

Secretariat of the Commission for Environmental Cooperation

Secretariat notification pursuant to Article 24.28 of the Agreement between the United States of America, Mexico, and Canada

Submitter: Pursuant to ECA Article 16(1)(a), the Submitter's identity is kept confidential
Party: United Mexican States
Date of submission: 11 April 2023
Date of revised submission: 22 June 2023
Date of determination: 24 November 2023
Submission no.: SEM-23-003 (*Agave Production in Jalisco*)

Executive summary

On 11 April 2023, a Mexican national (the "Submitter"), who requested that his particulars be kept confidential pursuant to ECA Article 16(1)(a), filed a submission with the CEC Secretariat under USMCA Article 24.27(1) asserting that Mexico (the "Party") is failing to effectively enforce its environmental law with respect to deforestation and desertification in the state of Jalisco, Mexico due to the planting of agave, and also in relation to alleged inadequate management of tequila vinasses, a term denoting the wastewater generated in the tequila manufacturing process.

On 11 May 2023, the Secretariat found that submission SEM-23-003 (*Agave Production in Jalisco*) did not meet all the eligibility requirements and criteria of USMCA Article 24.27 and so notified the Submitter in its determination under USMCA Article 24.27(2) and (3). On 22 June 2023, the Secretariat received a revised submission with the additional information.

On 26 July 2023, the Secretariat found that with the additional information received, the submission met all the applicable eligibility requirements and criteria (set out in USMCA Article 24.27(1) and (2)) and merited a response from the Party pursuant to USMCA Article 24.27(3).

On 25 September 2023, the Secretariat received a response in which the Party provided information on land use changes that have occurred on forested land; on the protection of such land in Jalisco through programs coordinated by the federal authorities; on ecological and territorial zoning measures, and on the establishment of criteria for the sustainable use of natural resources, the preservation of ecological equilibrium, and mitigation of the climate change effects ensuing from agave production operations.

In addition, the Party provided information on coordination among the authorities for the creation of information instruments and for the integration of sustainability goals and commitments into the agave-tequila supply chain; forestry-related inspection and surveillance measures carried out by Profepa, and self-regulation mechanisms implemented by businesses in the sector.

As regards the allegation of inadequate management of vinasses, the Party provided information on the National Environmental Auditing Program (*Programa Nacional de Auditoria Ambiental*) as it applies to agave-sector businesses; it reported on 22 inspection visits conducted by Conagua, and it presented information on coordination among the authorities, available information tools, and water quality assessments.

The Party gave notice of the existence of pending administrative proceedings relating to the effective enforcement of the environmental laws cited in the submission, and on this basis asked the Secretariat to terminate its review of the submission pursuant to USMCA Article 24.27(4)(a).

In regard to the pending proceedings notified by the Party, the Secretariat finds that the production of a factual record would not cause undue interference with the proceedings, since the matter about which the Secretariat is issuing its recommendation corresponds to the environmental impacts of vinasse discharges from the tequila distillation process, but without specifying any particular discharge or tequila company. A factual record would present aggregate data without specifying the discharge points; that is, it would result in the compilation and analysis of aggregate information and would thereby afford an overview of the issues raised by the Submitter.

In regard to the issues arising from land use changes on forested land, the Secretariat finds that the Party's response addresses the concerns raised in the submission. In the absence of more specific assertions, the Secretariat does not consider it necessary to prepare a factual record for this aspect.

With respect to water pollution caused by vinasse discharges, the response leaves central issues unresolved in regard to the contamination of receiving bodies under the jurisdiction of the federal authorities. In particular, the response does not clarify why, in the case of various acts carried out with respect to vinasse discharges onto the ground, the authority stated that it lacked jurisdiction.

Further to its review in the light of the Party's response, the Secretariat finds that central issues remain unresolved in relation to the matter raised in submission SEM-23-003 (*Agave Production in Jalisco*) and that the preparation of a factual record in regard to the effective enforcement of environmental law with respect to the contamination of receiving bodies by vinasse discharges is warranted.

A factual record could present information on the Party's efforts to identify, monitor, and control vinasse discharges into receiving bodies under federal jurisdiction in accordance with the National Waters Act (*Ley de Aguas Nacionales—LAN*) as well as on the mechanisms used to determine responsibility for environmental harm under the Federal Environmental Responsibility Act (*Ley Federal de Responsabilidad Ambiental—LFRA*).

The Secretariat presents its reasoning below and so notifies Council pursuant to USMCA Article 24.28(1).

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA or “the Agreement”) and the Environmental Cooperation Agreement (ECA) took effect. As from that date, the mechanism for submissions on the enforcement of environmental law (the “SEM mechanism”), 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 implementation of the SEM mechanism continues to be the work of the Commission for Environmental Cooperation (CEC or the “Commission”),¹ whose terms of reference are now stipulated in the ECA.²
2. The SEM mechanism allows any person or entity established in Canada, the United States, or Mexico to file a submission asserting that a Party to the ECA is failing to effectively enforce its environmental laws.³ The CEC Secretariat initially reviews submissions based on the requirements and criteria set out in USMCA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements and criteria, 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 determines whether the matter warrants the preparation of a factual record and, if so, it so informs the CEC Council and the Environment Committee,⁴ providing its reasons as prescribed by USMCA Article 24.28(1); otherwise, it terminates the review of the submission.⁵
3. On 11 April 2023, a citizen whose identity is being kept confidential pursuant to ECA Article 16(1)(a) (the “Submitter”) filed a USMCA Article 24.27(1)⁶ submission with the CEC Secretariat asserting that Mexico (the “Party”) is failing to effectively enforce its environmental laws with respect to deforestation and desertification in the state of Jalisco, Mexico due to the planting of

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

² While the provisions now governing the SEM mechanism are those of chapter 24 of the USMCA, the ECA also establishes some related procedures: the Secretariat’s role in implementing the submission process; the Council’s role in exchanges of information with the Environment Committee; the preparation and publication of factual records, and the Council’s cooperation activities further to factual records: ECA Articles 2(3), 4(1)(l), 4(1)(m), 4(4), and 5(5).

³ USMCA Article 24.27(1) stipulates that a submission may be filed by “any person of a Party,” this being defined under Article 1.5 as a “a national [natural person who has the nationality of a Party or is a permanent resident thereof] of a Party or an enterprise [private, public, or social organization constituted or organized under the applicable law] of a Party”.

⁴ Established under USMCA Article 24.26(2), the Environment Committee has as its purpose that of overseeing the implementation of chapter 24.

⁵ For detailed information on the various stages of the submissions on enforcement matters (SEM) process, the public registry of submissions, and the Secretariat’s determinations and factual records, please visit the CEC website at <<http://www.cec.org/submissions-on-enforcement/>>.

⁶ SEM-23-003 (*Agave Production in Jalisco*), USMCA Article 24.27(1) Submission (11 April 2023), online at <<https://bit.ly/3LdDwJA>> [Submission].

agave over increasingly large areas, and also in relation to allegedly inadequate management of the wastewater (called “vinasse” or “vinasses”) generated in the tequila manufacturing process.⁷

