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SECRETARIAT OF THE COMMISSION FOR ENVIRONMENTAL COOPERATION

PR 1. In response to the Secretariat's Determination dated March 6, 2023, being within the 60-day period indicated in Paragraph 7 and based on CHAPTER 24 of the USMCA, I hereby submit a REVISED SUBMISSION regarding Submission number SEM-23-002 (Avocado Production in Michoacán) to support the noted requirement and to complement some other relevant points.

PR 2. Paragraph 6 of the Determination states that, in particular, information is required that confirms that the matter has been communicated in writing to the Party. In the same sense, Paragraph 81 states: "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."

PR 3. Paragraph 54 states: "...Nothing in Article 24.27(2)(e) states that it must be the Submitter, rather than a third person, who communicates the matter to the relevant authorities of the Party." In this regard, it is clear that the written communication may be from the Submitter or from third parties.

PR 4. The same Paragraph 54 also states: "The Secretariat has reiterated that this requirement is intended to ensure that the relevant authorities are aware of concerns about lack of environmental law enforcement in relation to the subject matter of a submission before it is filed with the Secretariat."

PR 5. In relation to the above, there is sufficient evidence to demonstrate that the Mexican environmental authorities SEMARNAT, PROFEPA, CONAFOR and CONAGUA (and SADER, as an authority promoting avocado production), have been aware for several years—through different sources—of the environmental problems caused by the lack of effective enforcement of environmental laws related to avocado production in Michoacán and have not provided adequate responses or attention to the problem.

PR 6. Additional information and evidence to support paragraph (e) of Article 24.27(2) of the USMCA is presented in THREE SECTIONS: I) WRITTEN COMMUNICATIONS; II) CITIZEN COMPLAINTS; (III) OFFICIAL PUBLICATIONS FROM THE FEDERAL AUTHORITIES THEMSELVES.

I) WRITTEN COMMUNICATIONS

PR 7. On May 17, 2017, Congressman Pascual Sigala Páez presented a POINT OF AGREEMENT to the Plenary of the Honorable Congress of the State of Michoacán regarding the environmental problems caused by avocado production. On May 24, the Board of Directors of the Honorable Congress of the State of Michoacán approved the AGREEMENT of urgent and obvious resolution which urges the heads of the FEDERAL ENTITIES: Ministry of Environment and Natural Resources (*Secretaría del Medio Ambiente y Recursos Naturales*—SEMARNAT), Federal Attorney General for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—PROFEPA), National Forestry Commission (*Comisión Nacional Forestal*—CONAFOR) and Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (*Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación*—SAGARPA) as well as the corresponding state agencies "....so that as soon as possible and within the scope of their respective competencies, they jointly create a Round Table with the participation of the avocado producers from the State, marketers and/or packers, academics and experts to define the mechanisms within the legal framework that allow for advancing the normalization of avocado orchards." One of the objectives of the Round Table is to address the "ECOLOGICAL EMERGENCY" that Michoacán has generated due to avocado cultivation. The version of the Agreement is available at: <http://congresomich.gob.mx/file/Acuerdo -390.pdf>

PR 8. It should be noted that in the complete document of the PROPOSED AGREEMENT, Congressman Sigala recounts the importance of the avocado industry, as well as some of the environmental problems generated by avocado production (ANNEX 1 CONGRESS MICH.PDF).

PR 9. The Agreement of the Congress of Michoacán was OFFICIALLY NOTIFIED by means of a WRITTEN COMMUNICATION to the head of SEMARNAT, Ing. Rafael Pacchiano Alamán via official letter SSP/DGSATJ/DAT/DAT/DATMDSP/2238/17 dated 24 May 2017. Apparently, this authority did not issue any response, according to the File in the Archives of the Congress of the State of Michoacán.

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PR 10. Likewise, this Agreement of the Congress of Michoacán was OFFICIALLY NOTIFIED by means of a WRITTEN COMMUNICATION to the Head of PROFEPA, Guillermo Haro Bélchez, via official letter SSP/DGSATJ/DAT/DAT/DATMDSP/2238-A/17 dated 24 May 2017 (ANNEX 1 CONGRESS MICH.PDF).

