impacts, and the implementation of training programs for producers is recommended. The study concludes that careful planning is required to balance avocado production and environmental conservation in the region.¹⁹
51. The Secretariat determines that the submission satisfies USMCA Article 24.27(2)(c).
- d. appears to be aimed at promoting enforcement rather than at harassing industry; and*
52. The Secretariat finds that USMCA Article 24.27(2)(d) is satisfied since from the information and documentation included in the submission and its annexes is not intended to harass an industry. Although the submitter makes reference to a specific industry’s activities, avocado production activities in Michoacán, the submission seeks the effective enforcement of environmental law in relation to the protection of forest ecosystems and water quality in the face of adverse environmental effects derived from the production of the fruit in the state.
- e. indicates whether the matter has been communicated in writing to the relevant authorities of the Party and the Party’s response, if any*
53. The submission includes a request for information from Semarnat made through the National Transparency Platform. The submission states that “avocado production in Michoacán is generating a series of negative environmental impacts [...] on issues such as deforestation, pollution, biodiversity, water quality and availability, climate change and others that affect the Human Right to a Healthy Environment [...],”²⁰ and wonders whether the unit has undertaken environmental law enforcement actions in this regard.
54. In general, communications to the relevant authorities that meet this requirement are in the form of a written statement conveying the situation that is raised in the submission. Nothing in Article 24.27(2)(e) states that it must be the Submitter, rather than a third person, who

¹⁸ M. Bravo Espinosa, M. E. Mendoza, T. Carlón Allende, L. Medina, J. T. Sáenz Reyes and R. Páez (2012), “Effects of Converting Forest to Avocado Orchards on Topsoil Properties in the Trans-Mexican Volcanic System, Mexico,” *Land Degradation & Development*, vol. 25, No. 5, pp. 452-467, at: <<https://bit.ly/3Z9IR9f>>.

¹⁹ A. Burgos, C. Anaya and I. Solorio (2011), *Ecological impact of avocado cultivation at the regional and plot levels in the state of Michoacán: definition of a typology of producers*, stage I, final report presented to the Michoacán Produce Foundation (FPM) and the Local Agricultural Association of Uruapan Avocado Producers, Michoacán (AALPAUM), Geoenvironmental Research Center (CIGA-UNAM Campus Morelia), Morelia, Michoacán, https://lae.ciga.unam.mx/aguacate/sub2/images/stories/Informe_Final_Tipologias_Aguacate_COMPONENTE_2.pdf:>.

²⁰ Submission, § 64.

communicates the matter to the relevant authorities of the Party.²¹ The Secretariat has reiterated that this requirement is intended to ensure that the relevant authorities are aware of concerns about the lack of enforcement of environmental law in relation to the subject matter of a submission before it is filed with the Secretariat.²² The Submitter does not refer to any written communication addressed to the relevant authorities, nor do they explain the reasons why it has been impossible to send a letter, file a complaint or send an email, or the difficulty of attaching a communication submitted by a third party.

55. Without 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). The Secretariat considers that a request for information alone does not meet the requirement set by the USMCA.
56. A revised submission may include information on any communication addressed to the relevant authorities of the Government of Mexico and, if any, the response of the authority.

D. Article 24.27(3) Criteria

57. Article 24.27(3) of the USMCA establishes four additional criteria that guide the Secretariat's review process:

a. the submission alleges harm to the person making the submission;

58. The submission asserts that:

It is clear that responsible and concerned authorities lack the necessary information, are not taking the proper actions, and therefore are failing to perform their duties and comply with the law. This is serious, since these failures to effectively enforce the environmental law are severely harming the forest, worsening climate change, causing severe harm to biodiversity and ecosystems, and are thus affecting Michoacán, the country, the North American region and the planet....²³

59. The submission highlights various negative environmental impacts resulting from the production of avocado in Michoacán—specifically, the accelerated growth of the area dedicated to avocado in Michoacán at the expense of forest lands—such as deforestation, agrochemical pollution, biodiversity, the impact on water quality and availability, and climate change impacts.²⁴
60. The submission states that “...Michoacán avocado growers, and how they build and operate their production units, are not all the same.”²⁵ At the same time, it states that “...most avocado

²¹ See SEM-06-003 and SEM-06-004 (*Ex Hacienda El Hospital II y III*), Notification to the Council pursuant to Article 15(1) of the NAAEC, p. 18.