4. According to the Submitter, the Party is failing to effectively enforce various applicable legal provisions:
- i) the Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos*—the **Constitution**);
 - ii) the General Ecological Equilibrium and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—**LGEEPA**);
 - iii) the Agrarian Act (*Ley Agraria*);
 - iv) the Federal Duties Act (*Ley Federal de Derechos*—**LFD**);
 - v) the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (**Protocol of San Salvador**);
 - vi) Mexican Official Standard NOM-064-ECOL-1994, *Establishing maximum permissible contaminant limits in wastewater discharges into receiving bodies from the distillery industry*, and
 - vii) Mexican Official Standard NOM-EM-037-FITO-2002, *Phytosanitary specifications for the production and mobilization of blue agave ('Weber Azul' cultivar)*.
5. On 11 May 2023, the Secretariat found that submission SEM-23-003 (*Agave Production in Jalisco*) did not meet all the eligibility requirements and criteria of USMCA Article 24.27 and so notified the Submitter in its USMCA Article 24.27(2) and (3) determination.⁸ The Secretariat found that the legal provisions and regulatory instruments cited in the submission as not being effectively enforced by the Party do not qualify as environmental law under USMCA Article 24.1, and that in order for the submission to be eligible, it should have cited environmental law as required by USMCA Article 24.1.⁹
6. On 26 July 2023, the Secretariat received a revised submission containing additional information.¹⁰
7. On 26 July 2023, the Secretariat found that with the additional information received, the submission met all the corresponding eligibility requirements and criteria (i.e., those set out in USMCA Article 24.27(1) and (2)) and merited a response from the Party pursuant to USMCA Article 24.27(3) in relation to the effective enforcement of the following legal provisions:¹¹
- i. Article 4, fifth and sixth paragraphs, of the **Constitution**;
 - ii. **LGEEPA** Articles 5 paragraphs II, V, IX and XI, 15 paragraphs III, IV, IX and XII, 19 paragraphs I, II, III, V and VII, 20 *bis* 1, 21, 78, 78 *bis*, 79 paragraphs I, II, VI and IX, 88 paragraphs I, III and IV, 89 paragraphs II, III, V and XI, 98, 99

⁷ Submission, “Exposición de hechos,” at 7.

⁸ SEM-23-003 (*Agave Production in Jalisco*), USMCA Article 24.27(2) and (3) Determination (11 May 2023), online at <https://bit.ly/DET23-03_es> [Determination].

⁹ *Ibid.*, § 6.

¹⁰ SEM-23-002 (*Agave Production in Jalisco*), revised submission, with additional information pursuant to USMCA Article 24.27(1) (22 June 2023), online at <<https://bit.ly/RSUB23-03>> [Revised Submission].

¹¹ SEM-23-003 (*Agave Production in Jalisco*), USMCA Article 24.27(2) and (3) Determination (26 July 2023), online at <<https://bit.ly/3Gb56DX>> [Second Determination].

- paragraph XII, 117 paragraphs I, II, III and V, 120 paragraphs I, III, V, VI and VII, 121, 133, 139, 160, 161, 162, 170, 171, 172, and 173;
- iii. Articles 7 *bis* paragraph XI, 9 paragraph XXXVI, 14 *bis* 5 paragraphs X, XI, XII and XVII, 47, 85, 86 paragraph V, 88 *bis* paragraphs I, II, III, V, VI, VII, VIII, IX and X, 91, 92 paragraphs I and II, 96 *bis*, 96 *bis* 1, 119 paragraphs I, II, XII, XIV, XV and XVII, and 123 *bis* 1 of the National Waters Act (*Ley de Aguas Nacionales—LAN*);
 - iv. Articles 1, 4, 5 paragraphs II and V, 6, 9 paragraphs I, II, IV, XVIII and XXI, 18, 19, 20, 70, and 106 of the General Wildlife Act (*Ley General de Vida Silvestre—LGVS*);
 - v. Articles 93, 94, 96, 97, 98, and 99 of the General Sustainable Forest Development Act (*Ley General de Desarrollo Forestal Sustentable—LGDFS*);
 - vi. Articles 165, 170, and 172 of the Sustainable Rural Development Act (*Ley de Desarrollo Rural Sustentable—LDRS*);
 - vii. Articles 10 and 54 of the Federal Environmental Responsibility Act (*Ley Federal de Responsabilidad Ambiental—LFRA*), and
 - viii. Mexican Official Standard NOM-001-SEMARNAT-2021, *Establishing permissible contaminant limits in wastewater discharges into receiving bodies owned by the nation (NOM-001)*.
8. On 25 September 2023, the Secretariat received the Party's response.¹² It contains information on land use changes that have occurred on forested land as well as on strategies, programs, and other measures implemented in the tequila industry to avoid impacts on the environment and natural resources; in addition, it provides information on the conditions under which agave is produced in Jalisco. The Party contends that a number of the provisions cited by the Submitter should not have been considered for review by the Secretariat because they are not applicable to the matters raised in the submission.¹³ The Party also gives notice of the existence of pending administrative proceedings and therefore requests that processing of the submission be terminated pursuant to USMCA Article 24.27(4)(a).¹⁴
9. In accordance with USMCA Article 24.28(1), the CEC Secretariat has reviewed submission SEM-23-003 (*Agave Production in Jalisco*) in light of the Party's response to ascertain whether it warrants the preparation of a factual record.
10. Further to its review of the response, the Secretariat finds that because the citizen complaints notified by the Party as pending administrative proceedings were initiated and are being processed by the Party (sic), and because the subject of these proceedings does not coincide with the matters raised in the submission — the Submitter does not refer to any specific property or lot — it is not evident that the citizen complaints that are still pending have the potential to resolve the matters raised in SEM-23-003.

¹² SEM-23-003 (*Agave Production in Jalisco*), USMCA Article 24.27(4) Party Response (25 September 2023), online at <<https://bit.ly/3G2q0VW>> [Response].

¹³ *Ibid.*, §§ 5–15.

¹⁴ *Ibid.*, § 132.

11. In sum, further to its review of the submission in light of the response, the Secretariat concludes that the response leaves central issues unresolved that **warrant the preparation of a factual record**, specifically in regard to the effective enforcement of environmental laws relating to control of wastewater discharges originating during the tequila production process in the state of Jalisco, with particular attention to discharges onto the ground.

II. REVIEW

a. Preliminary issues

The inapplicability of the provisions cited in the submission

12. The Party contends that **LGEEPA** Articles 5 paragraphs II, IX and XI, 15 paragraphs III, IV, IX and XII, 19 paragraphs I, II, III, V and VII, 20 bis 1, 79 paragraphs I, II, VI and IX, 98, 99 paragraph XII, 160, 161, 162, 170, 171, and 172; **LGDFS** Articles 93, 94, 96, 97, 98, and 99; **LFRA** Articles 10 and 54; **LAN** Articles 92 paragraph I and 119 paragraphs I and XV, and **NOM 001** are not applicable to the matters raised in the submission, since these are provisions that are being enforced by the federal authorities.¹⁵
13. On this score, the Party argues that the response presents various acts of enforcement, including auditing of Mexican official standards, implementation of land use change and ecological zoning plans, and acts of inspection and surveillance.¹⁶ That is, it argues that these “are being enforced with respect to the assertions in the submission.” In any event, the Secretariat reviewed the acts of enforcement reported by the Party so as to determine on this basis whether the preparation of a factual record is warranted.
14. Below, the Secretariat gives an accounting of the information on enforcement measures provided by the Party and incorporates them into its review. Nevertheless, it adheres to the text of its determination of 26 July 2023 on the relevance and eligibility of the provisions cited by the Submitter.

The environmental responsibility regime is not applicable to the Party

15. The Party argues that **LFRA** Article 10, establishing the environmental responsibility regime, is only applicable with respect to natural or legal persons who cause direct or indirect harm to the environment and are therefore obligated to repair or compensate for the harm caused. The Party asserts on this basis that noncompliance with this provision is not a concept applicable to a public authority.¹⁷ In this regard, it should be borne in mind that the state is in fact a legal person¹⁸ and that it may incur responsibility by failing to act in certain circumstances. In any event, the SEM process demands transparent information on the Parties’ commitment to *effectively enforce* their

¹⁵ Response., §§ 5–14.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, § 11.