PR 11. PROFEPA, by means of official letter No. PFPA/4/8C.17.5/0144/17, dated 21 June 2017, replied to the official letter from the President of the Board of Directors of the Congress of the State of Michoacán. In the official letter he pointed out that PROFEPA has participated in several meetings with federal authorities such as SEMARNAT, CONAFOR, CONAGUA and other state authorities, such as representatives of the Local Plant Health Boards and the Association of Export

Producers and Packers of Avocado of Mexico (*Asociación de Productores y Empacadores Exportadores de Aguacate de México—APEAM*) to analyze the avocado problem (ANNEX 1 CONGRESS MICH.PDF). In the aforementioned letter (a copy of which was sent to the Federal Attorney for Environmental Protection, Guillermo Javier Haro Bélchez), the Deputy Attorney General for Natural Resources of PROFEPA Biol. Ignacio Millan Tovar also stated that PROFEPA has carried out actions between 2015 and 2017 within which some criminal complaints were filed. This is in any case irrefutable evidence to demonstrate that the federal environmental authorities have been perfectly aware of the environmental problem caused by avocado for several years.

PR 12. In the same sense, the Agreement of the Congress of Michoacán was OFFICIALLY NOTIFIED by means of a WRITTEN COMMUNICATION to the head of CONAFOR, Ing. Jorge Rescala Pérez, via official letter SSP/DGSATJ/DAT/DAT/DATMDSP/2238-C/17 dated 24 May 2017. Apparently, this authority did not issue any response, according to the File in the Archives of the H. Congress of the State of Michoacán. [REDACTED]

PR 13. Similarly, the Agreement of the Congress of Michoacán was OFFICIALLY NOTIFIED by means of a WRITTEN COMMUNICATION to the head of SAGARPA, José Eduardo Calzada Roviroa, via official letter SSP/DGSATJ/DAT/DAT/DATMDSP/2238 -D/17 dated 24 May 2017. Apparently, this authority did not issue any response, according to the File in the Archives of the Congress of the State of Michoacán. [REDACTED].

PR 14. It should be noted that the Agreement of the Congress of the State of Michoacán was also OFFICIALLY NOTIFIED by means of a WRITTEN COMMUNICATION to different agencies of the Government of the State of Michoacán, as well as the STATE ECOLOGY COUNCIL. (ANNEX 1 CONGRESS MICH.PDF)

PR 15. It is worth mentioning that the Agreement of the Congress of the State of Michoacán is not just any document submitted by a third party, but rather it is an OFFICIAL PUBLIC DOCUMENT prepared and communicated by the highest elected representation of the State of Michoacán. It is pertinent to point out that in accordance with Article 202 of the Federal Code of Civil Procedures, PUBLIC DOCUMENTS are FULL PROOF of the facts legally affirmed by the authority from which they originate; likewise, this is referenced in various criteria and jurisprudence of the Supreme Court of Justice of the Nation. That is to say, it is a QUALIFIED WRITTEN COMMUNICATION, which communicates to the federal environmental authorities (SEMARNAT, PROFEPA, CONAFOR and SAGARPA; as well as to other state authorities) the environmental issue related to the avocado production and requests them to establish a Round Table to look for solutions to the problem; to the "ECOLOGICAL EMERGENCY" that Michoacán is experiencing.

PR 16. The SENATE OF THE REPUBLIC, on 4 July 2017, through the Third Commission, issued Opinion 1, Opinion with Point of Agreement by which urges PROFEPA, in coordination with CONAFOR and the Government of the State of

Michoacán, to conduct pertinent investigations regarding the alleged changes in land use carried out in Michoacán. The document warns about the environmental problems due to the avocado and the problem of the jurisdiction between federal and state authorities. It is an OFFICIAL PUBLIC DOCUMENT that should have been notified to the federal environmental authorities PROFEPA and CONAFOR. (ANNEX 2 Dictamen-Tercera_Comision-Martes-04 de Julio-2017...PDF) Document also available at: https://www.senado.gob.mx/permanente/CP/pdfs/dictamenes/tercera/Dictamen_Tercera_Comision-Martes-04-Julio-2017-416.pdf