²² Id. (“Clearly the requirement of Article 14(1)(e) is to demonstrate that the competent authorities are aware of the matter in question.”). See also SEM-09-004 (*Mining in Quebec*), Determination according to Article 14(1) of the NAAEC, p. 8 (“A letter, e-mail, fax, or similar form of communication from the Submitters or others directly to the relevant authorities is meant here, and such must regard the matters which are the subject of the submission, and be dated prior to the submission's filing.”).

²³ Submission, § 50.

²⁴ Id. at §§ 5 and 64.

²⁵ Id. at § 8.

producers in Michoacán are generating either high or very high impacts according to several specific indices, with a high impact in the General Potential Ecological Impact (*Índice General de Impacto Ecológico Potencial—IGIEP*).²⁶

61. Regarding deforestation, the submission argues that “...current annual deforestation is estimated to be 30,000 hectares. It should be noted, however, that Michoacán's environmental authorities have recently stated that deforestation may reach 60,000 hectares per year.”²⁷ The submission states that forests provide environmental services such as

...wildlife refuge, habitat for various organisms, recreation, mitigation of the effects of climate change, climate regulation due to the interaction of vegetation with the atmosphere, regulation of the hydrological cycle due to the ecosystem's ability to intercept rainwater, filter water, recharge aquifers and slowly release water volumes; soil conservation, assimilation of various pollutants, carbon capture through the photosynthesis process, and oxygen generation, among others.²⁸
62. The submission links the loss of forests to climate effects: “The deforestation associated with avocado growing and the monocrop's low CO₂ capture capacity affects climate change.”²⁹
63. The impact on biodiversity is also linked to deforestation, agrochemical pollution and water availability. The submission cites a study that “...found that 66% of avocado producers do not conserve native forest species and that 93% use synthetic pesticides. Both facts point to a very high potential impact on the loss of biodiversity.”³⁰ According to another study quoted by the Submitter, it is estimated that “...there are seven species of pine that are in danger of disappearance due to the effects of avocado production in the territory of Michoacán, which will have a considerable effect on biodiversity.”³¹
64. Regarding agrochemical pollution, the submission maintains that “...pollution from the use of agrochemicals can be one of the main ecological problems in the management of avocado fields, since 69% of the producers in their study had high and very high impact levels in the Agrochemical Usage Pollution Index (*Índice de Contaminación Por el Uso de Agroquímicos—CPUA*).”³² The Submitter also argues that “[t]he overuse of chemicals, fertilizers and pesticides affects water tables and pollutes the rivers and streams in the avocado region. These effluents then affect the land, communities and people several kilometers downstream.”³³
65. Regarding the quality and availability of water, the Submitter asserts that “[t]o sustain the avocado groves, water tank storage use has proliferated beyond all rules or control by the authorities.” The Submitter further sustains that, according to unofficial information from Conagua, “...more than 50% of wells at avocado groves are illegal.”³⁴ The submission also states that “...avocado producers redirect water flows away from communities’ basic needs.”³⁵

²⁶ Id. at § 9.

²⁷ Id. at § 17.

²⁸ Id. at § 11.

²⁹ Id. at § 18.

³⁰ Id. at § 26.

³¹ Id. at § 27.

³² Id. at § 20. *See also* § 19.

³³ Id. at § 21.

³⁴ Id. at § 25.

³⁵ Id.