¹⁸ Article 25 of the Federal Civil Code, which defines legal persons as “I. The nation, the states, and the municipalities.”

environmental laws, as is the case with the implementation of the environmental responsibility regime.¹⁹

16. The Party presents other arguments concerning the applicability of LFRA Article 54, which are addressed in paragraphs 81 and 82 of this notification.
17. The Secretariat therefore continues with its review of LFRA Articles 10 and 54, since these provisions are in fact related to the enforcement measures implemented by the Party.

b. Notification of pending judicial proceedings

18. In its response, the Party gives notice of pending proceedings under USMCA Article 24.27(4) and asks the Secretariat to terminate its review of the submission.²⁰
19. The transparency and credibility of the SEM process demand a strict review of the Party's notification of the existence of pending proceedings under USMCA Article 24.27(4). This is because the USMCA does not allow for the termination of a submission based solely on a Party's notification.²¹ This is corroborated by the CEC's practice throughout the period of implementation of the SEM process since its beginnings in 1994, with respect to submissions that have largely received the approval of Council to produce a factual record.²²
20. The Secretariat has advised on previous occasions that it does not function as a tribunal; that its determinations "are not binding on the Parties or submitters, and [that] Factual Records are not rulings or judicial opinions on an asserted failure of effective enforcement of environmental law." For this reason, it is not evident how a factual record could interfere with ongoing domestic proceedings, as a court decision could do.²³

¹⁹ Cf. RESPONSABILIDAD AMBIENTAL: ESTÁ SUJETA A UN RÉGIMEN DE ESPECIALIDAD REGULATORIA EN QUE CONFLUYEN LA LEY FEDERAL DE RESPONSABILIDAD AMBIENTAL Y OTROS ORDENAMIENTOS, LO QUE IMPLICA EL DEBER DE INTERPRETARLOS DE MODO QUE PREVALEZCA EL MANDATO CONSTITUCIONAL DE PROTECCIÓN Y REPARACIÓN. *Tesis aislada*, Eighteenth Collegiate Administrative Tribunal of the First Circuit, Judicial Branch of the Federation, no. I.18o.A.71 A (10a.), *Semanario Judicial de la Federación y su Gaceta* (Gaceta SJF), 10th epoch, bk. 53, vol. III, 27 April 2018, at 2066, digital record 2016752, online at <<https://bit.ly/48QddTB>> [ENVIRONMENTAL RESPONSIBILITY].

²⁰ Response, §§ 99, 129, and 132.

²¹ Cf. SEM-01-001 (*Cytrar II*), Article 14(3) Determination (13 June 2001), at 5, <https://bit.ly/DET_14_3-01-001_es>: "Only in the specific case where the matter that is the subject to a submission is the subject of a pending proceeding is the Secretariat authorized to proceed no further with its consideration of a submission..."

²² SEM-96-003 (*Oldman River I*); SEM-97-001 (*BC Hydro*); SEM-98-004 (*BC Mining*); SEM-00-004 (*BC Logging*); SEM-00-006 (*Tarahumara*); SEM-01-001 (*Cytrar II*); SEM-02-003 (*Pulp and Paper*); SEM-03-003 (*Lake Chapala II*); SEM-04-002 (*Environmental Pollution in Hermosillo*); SEM-04-005 (*Coal-fired Power Plants*); SEM-05-003 (*Environmental Pollution in Hermosillo II*); SEM-06-003 (*Ex Hacienda El Hospital II*) and SEM-06-004 (*Ex Hacienda El Hospital III*), consolidated; SEM-06-005 (*Species at Risk*); SEM-06-006 (*Los Remedios National Park*); SEM-07-005 (*Drilling Waste in Cunduacán*); SEM-07-001 (*Minera San Xavier*); SEM-09-003 (*Los Remedios National Park II*); SEM-09-002 (*Wetlands in Manzanillo*); SEM-11-002 (*Sumidero Canyon II*), SEM-10-002 (*Alberta Tailings Ponds*); SEM-12-001 (*BC Salmon Farms*); SEM-13-001 (*Tourism Development in the Gulf of California*); SEM-19-002 (*City Park Project*); SEM-22-001 (*Pollution in Playa Hermosa*), and SEM-21-003 (*North Atlantic Right Whale*).

²³ SEM-07-001 (*Minera San Xavier*), Article 15(1) Determination (15 July 2009), § 44, online at <https://bit.ly/DET_07-007> [*Minera San Xavier* Article 15(1) Determination]. See also the *lis pendens* analysis in §§ 40-4.

21. The threshold for a finding of the existence of pending judicial or administrative proceedings must be high in order to give full effect to the object and purpose of the SEM mechanism,²⁴ for “the Secretariat must attempt to ensure a modicum of predictability and thus fairness in [implementing the mechanism].”²⁵ The fact that the Secretariat has the power to determine whether pending proceedings notified by a Party indeed require the termination of a submission process is corroborated by the principle that a treaty cannot contribute to the achievement of its express object and purpose if it is not effective.²⁶ To this end, it becomes necessary to implement the SEM mechanism under the aegis of institutional effectiveness, giving a constructive interpretation to the provisions of the USMCA.²⁷
22. For this reason, the Secretariat is only authorized to apply this exceptional form of termination of a submission after considering whether the preparation of a factual record could *duplicate efforts or cause interference* in a judicial or administrative sphere in relation to any proceeding notified by a Party, considering: i) whether the proceeding in question is ongoing; ii) whether it is being pursued in a timely manner and in accordance with the Party’s law; iii) whether it concerns the same matter raised and environmental law cited by the submitter, and iv) whether the proceeding has the potential to resolve the matter raised in the submission.²⁸ A review of each of these factors is presented in the following paragraphs.
23. As a preliminary matter, the Party reports on various acts of enforcement in the section titled (in Spanish) “(a) Whether the matter is the subject of a pending judicial or administrative proceeding, in which case the Secretariat shall proceed no further”²⁹ and informs the Secretariat of pending proceedings. In this section, the Party presents acts that must be reviewed under USMCA Article 24.27(b)(i); i.e., as information on enforcement of the environmental law in question.³⁰ Beyond this formality, which is addressed in the corresponding section, and in an effort to make its review as transparent as possible, the Secretariat now proceeds to consider whether any of the ongoing proceedings mentioned in the Party’s response could in fact give rise to the termination of submission SEM-23-003 (*Agave Production in Jalisco*).

²⁴ *Ibid.*, § 35.

²⁵ *Ibid.*, § 33.

²⁶ See, e.g., A. M. Slaughter and A. Wiersema, “The Scope of the Secretariat’s Powers regarding the Submissions Procedure of the North American Agreement on Environmental Cooperation under General Principles of International Law,” § 6, in Commission for Environmental Cooperation, *North American Environmental Law and Policy: Citizen Submissions on Enforcement Matters*, NAELP series, vol. 27 (Montreal: CEC, 2010), at 1–30, online at <<http://goo.gl/BnFqYe>>.

²⁷ “[I]nternational law authorises, indeed requires, the organisation, should it find it necessary, if it is to discharge all its functions effectively, to interpret its procedures in a constructive manner directed towards achieving the objective the Parties are deemed to have had in mind.” United Nations Security Council, *Special Report of the Secretary-General on Ethiopia and Eritrea*, doc. no. S/2006/992, enclosure, “Eritrea-Ethiopia Boundary Commission: Statement by the Commission,” 15 December 2006, § 17; online at <<https://bit.ly/486xLXJ>>.

²⁸ SEM-01-001 (*Cytrar II*), Article 15(1) Notification (29 July 2002), at 6, online at <https://bit.ly/3EQwIDm> [Cytrar II Article 15(1) Notification].

²⁹ *Ibid.* at 13–24.

³⁰ USMCA Article 24.27(4)(b)(i): “The Party shall inform the CEC Secretariat within 60 days of delivery of the request:… b) of any other information the Party wishes to provide, such as:… i) information regarding the enforcement of the environmental law at issue, including any actions taken in connection with the matter in question;…”

24. The Party reports a total of 38 complaints in connection with forested land use changes and cutting of trees in forested zones, and 67 complaints related to discharges into national bodies of water and property, all filed with the Office of the State Attorney for Environmental Protection (*Procuraduría Estatal de Protección al Ambiente—Proepa*).³¹ Since these are acts of enforcement by a state authority, the Secretariat cannot include them in its review, since the SEM mechanism only contemplates legislation enforced by federal authorities.³²

i) Whether the proceeding in question is being pursued by the Party

25. The Secretariat began by reviewing whether any of the pending administrative proceedings notified by the Party were initiated by the Party,³³ and then went on to consider the three other factors necessary to determine the existence of pending proceedings.³⁴
26. The Party stated that between 2012 and 2023, the Profepa office in the state of Jalisco opened a total of 84 citizen complaint files relating to vinasse discharges and land use changes on forested land for planting of agave.³⁵ In this regard, the Secretariat identified information on 76 citizen complaint files (Table 1). There is also one criminal investigation into an alleged offense involving forested land use changes,³⁶ which cannot be considered a pending proceeding because the indictment has yet to be prepared and no acts of enforcement have been carried out.
27. An important point to emphasize is that the citizen complaints in question do not in and of themselves constitute acts by the Party seeking to implement enforcement measures in relation to land use changes that have occurred on forested land or to control of wastewater discharges. In any event, the complainants in these proceedings are attempting to set the institutional apparatus in motion in order to address the impact caused by forested land use changes, burning of trees or forested areas, and discharge of vinasses in order to make way for agave production in Jalisco.