PR 17. Also under the heading of written communications, it should be noted that in June 2016, the State Ecology Council of Michoacán (*Consejo Estatal de Ecología de Michoacán*—COEECO), a Citizen Body of permanent and social consultation and advisory capacity to the Executive Branch of the State and municipalities on environmental matters in accordance with Article 192 of the Conservation and Environmental Sustainability Law of the State of Michoacán (*Ley para la Conservación y Sustentabilidad Ambiental del Estado de Michoacán*—LCSAM)) issued RECOMMENDATION R-103 on the "REGULATION OF THE CHANGE OF USE OF SOIL IN RESPONSE TO THE EXPANSION OF THE AREA DEDICATED TO AVOCADO CULTIVATION." (ANNEX3 R-103-use-of-soil-aguacate-v2-COEECO.pdf). This public recommendation can also be found through an official link from the Government of the State of Michoacán: http://laipdocs.michoacan.gob.mx/?wpfb_dl=74056

PR 18. This PUBLIC RECOMMENDATION of COEECO refers to the concerning trend of change in land use in the pine-oak forests of Michoacán for avocado plantations and some efforts that have been made to increase the visibility of the environmental problem according to the FOURTH, FIFTH AND SIXTH BACKGROUND SECTIONS.

PR 19. Part of the environmental problem caused by the avocado in Michoacán is also addressed in the FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH AND TENTH CONSIDERATIONS.

PR 20. In POINT 3 of the recommendations, it is recommended to the Director of the Forestry Commission of the State of Michoacán: "to promote the establishment of coordination mechanisms with the competent federal authorities on the matter, particularly with the C.C. Delegates of the Ministry of Environment and Natural Resources (SEMARNAT), the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA) and the Federal Attorney General's Office (PROFEPA) in order to develop new strategies for intergovernmental concurrence to address this problem (environmental)."

PR 21. Regarding COEECO's PUBLIC RECOMMENDATION, three considerations should be noted: FIRST: In COEECO's meetings, the Delegate of SEMARNAT, the Delegate of PROFEPA, as well as the delegates of CONAGUA and CONAFOR normally participate as guests. SECOND: The Director of the Forestry Commission of the State of Michoacán—who is a member of COEECO in accordance with Article 193 of the LCSAM—was responsible for establishing contact with federal environmental

agencies to notify them of Recommendation R-103 and work on the coordination mechanisms, which he certainly did. THIRD: The Recommendation is an OFFICIAL PUBLIC DOCUMENT, in accordance with the nature and functions of COEECO. Thus, this document in itself also fulfills the requirement of Paragraph 6 of the CEC Secretariat's Determination. With this, it can be said that the FEDERAL ENVIRONMENTAL AUTHORITIES were directly aware of the RECOMMENDATION and, therefore, of the environmental problems caused by avocado production, without having implemented effective actions to contain the environmental damage, or to enforce the environmental law.

PR 22. The final part of paragraph 54 of the Determination, it states: "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."

PR 23. In this regard, it should be noted that on March 15, 2023, [REDACTED] presented a WRITTEN COMMUNICATION to María Luisa Albores González, Secretary of SEMARNAT, describing the problem of the lack of environmental law enforcement in relation to avocado production in Michoacán, the serious environmental effects that are being generated for this reason, and requesting her intervention (ANNEX 4). This communication was also sent via e-mail to the official SEMARNAT e-mail address: atención.ciudadana@semarmat.gob.mx and contacto.ciudadano@semarnat.gob.mx. On March 17, we received a copy of the e-mail sent by the Citizen Affairs Office to Mr. Gabriel Ruiz Martínez, Director of Follow-up and Institutional Management Control of the Office of the Secretary of SEMARNAT, informing him of the document submitted by [REDACTED], which was assigned the number [REDACTED]. It is worth mentioning that to date SEMARNAT has not provided any further response on the merits of the matter, which confirms the evasive attitude of the authority to address the problem.