66. The Secretariat has already determined on previous occasions that, in considering the question of damage, consideration should be given to whether the damage referred to in the submission is due to the alleged lack of effective application of environmental law and whether such harm is related to environmental protection.³⁶ In accordance with the practice in the implementation of the SEM mechanism, the Secretariat determines that the submission satisfies the criterion set out in USMCA Article 24.27(3)(a).
- b. the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter;*
67. Article 24.2(2) of the USMCA states that the objectives of Chapter 24 of the Agreement are “to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation, in furtherance of sustainable development.”
68. The submission describes how the issues of deforestation, availability and quality of water, use of agrochemicals, and biodiversity — along with the Submitter's assertions — relate to several articles of Chapter 24, including Articles 24.2, 24.3, 24.4, 25.15, 24.23 and 24.24.³⁷
69. With regard to Article 24.2, the submission states: “...there are no signs of *cooperation to protect and conserve the environment* in Michoacán's avocado growing regions. On the contrary, deforestation and related environmental damage due to the failure to *effectively enforce environmental laws* are well documented.”³⁸
70. With regard to Article 24.3(2), and the commitment of Parties to improve their levels of environmental protection and to ensure that they result from their environmental laws and policies, the submission asserts: “...in Michoacán's avocado region [...] environmental regulation is limited, but worse, not enforced. The evidence shows that there are no effective commitments or substantive actions to protect the environment.”³⁹
71. The Secretariat believes that the study of the issues raised in the submission would help to promote high levels of environmental protection, as well as effective enforcement of environmental laws, with respect to avocado production in Michoacán.
72. The Secretariat concludes that the submission satisfies USMCA Article 24.27(3)(b).
- c. private remedies available under the Party's law have been pursued; and*
73. The Secretariat has found that pursuing private remedies can be interpreted broadly and this criterion can be met by filing a citizen complaint or referencing a complaint or remedy filed by another person, organization, or entity.

³⁶ SEM-19-004 (*Barred Owl*), Determination according to Articles 14(1) and (2) of NAAEC (21 November 2019), § 28; SEM-11-002 (*Sumidero Canyon II*), Determination according to Articles 14(1) and (2) of NAAEC (6 September 2012), § 36; SEM-13-00 (*Tourism Development in the Gulf of California*), Determination pursuant to Articles 14(1) and (2) of NAAEC (23 November 2013), § 62.

³⁷ Submission, §§ 52-62.

³⁸ *Id.* at § 53 (emphasis added).

³⁹ *Id.* at § 54.

74. This criterion is evaluated according to a standard of reasonableness, keeping in mind that in some cases barriers exist to pursuing such remedies.⁴⁰ In this sense, the Secretariat considers that it is sometimes impossible to initiate judicial or administrative proceedings in relation to a multiplicity of violators,⁴¹ so litigation may not be a convenient strategy to deal with certain alleged violations;⁴² that seeking specific remedies available to individuals with respect to the alleged widespread failure to enforce environmental law may be difficult;⁴³ that when the alleged failure to effectively enforce is of a generalized nature, the burden on the submitter to pursue remedies in relation to all violations is an important element in determining that “reasonable actions” have been taken,⁴⁴ and that a legal explanation may be available.⁴⁵
75. With regard to seeking or seeking remedies at their disposal or taking reasonable action to that effect, the Submitter states that:
- The legal framework for the defense of the environment stems from the content of article 4 of the Constitution. From there are 6 actions in 5 locations, to which Revuelta (2019) has [*sic*] called the Penta-Dimension of Environmental Law in Mexico. None of them is viable. The General Law on Sustainable Forest Development does not consider any legal action that we can assert against citizens, in the absence of articles 93, 94, 96, 97, 99 and relating. The possibility of the Popular Complaint under the LGEEPA is surpassed by the media exposure, the torrent of scientific studies that have been published for more than 15 years (several of them even under the sponsorship of the authorities themselves, as mentioned above) and the response of the environmental authorities Semarnat and Profepa (Annexes 6 and 8) to requests for access to information. So that for the specific case, no other actions can be made available to individuals in Mexico.⁴⁶
76. The Secretariat notes that the Submitter provides a reasonable explanation, stating that it is impossible to initiate remedies in relation to avocado production in Michoacán. The existence of barriers to reasonable reliance on the Party's resources is a consideration that the Secretariat has in mind.⁴⁷
77. The Secretariat considers that the submission complies with USMCA Article 24.27(3)(c), since the Submitter has explained the impossibility of seeking remedies under Mexican law.