³¹ Response at §78.

³² Cf. USMCA Article 24.1: “statute 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*” (emphasis added).

³³ *Minera San Xavier* Article 15(1) Determination, § 36: “The proceedings notified by Mexico in this matter were *initiated by the Submitter and not Mexico*. They therefore, in part, fall outside of the definition of pending proceedings in Article 45(3)(a)” (emphasis in original).

³⁴ Cf. SEM-96-003 (*Oldman River I*), Article 15(1) Determination (2 April 1997), online at <<https://bit.ly/3ZG7sTu>> [*Oldman River Article 15(1) Determination I*] (available in English only). See in particular pp. 3–4:

The pending Federal Court case called to the attention of the Secretariat by Canada is not an action *pursued by the Party* within the meaning of Article 45(3)(a)… Since the current matter before the Canadian court was initiated and is being pursued by a private entity, and not a “Party” as that term appears to be employed in Article 45(3)(a), the Secretariat may consider other factors in its review of the Submission at this stage.

³⁵ Response, table at 24–33 and Appendix MX-017.

³⁶ Response, § 113.

28. Of the 76 citizen complaints, the Party reports that 9 have been *allowed*,³⁷ 6 have been *addressed*,³⁸ 12 have been *received*,³⁹ 35 have been *closed*,⁴⁰ and 14 *lack information*,⁴¹ as indicated in the table below.

Table 1. Citizen complaints notified by the Party⁴²

	Citizen complaint no.	Subject	Status
1	PFPA/21.7/2C.28.1/00010-12	Vinasse discharge	Closed
2	PFPA/21.7/2C.28.4.1/00028-12		Closed
3	PFPA/21.7/2C.28.4.2/00043-12		Closed
4	PFPA/21.7/2C.28.4.1/00012-13		Closed
5	PFPA/21.7/2C.28.4.1/00015-13		Closed
6	PFPA/21.7/2C.28.4.1/00020-13		Closed
7	PFPA/21.7/2C.28.2/00334-13	Land use change on forested land for agave production	Closed
8	PFPA/21.7/2C.28.2/00043-14		Closed
9	PFPA/21.7/2C.28.2/00037-16		Closed
10	PFPA/21.7/2C.28.2/00073-17		Allowed
11	PFPA/21.7/2C.28.2/00102-17		Closed
12	PFPA/21.7/2C.28.2/00150-17		Closed
13	PFPA/21.7/2C.28.2/00206-17		Addressed
14	PFPA/21.7/2C.28.1/00008-18	Vinasse discharge	Closed
15	PFPA/21.7/2C.28.2/00063-18	Land use change on forested land for agave production	Closed

³⁷ Citizen complaint file nos. PFPA/21.7/2C.28.2/00073-17; PFPA/21.7/2C.28. 2/00072-19; PFPA/21.7/2C.28.1/00031-19; PFPA/21.7/2C.28.2/00128-20; PFPA/21.7/2C.28.2/00182-20; PFPA/21.7/2C.28.2/00060-21; PFPA/21.7/2C.28.2/00063-21; PFPA/21.7/2C.28.2/00165-21, and PFPA/21.7/2C.28.2/00206-21.

³⁸ Citizen complaint file nos. PFPA/21.7/2C.28.2/00206-17; DA-039-19; DA-044-19, PFPA/21.7/2C.28.2/00162-21; DA-028-21, and DA-029-21.

³⁹ Citizen complaint file nos. DA-001-19; DA-020-19; DA-043-19; DA-047-19; DA-020-20; DA-034-20; DA-019-21; DA-020-21; DA-022-21; DA-031-21; DA-033-21, and DA-052-21.

⁴⁰ Citizen complaint file nos. PFPA/21.7/2C.28.1/00010-12; PFPA/21.7/2C.28.4.1/00028-12; PFPA/21.7/2C.28.4.2/00043-12; PFPA/21.7/2C.28.4.1/00012-13; PFPA/21.7/2C.28.4.1/00015-13; PFPA/21.7/2C.28.4.1/00020-13; PFPA/21.7/2C.28.2/00334-13; PFPA/21.7/2C.28.2/00043-14; PFPA/21.7/2C.28.2/00037-16; PFPA/21.7/2C.28.2/00102-17; PFPA/21.7/2C.28.2/00150-17; PFPA/21.7/2C.28.1/00008-18; PFPA/21.7/2C.28.2/00063-18; PFPA/21.7/2C.28.1/00002-18; PFPA/21.7/2C.28.1/00022-18; PFPA/21.7/2C.28.1/00044-18; PFPA/21.7/2C.28.1/00050-18; PFPA/21.7/2C.28.2/00051-19; PFPA/21.7/2C.28.2/00086-19; PFPA/21.7/2C.28.2/00144-19; PFPA/21.7/2C.28.2/00154-19; PFPA/21.7/2C.28.2/00174-19; PFPA/21.7/2C.28.1/00027-19; PFPA/21.7/2C.28.1/00008-19; PFPA/21.7/2C.28.1/00007-20; PFPA/21.7/2C.28.2/00115-20; PFPA/21.7/2C.28.1/00022-20; PFPA/21.7/2C.28.2/0177-20; DA-032-20; PFPA/21.7/2C.28.2/00017-21; PFPA/21.7/2C.28.2/00043-21; PFPA/21.7/2C.28.2/00098-21; PFPA/21.7/2C.28.2/00179-21; PFPA/21.7/2C.28.1/00036-21, and PFPA/21.7/2C.28.2/00184-21.

⁴¹ Citizen complaint file nos. PFPA/21.7/2C.28.2/00057-22; PFPA/21.7/2C.28.2/00066-22; PFPA/21.7/2C.28.2/00074-22; PFPA/21.7/2C.28.2/00088-22; PFPA/21.7/2C.28.2/00099-22; PFPA/21.7/2C.28.2/00110-22; PFPA/21.7/2C.28.4.2/00010-22; PFPA/21.7/2C.28.2/00138-22; PFPA/21.7/2C.28.1/00022-22; PFPA/21.7/2C.28.2/00151-22; PFPA/21.7/2C.28.2/00161-22; PFPA/21.7/2C.28.2/00186-22; PFPA/21.7/2C.28.1/00028-22, and PFPA/21.7/2C.28.2/00197-22.

⁴² Response, §§ 90–1 (table at 24-33) and Appendices MX-016 and MX-017.