PR 24. THE WRITTEN COMMUNICATIONS noted above meet the requirement of Article 24.27(2)(e) (Paragraphs 54 and 81 of the Determination) and constitute FACTUAL EVIDENCE that the environmental authorities have been aware of the environmental problems caused by avocado production and the failure to effectively enforce the environmental law for several years. In spite of this, they have not taken substantive actions to observe or enforce the law, nor to contain the environmental damage. This is a matter that cannot continue in illegality, due to the serious environmental impacts it is generating.

II) CITIZEN COMPLAINTS

PR 25. As noted, the final part of paragraph 54 of the Determination states: "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." In this sense, a variety of environmental citizen complaints submitted to the corresponding authorities by third parties should be considered.

PR 26. According to the public information provided by PROFEPA [REDACTED] In the 2012-2021 period, at least 35 CITIZEN COMPLAINTS IN MICHOACAN were identified that have to do with forest logging, tree felling, fires or change of land use, with the purpose -in all cases- of planting avocado trees. B) In 26 of these complaints, they were concluded by issuing a resolution derived from an administrative procedure in accordance with article 199 section VII of the LGEEPA. C) Of these resolutions, in 20 cases it is mentioned that a fine was imposed, but without evidence of collection. D) In some cases, it is stated that reforestation was conducted. It would be important for PROFEPA to review the coordinates of these properties because it is most likely that today there are avocado plantations on the properties that PROFEPA did not follow up on. E) In 7 cases PROFEPA could have filed criminal charges for environmental crimes with the corresponding prosecutors. It would also be important for PROFEPA to know how these complaints were handled and followed up on, because there is no evidence to infer that anyone has been detained for these environmental crimes. All this shows that the corresponding authority has been aware of the environmental problems derived from avocado production for many years, but does not enforce, nor does it seek to enforce, the environmental law effectively.

PR 27. In relation to the foregoing, it should be noted -as the Determination (Paragraph 74) rightly points out- that in reality it is humanly impossible to initiate thousands of citizen complaints or judicial or administrative proceedings given the multiplicity of violators. This is so, since according to APEAM the number of producers grew from 29,000 in September 2021 to 32,315 in December 2022. That is, more than three thousand producers in 15 months (PARAGRAPH 7, Original Submission), which could reach stratospheric numbers of illegal producers in the period from 2000 to 2022. Nevertheless, the 35 citizen complaints constitute SOLID EVIDENCE to show that the environmental authorities have been fully aware of the environmental problems of the avocado for many years and are aware of the problems of the lack of effective enforcement of environmental law. They also show that the environmental authorities have not given adequate attention to the environmental problems derived from avocado production.

III) OFFICIAL PUBLICATIONS FROM THE FEDERAL AUTHORITIES THEMSELVES

PR 28. CONAFOR'S ANNUAL WORK PLAN 2022, a deconcentrated unit of SEMARNAT, on page 12, the sub-section "Deforestation and Clandestine Logging" recognizes: "95% of deforestation occurs illegally, since SEMARNAT only authorizes changes in land use on an average of 12 to 13 thousand hectares per year, while gross annual deforestation averages 212,834 thousand hectares per year. The productive activities with the greatest impact on deforestation processes are those that involve highly profitable agricultural activities compared to forestry, such as avocado, oil palm, soybean, and meat production, as well as subsistence activities (extensive cattle ranching and cultivation of maize and beans)." Document available at: https://www.conafor.gob.mx/transparencia/docs/2022/Programa_Anual_de_Trabajo_2022.pdf

PR 29. On page 15, Section 3, first paragraph, "Decrease in the capacity to provide environmental services that affects the possibilities for the population's social and economic development," CONAFOR recognizes that environmental services are an essential public good for development, "However, the capacity to provide environmental services is at risk due to the processes of deforestation and degradation and the lack of valuation of these services and their internalization in public policies". Document available at: https://www.conafor.gob.mx/transparencia/docs/2022/Programa_Anual_de_Trabajo_2022.pdf

PR 30. There is a diversity of SCIENTIFIC STUDIES SPONSORED by different Federal Authorities for more than 10 years that show the environmental problems of the avocado. These studies have been sponsored by the environmental authorities and show that the federal authorities have been aware of the avocado-related environmental problems caused by the lack of effective enforcement of the environmental law.