⁴⁰ See SEM-18-001 (*Transboundary Agricultural Burning*), Determination pursuant to Articles 14(1) and (2) of the NAAEC (19 February 2018), §§ 27-28 (“In similar situations, the Secretariat has considered if reasonable actions were taken prior to file a submission. It has also considered that in some cases, the lack of resources may limit a submitter’s ability to undertake private remedies before filing a submission. The Secretariat considers that a barrier to a private remedy may include economic and social factors.”).

⁴¹ SEM-97-003 (*Quebec Hog Farms*), Notification under Article 15(1) of NAAEC (29 October 1999), p. 9, at: <<https://bit.ly/ADVSEM-97-003>>.

⁴² SEM-98-003 (*Great Lakes*) Determination pursuant to Article 14(1) and (2) (8 September 1999), p. 10, at: <https://bit.ly/DET14_1_2_98-003> [available in English only].

⁴³ SEM-98-004 (*BC Mining*), Notification under Article 15(1) of the NAAEC (11 May 2001), p. 16, at: <https://bit.ly/ADV15_1_98-004>.

⁴⁴ SEM-09-005 (*Skeena River Fishery*), Determination under Articles 14(1) and (2) of the NAAEC (18 May 2010), § 44, at: <https://bit.ly/DET14_1_2_09-005> [available in English only].

⁴⁵ Submission, § 66

⁴⁶ Submission, § 66.

⁴⁷ See SEM-15-002 (*Management of Analog TV Waste*), Determination under Articles 14(1) and (2) of NAAEC (1 March 2016), §59, at: <www.cec.org/wp-content/uploads/wpallimport/files/15-2-det1412_es_public.pdf>.

d. the submission is not drawn exclusively from mass media reports

78. With regard to Article 24.27(3)(d) of the USMCA, the Secretariat considers that the submission is *not* based on media reports. While the submission refers to news in the media, it reflects public attention to various issues of concern to the local community. The submission is based on documentation and information that the Submitter collected, largely from scientific studies, official sources, technical documentation and requests for information on the environmental situation in question.
79. The Secretariat therefore concludes that the submission meets the criteria in USMCA Article 24.27(3)(d).

IV. DETERMINATION

80. For the reasons outlined in its analysis, the Secretariat determines that the SEM-23-002 (*Avocado Production in Michoacán*) *does not* satisfy all the admissibility requirements set out in Article 24.27(2), and that additional information is required for the process to continue and to potentially request a response from the Government of Mexico in accordance with Article 24.27(3).
81. The Submitter must submit 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.
82. The Submitter has 60 calendar days from the date of this determination (i.e. until **4 May 2023**) to submit a revised submission containing the requested information. It is not necessary re-submit the documents already provided with the original submission. The Secretariat will then proceed to reconsider whether the SEM-23-002 (*Avocado Production in Michoacán*) submission meets the eligibility requirements.

Submitted respectfully to their consideration,

Secretariat of the Commission for Environmental Cooperation

(original signed)

By: Paolo Solano
Director of Legal Affairs and Head of the SEM Unit

c.c.p.: Miguel Ángel Zerón, alternate representative of Mexico
Stephen de Boer, Alternate Representative of Canada
Jane Nishida, alternate representative of the United States
Contact points of the Environment Committee
Jorge Daniel Taillant, executive director of the CCA
Submitter