16	PFPA/21.7/2C.28.1/00002-18	Land use change on forested land for agave production	Closed
17	PFPA/21.7/2C.28.1/00022-18	Vinasse discharge	Closed
18	PFPA/21.7/2C.28.1/00044-18		Closed
19	PFPA/21.7/2C.28.1/00050-18		Closed
20	PFPA/21.7/2C.28.2/00051-19	Land use change on forested land for agave production	Closed
21	PFPA/21.7/2C.28.2/00072-19		Allowed
22	PFPA/21.7/2C.28.2/00086-19		Closed
23	PFPA/21.7/2C.28.2/00144-19		Closed
24	PFPA/21.7/2C.28.2/00154-19		Closed
25	PFPA/21.7/2C.28.2/00174-19		Closed
26	PFPA/21.7/2C.28.1/00027-19		Vinasse discharge
27	PFPA/21.7/2C.28.1/00031-19	Vinasse discharge	Allowed
28	PFPA/21.7/2C.28.1/00008-19	Vinasse discharge	Closed
29	DA-001-19	Land use change on forested land for agave production	Received
30	DA-020-19		Received
31	DA-039-19	Vinasse discharge	Addressed
32	DA-043-19	Land use change on forested land for agave production	Received
33	DA-044-19	Vinasse discharge	Addressed
34	DA-047-19		Received
35	PFPA/21.7/2C.28.1/00007-20		Closed
36	PFPA/21.7/2C.28.2/00115-20	Land use change on forested land for agave production	Closed
37	PFPA/21.7/2C.28.2/00128-20		Allowed
38	PFPA/21.7/2C.28.1/00022-20	Vinasse discharge	Closed
39	PFPA/21.7/2C.28.2/0177-20	Land use change on forested land for agave production	Closed
40	PFPA/21.7/2C.28.2/00182-20		Allowed
41	DA-020-20		Received
42	DA-032-20		Closed
43	DA-034-20		Received
44	PFPA/21.7/2C.28.2/00017-21		Closed
45	PFPA/21.7/2C.28.2/00043-21		Closed
46	PFPA/21.7/2C.28.2/00060-21	Allowed	
47	PFPA/21.7/2C.28.2/00063-21	Allowed	
48	PFPA/21.7/2C.28.2/00098-21	Closed	
49	PFPA/21.7/2C.28.2/00162-21	Addressed	
50	PFPA/21.7/2C.28.2/00165-21	Allowed	
51	PFPA/21.7/2C.28.2/00179-21	Closed	
52	PFPA/21.7/2C.28.1/00036-21	Vinasse discharge	Closed
53	PFPA/21.7/2C.28.2/00184-21	Land use change on forested land for agave production	Closed
54	PFPA/21.7/2C.28.2/00206-21		Allowed
55	DA-019-21		Received
56	DA-020-21		Received
57	DA-022-21		Received
58	DA-028-21		Addressed
59	DA-029-21		Addressed
60	DA-031-21		Received
61	DA-033-21		Received
62	DA-052-21		Received
63	PFPA/21.7/2C.28.2/00057-22		No information
64	PFPA/21.7/2C.28.2/00066-22		No information
65	PFPA/21.7/2C.28.2/00074-22		No information

66	PFPA/21.7/2C.28.2/00088-22		No information
67	PFPA/21.7/2C.28.2/00099-22	Land use change on forested land for agave production	No information
68	PFPA/21.7/2C.28.2/00110-22		No information
69	PFPA/21.7/2C.28.4.2/00010-22		No information
70	PFPA/21.7/2C.28.2/00138-22		No information
71	PFPA/21.7/2C.28.1/00022-22	Vinasse discharge	No information
72	PFPA/21.7/2C.28.2/00151-22	Land use change on forested land for agave production	No information
73	PFPA/21.7/2C.28.2/00161-22		No information
74	PFPA/21.7/2C.28.2/00186-22		No information
75	PFPA/21.7/2C.28.1/00028-22	Vinasse discharge	No information
76	PFPA/21.7/2C.28.2/00197-22	Land use change on forested land for agave production	No information

29. The Party's response does not clarify whether the *allowed*, *addressed*, and *received* complaints gave rise to administrative proceedings; furthermore, the status of 14 citizen complaints is unknown. In this regard, the Secretariat cannot conclude with certainty that the *allowed*,⁴³ *addressed*,⁴⁴ and *received* citizen complaints⁴⁵ as well as the 14 complaints with no information on their status⁴⁶ can be considered pending administrative proceedings.
30. Regarding the 22 administrative proceedings notified by the Party, Table 2 presents the status of each.

Table 2. Administrative proceedings notified by the Party⁴⁷

	Citizen complaint no.	Administrative proceeding	Subject	Status
1	PFPA/21.7/2C.28.1/0008-19	PFPA/21.2/2C.27.1/00027-19	Wastewater discharge	Closed
2	Unknown	PFPA/21.2/2C.27.1/00031-18	Wastewater discharge	Closed
3	PFPA/21.7/2C.28.1/00036-21	PFPA/21.2/2C.27.1/00058-21	Vinasse discharge	Active
4	Unknown	PFPA/21.2/2C.27.1/00012-18	Wastewater discharge	Closed
5	PFPA/21.7/2C.28.1/0008-18	PFPA/21.2/2C.27.1/00026-18	Wastewater discharge	Closed
6	PFPA/21.7/2C.28.1/00050-18	PFPA/21.2/2C.27.1/00004-19	Wastewater discharge	Closed

⁴³ Citizen complaint file nos. PFPA/21.7/2C.28.2/00073-17; PFPA/21.7/2C.28.2/00072-19; PFPA/21.7/2C.28.1/00031-19; PFPA/21.7/2C.28.2/00128-20; PFPA/21.7/2C.28.2/00182-20; PFPA/21.7/2C.28.2/00060-21; PFPA/21.7/2C.28.2/00063-21; PFPA/21.7/2C.28.2/00165-21, and PFPA/21.7/2C.28.2/00206-21.

⁴⁴ Citizen complaint file nos. PFPA/21.7/2C.28.2/00206-17; DA-039-19; DA-044-19; PFPA/21.7/2C.28.2/00162-21; DA-028-21, and DA-029-21.

⁴⁵ Citizen complaint file nos. DA-001-19; DA-020-19; DA-043-19; DA-047-19; DA-020-20; DA-034-20; DA-019-21; DA-020-21; DA-022-21; DA-031-21; DA-033-21, and DA-052-21.

⁴⁶ Citizen complaint file nos. PFPA/21.7/2C.28.2/00057-22; PFPA/21.7/2C.28.2/00066-22; PFPA/21.7/2C.28.2/00074-22; PFPA/21.7/2C.28.2/00088-22; PFPA/21.7/2C.28.2/00099-22; PFPA/21.7/2C.28.2/00110-22; PFPA/21.7/2C.28.4.2/00010-22; PFPA/21.7/2C.28.2/00138-22; PFPA/21.7/2C.28.1/00022-22; PFPA/21.7/2C.28.2/00151-22; PFPA/21.7/2C.28.2/00161-22; PFPA/21.7/2C.28.2/00186-22; PFPA/21.7/2C.28.1/00028-22, and PFPA/21.7/2C.28.2/00197-22.

⁴⁷ Response, §§ 90–1 (table at 24–33) and Appendix MX-017.

7	Unknown	PFPA/21.3/2C.27.2/00006-17	Land use change on forested land	Closed
8	Unknown	PFPA/21.3/2C.27.2/00100-17	Land use change on forested land	Closed
9	Unknown	PFPA/21.3/2C.27.2/00101-17	Land use change on forested land	Closed
10	Unknown	PFPA/21.3/2C.27.2/00102-17	Land use change on forested land	Closed
11	Unknown	PFPA/21.3/2C.27.2/00104-17	Land use change on forested land	Closed
12	Unknown	PFPA/21.3/2C.27.2/00071-18	Land use change on forested land	Closed
13	Unknown	PFPA/21.3/2C.27.2/00076-18	Land use change on forested land	Closed
14	Unknown	PFPA/21.3/2C.27.2/00011-19	Land use change on forested land	Closed
15	PFPA/21.7/2C.28.1/00007-20	Unknown	Vinasse discharges	Closed
16	Unknown	PFPA/21.3/2C.27.5/00021-21	Land use change on forested land	Active
17	PFPA/21.7/2C.28.1/00002-18	PFPA/21.2/2C.27.1/00031-21	Discharge of contaminated wastewater into bodies of water	Closed
18	Unknown	PFPA/21.3/2C.27.5/00027-21	Land use change on forested land	Active
19	Unknown	PFPA/21.3/2C.27.5/00003-22	Land use change on forested land	Active
20	Unknown	PFPA/21.3/2C.27.5/00009-22	Land use change on forested land	Active
21	Unknown	PFPA/21.3/2C.27.5/00010-22	Land use change on forested land	Active
22	Unknown	PFPA/21.3/2C.27.2/00001-23 (sic)	Land use change on forested land	Active