PR 31. The Institute of Forestry, Agriculture and Livestock Research (INIFAP) of the Federal Ministry of Agriculture has sponsored a variety of scientific studies on the environmental effects of avocado production. Among them, these can be mentioned: Alvarez, Arturo; Salazar, Samuel; Ruiz, Jose Ariel, and Medina, Guillermo (2017). *Scenarios of how climate change will modify 'Hass' avocado growing areas in Michoacán*. Mexican Journal of Agricultural Sciences, No. 19, pp. 4035-4048. Available at: <https://cienciasagricolas.inifap.gob.mx/index.php/agricolas/article/view/671/531>

Bravo, Miguel; Sánchez, José de la Luz; Vidales, José Agustín; Sáenz, José Trinidad; Chávez, José Gilberto; Madrigal, Salvador; Muñoz, Hipólito Jesús; Tapia, Luis Mario; Orozco, Gabriela; Alcántar, Juan José; Vidales, Ignacio, and Venegas, Eulalio (2009). *Environmental and socioeconomic impacts of forest land use change to avocado orchards in Michoacán*. Mexico: Institute of Forestry, Agriculture and Livestock Research (*Instituto de Investigaciones Forestales, Agropecuarias y*

Pecuarías—INIFAP).

Available

at:

http://www.inifapcirne.gob.mx/Revistas/Archivos/libro_aguacate.pdf

PR 32. The Federal Chamber of Deputies has also published studies on the environmental effects of the avocado. Among them, one can identify: CEDRSSA, (2017). Export Case Report: Avocado. Center of Studies for Sustainable Rural Development and Food Sovereignty of the Chamber of Deputies. LXIII LEGISLATURE. Available at <http://www.cedrssa.gob.mx/files/b/13/54Exportación%20aguacate.pdf>. This study, in Section 4.1, refers to part of the environmental impacts of the avocado in Michoacán.

PR 33. SEMARNAT knows the problem very well, since in addition to a variety of meetings that the delegates of federal agencies have held to address these issues in Michoacán, which are surely reflected in countless internal minutes, official documents and official files during the last few years, the Secretariat itself published in its official quarterly magazine ENVIRONMENTAL DIALOGUES (*DIÁLOGOS AMBIENTALES*) Winter 2020, year 1, number 1, the article entitled: "Avocado: The Mexican green desert" by Pablo Alarcón Chaires, pp. 47-52, which clearly addresses part of the environmental problems generated by avocado production and the lack of environmental regulation of it. https://mia.semarnat.gob.mx:8443/dialogosAmbientales/documentos/DialogosAmbientales_Anio1_no1.pdf This is another irrefutable proof that the environmental authority is perfectly aware of the problem and has not acted effectively on it, thus the lack of effective enforcement of the environmental law.

PR 34. The Ministry of Environment and Natural Resources (SEMARNAT) and the National Institute of Ecology, both environmental agencies of the Federal Government financed the work of Garibay, Claudio, and Bocco, Gerardo (2011). *Land use changes on the Purepecha Plateau* (1976-2005). Ministry of Environment and Natural Resources, National Institute of Ecology UNAM/CIGA. Available at: <https://doi.org/10.22201/ciga.9786077908500e.2012>

PR 35. These official publications CLEARLY SHOW that the Chamber of Deputies, SEMARNAT as the highest federal environmental authority, as well as other closely linked federal authorities such as the Ministry of Agriculture (which, through SENASICA, grants Phytosanitary Certifications essential for avocado exports) have had clear knowledge and full awareness of the environmental problems caused by the lack of effective enforcement of environmental law in avocado production. However, they have not addressed the problem, and this has allowed the excessive growth of illegal orchards, with complete impunity, since there is no one to monitor and no one to effectively enforce environmental law.