31. The Secretariat notes, with reference to the evaluation of pending proceedings in previous submissions, that the threshold for the existence of a pending administrative proceeding is reached where a government is *actively* involved in applying the measures prescribed by its legislation in relation to the same matter raised by the authors of a submission. In such cases, pursuant to USMCA Article 24.27(a), the Secretariat terminates its review of the submission.⁴⁸
32. Concerning the citizen complaints notified by the Party, these have given rise to three administrative proceedings, which are not considered pending because they were closed by Profepa. In the other seven administrative proceedings that are presumably pending, the authority acted in response to a complaint and not on its own initiative.
33. In view of the foregoing discussion, the Secretariat finds that the information in the response is not conclusive as to the status of seven proceedings stated to be pending, since there is no certainty that they are active and hence being actively pursued by the Party. The mere allegation that they are

⁴⁸ Cf. *Oldman River I* Article 15(1) Determination at 3–4.

active would not be sufficient to justify the termination of submission SEM-23-003 (*Agave Production in Jalisco*).

ii) Whether the proceeding is timely in accordance with the Party's law

34. Concerning the citizen complaints, the response refers to 9 of these that were *allowed*, 6 that were *addressed*, and 12 that were *received*. In this regard, the following information is presented:⁴⁹

Table 3. Citizen complaints notified by the Party⁵⁰

Citizen complaint file no. Year	Measures applied and status	Secretariat's observations
PFPA/21.7/2C.28.2/00073-17 2017	No inspection visits have been conducted.	The file has been at its initial stage since 2017, with no inspection visits conducted.
PFPA/21.7/2C.28.2/00206-17 2017	An inspection visit was conducted and irregularities were observed.	It is understood that the file is at its initial stage, with no safety measures applied. In addition, the Secretariat notes that the file has been at its initial stage since 2017.
PFPA/21.7/2C.28.2/00072-19 2019	No inspection visits have been conducted.	The file has been at its initial stage since 2019, with no inspection visits conducted.
PFPA/21.7/2C.28.1/00031-19 2019	No inspection visits have been conducted.	The file has been at its initial stage since 2019, with no inspection visits conducted.
DA-001-19 2019	No inspection visits have been conducted.	The file has been at its initial stage since 2019, with no inspection visits conducted.
DA-020-19 2019	No inspection visits have been conducted.	The file has been at its initial stage since 2019, with no inspection visits conducted.
DA-039-19 2019	Referred to Conagua for processing.	How Conagua processed the file is unknown.
DA-043-19 2019	No inspection visits have been conducted.	The file has been at its initial stage since 2019, with no inspection visits conducted.
DA-044-19 2019	No irregularities were found during the inspection visit.	It is unclear whether the file has now been closed or whether sanctions were applied further to the findings of the visit.
DA-047-19 2019	No inspection visits have been conducted.	The file has been at its initial stage since 2019, with no inspection visits conducted.
PFPA/21.7/2C.28.2/00128-20 2020	No inspection visits have been conducted.	The file has been at its initial stage since 2020, with no inspection visits conducted.
PFPA/21.7/2C.28.2/00182-20 2020	No inspection visits have been conducted.	The file has been at its initial stage since 2020, with no inspection visits conducted.

⁴⁹ Cf. Response, §§ 90–1 (table at 24–33) and Appendix MX-017.

⁵⁰ *Ibid.*

DA-020-20 2020	No inspection visits have been conducted.	The file has been at its initial stage since 2020, with no inspection visits conducted.
DA-034-20 2020	No inspection visits have been conducted.	The file has been at its initial stage since 2020, with no inspection visits conducted.
PFPA/21.7/2C.28.2/00060-21 2021	No inspection visits have been conducted.	The file has been at its initial stage since 2021, with no inspection visits conducted.
PFPA/21.7/2C.28.2/00063-21 2021	No inspection visits have been conducted.	The file has been at its initial stage since 2021, with no inspection visits conducted.
PFPA/21.7/2C.28.2/00162-21 2021	Irregularities were found during the inspection visit.	It is unclear whether the file has now been closed or whether sanctions arising from the findings of the visit were applied.
PFPA/21.7/2C.28.2/00165-21 2021	No inspection visits have been conducted.	The file has been at its initial stage since 2021, with no inspection visits conducted.
PFPA/21.7/2C.28.2/00206-21 2021	No inspection visits have been conducted.	The file has been at its initial stage since 2021, with no inspection visits conducted.
DA-019-21 2021	Irregularities were found during the inspection visit.	It is unclear whether the file has now been closed or whether sanctions arising from the findings of the visit were applied.
DA-020-21 2021	No inspection visits have been conducted.	The file has been at its initial stage since 2021, with no inspection visits conducted.
DA-022-21 2021	No inspection visits have been conducted.	The file has been at its initial stage since 2021, with no inspection visits conducted.
DA-028-21 2021	Irregularities were found during the inspection visit.	It is unclear whether the file has now been closed or whether sanctions arising from the findings of the visit were applied.
DA-029-21 2021	Irregularities were found during the inspection visit.	It is unclear whether the file has now been closed or whether sanctions arising from the findings of the visit were applied.
DA-031-21 2021	No inspection visits have been conducted.	The file has been at its initial stage since 2021, with no inspection visits conducted.
DA-052-21 2021	No inspection visits have been conducted.	The file has been at its initial stage since 2021, with no inspection visits conducted.

35. In regard to the citizen complaints notified by the Party and listed in the above table, it should be noted that no inspection visits were conducted in 19 of these cases. Furthermore, some of these complaints were filed as early as 2017. For these reasons, it is impossible to reach a finding that these are proceedings pursued in a timely manner. In five of these proceedings, *irregularities were found*, and yet the Party's response does not clarify whether sanctions were applied or whether corrective measures are planned. In one case, the matter was referred to Conagua, but it

is not stated how this latter followed up. In another case, the authority found that there had been no irregularities, but the Party does not clarify whether the file was closed.

36. Concerning the Party's notification of 7 administrative proceedings that are active, the following information is available:

Table 4. Active proceedings notified by the Party⁵¹

File no.	Measures applied and status	Secretariat's observations
PFPA/21.2/2C.27.1/00058-21	At the time of the inspection visit, it was found that the establishment had already been closed by Conagua and Proepa. The authority did not find at the time of the visit that there had been vinasse discharges. ⁵²	The inspection was conducted further to a citizen complaint. It is unknown whether acts of investigation were carried out to determine whether the closing orders issued by Conagua and Proepa had been violated.
PFPA/21.3/2C.27.5/00021-21	Temporary total closing of the operation was applied. The file is under assessment by the legal affairs division of the state office of Profepa. ⁵³	The proceeding is active, since the document filed by the inspected party on 21 May 2021 has been under review by the authority since that date.
PFPA/21.3/2C.27.5/00027-21	Temporary total closing of the operation was applied. The file is under assessment by the legal affairs division of the state office of Profepa. ⁵⁴	The proceeding is active. The authority is reviewing the document filed by the inspected party on 2 July 2021.
PFPA/21.3/2C.27.5/00003-22	Closing of the operation was applied. The file is under assessment by the legal affairs division of the state office of Profepa. ⁵⁵	The proceeding is active, since the authority is reviewing the document filed by the inspected party on 3 March 2022.
PFPA/21.3/2C.27.5/00009-22	Closing of the operation was applied. The file is under assessment by the legal affairs division of the state office of Profepa. ⁵⁶	The proceeding is active, since the authority is reviewing the document filed by the inspected party on 30 June 2022, which concerns the findings of an inspection visit ordered further to a citizen complaint.
PFPA/21.3/2C.27.5/00010-22	Closing of the operation was applied. The file is under assessment by the legal affairs division of the state office of Profepa. ⁵⁷	The proceeding is active, since the authority is reviewing the documents filed by the inspected party on 7 September and 12 October 2022, which concern the findings of an inspection visit ordered further to a citizen complaint.
PFPA/21.3/2C.27.5/0001-23 (sic)	Temporary total closing of the operation was applied. The file is under assessment by the legal affairs division of the state office of Profepa. ⁵⁸	The proceeding is active, since the authority is reviewing the document filed by the inspected party on 4 May 2023, which concerns the findings of an

⁵¹ Cf. Response, §§90–1 (table at 24–33) and Appendix MX-017.

⁵² Appendix MX-017 at 18.

⁵³ *Ibid.*

⁵⁴ *Ibid.* at 71.

⁵⁵ *Ibid.* at 71–2.

⁵⁶ *Ibid.* at 72.

⁵⁷ *Ibid.* at 72–3.

⁵⁸ *Ibid.* at 73.

		inspection visit ordered further to a citizen complaint.
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37. The Secretariat notes that only three citizen complaint cases⁵⁹ gave rise to administrative proceedings.⁶⁰ As regards the remaining proceedings, 7 are active⁶¹ and 15 have been closed.⁶² As to the still active proceedings, the response states that the authority is continuing to review documents filed by the inspected parties at least since 2021. In one case, it reports the probable violation of a closing order. It should be clarified that only one of the active proceedings notified by the Party refers to vinasse discharges.⁶³
38. The Secretariat finds it probable that in some cases, the proceedings notified by the Party as active were pursued in a timely manner. However, this is not true for all of them, since some documents filed by the inspected parties are still under review by the authority at least two years later. Moreover, for one of the proceedings, the authority does not report whether any investigation was conducted upon discovery that closing seals had been broken.

iii) Whether the proceeding concerns the same matter and environmental law

39. The Secretariat has also found that when reviewing pending proceedings that concern the same matter as the assertions made in the submission, it must assess the potential for duplication of effort or interference with pending litigation.⁶⁴ Under such circumstances, the Secretariat must determine

⁵⁹ Citizen complaint file nos. PFPA/21.7/2C.28.1/00008-19; PFPA/21.7/2C.28.1/00007-20, and PFPA/21.7/2C.28.1/00002-18.

⁶⁰ Administrative proceeding file nos. PFPA/21.2/2C.27.1/00027-19 and PFPA/21.2/2C.27.1/00031-21, and unnumbered file relating to citizen complaint no. PFPA/21.7/2C.28.1/00007-20.

⁶¹ Administrative proceeding file nos. PFPA/21.2/2C.27.1/00058-21; PFPA/21.3/2C.27.5/00021-21; PFPA/21.3/2C.27.5/00027-21; FPA/21.3/2C.27.5/00003-22; PFPA/21.3/2C.27.5/00009-22; PFPA/21.3/2C.27.5/00010-22, and PFPA/21.3/2C.27.2/00001-23.

⁶² Administrative proceeding file nos. PFPA/21.2/2C.27.1/00027-19; PFPA/21.2/2C.27.1/00031-18; PFPA/21.2/2C.27.1/00012-18; PFPA/21.2/2C.27.1/00026-18; PFPA/21.2/2C.27.1/00004-19; PFPA/21.3/2C.27.2/00006-17; PFPA/21.3/2C.27.2/00100-17; PFPA/21.3/2C.27.2/00101-17; PFPA/21.3/2C.27.2/00102-17; PFPA/21.3/2C.27.2/00104-17; PFPA/21.3/2C.27.2/00071-18; PFPA/21.3/2C.27.2/00076-18; PFPA/21.3/2C.27.2/00011-19, and PFPA/21.2/2C.27.1/00031-21, and unnumbered file relating to citizen complaint no. PFPA/21.7/2C.28.1/00007-20.

⁶³ Cf. Response, table at §90 (administrative file no. PFPA/21.2/2C.28.1/00036-21). In this regard, the vinasses receiving area has been closed by Conagua and Profepa. The inspected party reported that it had had a spill that did not reach the nearby body of water. In addition, it reported details of a vinasse discharge into the San Onofre reservoir, near the water treatment plant. The authority observed on this point that the water was transparent in color and that no odors of decaying organic matter were perceived.

⁶⁴ SEM-00-004 (*BC Logging*), Article 15(1) Notification, at 16, online at <https://bit.ly/00-004NOTes>> [BC Logging Notification]:

In previous determinations, the Secretariat has stated that the threshold consideration of whether an administrative or judicial proceeding is pending should be construed narrowly to give full effect to the object and purpose of the NAAEC, and more particularly, to Article 14(3). Only those proceedings specifically delineated in Article 45(3)(a), pursued by a Party in a timely manner, in accordance with a Party's law, and concerning the same subject matter as the allegations raised in the submission should preclude the Secretariat from proceeding further under Article 14(3).

whether the subject of the litigation coincides with the assertions in the submission⁶⁵ and, as it has previously determined, must make a strict interpretation of the “matter” that is pending.⁶⁶ In addition, the Secretariat has found that citizen complaints constitute pending proceedings for the purposes of the SEM mechanism only when they give rise to administrative proceedings.⁶⁷

40. The Secretariat reviewed a total of 26 citizen complaints and 7 active administrative proceedings notified by the Party that arose from citizen complaints, which relate to the enforcement of Article 4, fifth and sixth paragraphs, of the Constitution; LGEEPA Articles 5 paragraphs II, V, IX and XI, 15 paragraphs III, IV, IX and XII, 19 paragraphs I, II, III, V and VII, 20 bis 1, 21, 78, 78 bis, 79 paragraphs I, II, VI and IX, 88 paragraphs I, III and IV, 89 paragraphs II, III, V and XI, 98, 99 paragraph XII, 117 paragraphs I, II, III and V, 120 paragraphs I, III, V, VI and VII, 121, 133, 139, 160, 161, 162, 170, 171, 172, and 173; LAN Articles 7 bis paragraph XI, 9 paragraph XXXVI, 14 bis 5 paragraphs X, XI, XII and XVII, 47, 85, 86 paragraph V, 88 bis paragraphs I, II, III, V, VI, VII, VIII, IX and X, 91, 92 paragraphs I and II, 96 bis, 96 bis 1, 119 paragraphs I, II, XII, XIV, XV and XVII, and 123 bis 1; LGVS Articles 1, 4, 5 paragraphs II and V, 6, 9 paragraphs I, II, IV, XVIII and XXI, 18, 19, 20, 70, and 106; LGDFS Articles 93, 94, 96, 97, 98, and 99; LDRS Articles 165, 170, and 172; LFRA Articles 10 and 54, and NOM-001.
41. Concerning the subject of each active proceeding, the following information has been identified:

Table 5. Active proceedings and their subjects⁶⁸

	Administrative file no.	Subject
	PFPA/21.7/2C.28.2/00073-17	Land use change on forested land.

⁶⁵ BC Hydro Notification at 2 (“such a proceeding must be of the same subject matter as the allegations raised in the Submission”); SEM-98-004 (*BC Mining*), Article 15(1) Notification, at 15, online at <https://bit.ly/ADV15_1_98-004> (“Further, such a proceeding must concern the same subject matter as the allegations raised in the submission”); BC Logging Notification at 16 (“Only those proceedings ... concerning the same subject matter as the allegations raised in the submission should preclude the Secretariat from proceeding further...”). See also SEM-12-001 (*BC Salmon Farms*), Notification to the Submitters and to Council regarding Proceedings Notified by Canada (7 May 2014), online at <<https://bit.ly/3Jy9Xln>>, § 18 (in re the location of salmon farms cited in the submission and in a judicial remedy) and § 4 (in reference to the fact that the judicial proceedings concern aquaculture licenses and not regulations on the deposit of substances into water).

⁶⁶ Cytrar II Notification at 7 (“The Secretariat has previously construed provisions of the Agreement narrowly when a broader reading could defeat the objectives of the Agreement by too liberally allowing Article 14(3)(a) to cut off further review”).