ADDITIONAL POSITIONS ON THE SUBMISSION

PR 36. Although the Secretariat of the Commission for Environmental Cooperation has determined that Submission SEM -23-002 (Avocado Production in Michoacán) satisfies all other requirements, we consider it appropriate to make some additional statements to strengthen the criteria.

PR 37. Regarding the harm to the submitter, as one of the additional criteria that guide the Secretariat's review process established in Article 24.27(3) of the USMCA, it has been stated (a) the submission alleges harm to the person making the submission. In the submission, it is well documented that avocado production and the failure to effectively enforce 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." (Determination Paragraph 58 [quoting paragraph 50 of the Original Submission])

PR 38. In this regard, it should be pointed out that the damage to these environmental goods directly affects the Human Right to a Healthy Environment not only of the submitter, but also of millions of Michoacán residents who by reason of their place of residence - proximity to the act detrimental to the environment - have a LEGITIMATE INTEREST, that is, a qualified, real and legally relevant impact (SCJN, Second Chamber, Constitutional Appeal on Review 3193/2018, September 26, 2018. Similar reasons in AR 779/2014 and AR 839/2019).

PR 39. The Supreme Court of Justice of the Nation (SCJN) in Mexico has stated that LEGITIMATE INTEREST depends on the "special situation that the person or community has with the ecosystem that is considered violated, particularly with its environmental services" (SCJN, First Chamber, Constitutional Appeal on Review 307/2016, November 14, 2018, Page 75 Paragraph 1).

PR 40. Considering that avocado production involves practically half of the municipalities of Michoacán, affecting several ecosystems, watersheds, and environmental services, it is pertinent to understand that the "area of influence" or the "adjacent environment" is at least the totality of the State of Michoacán. For this purpose, the criterion adopted by the SCJN when resolving an impairment of the Yucatan Peninsula aquifer serves as a reference, where it was finally recognized that an area of 124,409 square kilometers was covered, including all of Yucatan and almost the totality of the States of Campeche and Quintana Roo (SCJN, Second Chamber, Constitutional Appeal on Review 953/2019, May 6, 2020. Page 34, Paragraph 1; Page 43, Paragraph 2).

PR 41. The SCJN itself has affirmed that the analysis of the legitimate interest of a person when violations of the Human Right to a Healthy Environment are claimed is a collective right of significance in the whole of society and not of an individual nature, for this reason it must be subject to a scrutiny of flexibility and reasonableness and be

carried out in light of the *pro actione*, *pro persona*, and precautionary principles in environmental matters.

PR 42. The right to public participation in environmental matters guarantees the effectiveness of the Human Right to a Healthy Environment, which is developed in various international instruments, such as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador;" the International Covenant on Civil and Political Rights; the American Convention on Human Rights; the Rio Declaration on Environment and Development; the North American Agreement on Environmental Cooperation; the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, "Aarhus Convention;" and the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, "Bali Guidelines."

PR 43. Based on the foregoing, I hereby request the Secretariat of the Commission for Environmental Cooperation to notify me of the receipt of this document and its annexes, which fully supports the additional information to satisfy Article 24.27(2)(e) of SUBMISSION SEM-23-002 (Avocado Production in Michoacán).

PR 44. Once all the requirements established in Article 24.27 of the USMCA have been met, and considering the importance of the avocado issue, its environmental impact, as well as the lack of effective enforcement of the environmental law, it should be reexamined whether Submission SEM-23-002 meets all the admissibility requirements and, continuing with the process, a RESPONSE FROM THE GOVERNMENT OF MEXICO should be requested, in accordance with Article 24.27.3 and in due course the Factual Record referred to in Article 24.28. should be prepared, trusting that this instrument will help to achieve the effective enforcement of the environmental law, the protection of the environment and, in its case, the reparation of the environmental damage caused in the last 20 years in Michoacán.

THE SUBMITTER