⁶⁷ Cf. SEM-15-001 (*La Primavera Forest*), Article 15(1) Notification to Council (4 November 2016), § 25, online at <<https://bit.ly/3l6ML4i>>:

The Secretariat considers that in any event, Mexico has conducted implementation of the citizen’s complaint mechanism provided in Articles 189 of LGEEPA and 107 of LGVS and has make this process available to individuals.

See also SEM-00-004 (*BC Logging*), Article 15(1) Notification to Council (27 July 2001), at 17, online at <<https://bit.ly/463TiyM>>.

The concerns that weigh against development of a factual record when pending litigation is addressing the same subject matter as is raised in a submission are similar to the concerns relevant to whether a factual record is warranted with regard to a matter that is also subject to a timely, active, pending criminal investigation.

⁶⁸ Response, §§ 90–1 (table at 33–9) and Appendix MX-017.

Citizen complaints	PFPA/21.7/2C.28.2/00206-17	Land use change on forested land.
	PFPA/21.7/2C.28.2/00072-19	Land use change on forested land.
	PFPA/21.7/2C.28.1/00031-19	Vinasse discharge.
	DA-001-19	Land use change on forested land.
	DA-020-19	Land use change on forested land.
	DA-039-19	Vinasse discharge.
	DA-043-19	Land use change on forested land.
	DA-044-19	Vinasse discharge.
	DA-047-19	Vinasse discharge.
	PFPA/21.7/2C.28.2/00128-20	Land use change on forested land
	PFPA/21.7/2C.28.2/00182-20	Land use change on forested land
	DA-020-20	Land use change on forested land
	DA-034-20	Land use change on forested land
	PFPA/21.7/2C.28.2/00060-21	Land use change on forested land.
	PFPA/21.7/2C.28.2/00063-21	Land use change on forested land.
	PFPA/21.7/2C.28.2/00162-21	Land use change on forested land.
	PFPA/21.7/2C.28.2/00165-21	Land use change on forested land.
	PFPA/21.7/2C.28.2/00206-21	Land use change on forested land.
	DA-019-21	Land use change on forested land.
	DA-020-21	Land use change on forested land.
	DA-022-21	Land use change on forested land.
	DA-028-21	Land use change on forested land.
	DA-029-21	Land use change on forested land.
	DA-031-21	Vinasse discharge.
	DA-052-21	Land use change on forested land.
	Administrative proceedings	PFPA/21.2/2C.27.1/00058-21
PFPA/21.3/2C.27.5/00021-21		Land use change on forested land with evidence of fire, an agave plantation within a protected natural area under federal jurisdiction, on a lot located in the municipality of Tlajomulco de Zuñiga, Jalisco.

	PFPA/21.3/2C.27.5/00027-21	Land use change on forested land, two agave plantations within a protected natural area, on a lot located in the municipality of Tala, Jalisco.
	PFPA/21.3/2C.27.5/00003-22	Land use change on forested land, observation of three agave plots within a protected natural area under federal jurisdiction, on a lot located in the municipality of Tala, Jalisco.
	PFPA/21.3/2C.27.5/00009-22	Land use change on forested land, observation of an agave plantation, on a lot located in the municipality of Zapotlanejo, Jalisco.
	PFPA/21.3/2C.27.5/00010-22	Land use change on forested land, felling of trees with planting of agave, opening of a clearing within a protected natural area under federal jurisdiction, on a lot located in the municipality of Zapotitlán de Vadillo, Jalisco.
	PFPA/21.3/2C.27.5/0000-23	Land use change on forested land, observation of an agave plantation, on a lot located in the municipality of Etzatlán, Jalisco.

42. The information provided by the Party corroborates that the subject is identical to that of the submission. However, the Secretariat finds in its determination that this fact alone does not afford the justification for terminating the submission, since, as discussed in the preceding two paragraphs, these are not proceedings pursued actively by the Party, nor is there information in the response to corroborate that all of these cases have been pursued in a timely manner.
43. On another note, the risk of causing duplication of effort or undue interference with citizen complaint proceedings if the processing of the submission continues is minimal. While the submission presents examples of the issues relating to the control of land use changes and contamination caused by vinasses, a factual record would contain aggregate data; that is, it would entail the compilation and analysis of general information, without specifying particular lots or cases. In sum, an overview of the issues raised by the Submitter would be presented. On these grounds, the Secretariat deems it relevant to continue with its review.

iv) Whether the proceeding has the potential to resolve the matter raised by the submission

44. When reviewing the notification of pending judicial or administrative proceedings, the Secretariat takes into consideration whether their processing and resolution in fact have the potential to address and resolve the matter raised in the submission.⁶⁹ From the Secretariat’s perspective, that a complaint is referred to the competent authority does not necessarily mean that it will give rise to an administrative proceeding offering the prospect of applying sanctions or corrective measures, and thus does not *ipso facto* qualify as a pending proceeding.⁷⁰

⁶⁹ Cf. *Cytrar II* Article 15(1) Determination at 5–6:

To apply this exceptional condition for terminating a submission [i.e., applying Article 14(3)(a)] ... there must be a reasonable expectation that the “pending judicial or administrative proceeding” invoked by the Party will address and potentially resolve the matters raised in the submission.

See also SEM-21-003 (*North Atlantic Right Whale*), USMCA Article 24.28(1) Notification (3 June 2022), § 27, and SEM-13-001 (*Tourism Development in the Gulf of California*), Notification to the Submitters and to Council regarding a Proceeding Notified by Mexico (16 May 2014), § 22.

⁷⁰ *Ibid.*, § 45.

45. Concerning the citizen complaints notified by the Party, these bear a relationship to the impacts caused by land use changes, illegal felling of trees, and vinasse discharges at specific facilities.⁷¹ However, the central issue in the submission is the increased planting of agave, causing deforestation and desertification as well as inadequate management of vinasses during the tequila manufacturing process. Addressing and resolving the citizen complaints mentioned by the Party in its response shows little likelihood of resolving the breadth of the central concerns stated in the submission.
46. It should be borne in mind that the submission presents a systemic problem. It is important to emphasize that because a factual record would present aggregate data, it could not inadvertently interfere with the pending proceedings notified by the Party.
47. While the seven active administrative proceedings notified by the Party concern businesses devoted to the planting of agave, they do not address the large-scale issues affecting the state of Jalisco that the Submitter raises, and this is why these proceedings would not resolve the central issues of the submission. It must be clarified that only one of these active proceedings refers to vinasse discharges.⁷²
48. In view of the foregoing, the Secretariat continues with its review of whether the preparation of a factual record is warranted.

c. The assertions in submission SEM-23-003

49. The Secretariat proceeds to consider whether, in light of the response of the Party, the preparation of a factual record is warranted in regard to alleged failures to effectively enforce the environmental law with respect to: i) deforestation and desertification in Jalisco due to agave planting on ever greater areas of land, and ii) contamination of receiving bodies by vinasse discharges.

i) The assertion of land use changes, deforestation, and desertification in the state of Jalisco due to agave planting

50. The Submitter asserts that the Party is failing to effectively enforce its environmental laws in connection with deforestation and desertification in the state of Jalisco due to extensive planting of agave.⁷³ It further states that the businesses engaged in planting of agave have overpopulated large areas of land, devastating hillsides and plains in order to plant this crop.⁷⁴
51. The Party contends that the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat), acting by the Office of the Deputy Minister for Environmental Policy and Natural Resources (*Subsecretaría de Política Ambiental y Recursos Naturales*) oversees the effective enforcement of the environmental law cited in the submission⁷⁵ through the verification of Mexican official standards relating to the environment, sustainable land use, and ecological zoning, wildlife preservation and sustainable use, and ecological criteria for

⁷¹ Cf., Response, Appendix MX-017.

⁷² Cf. Response, table at §90 (administrative file no. PFPA/21.2/2C.28.1/00036-21).

⁷³ Submission, § 70.

⁷⁴ Response at 25.

⁷⁵ LGEEPA Articles 5 paragraphs II, IX and XI, 15 paragraphs III, IV, IX and XII, 19 paragraphs I, II, III, V and VII, 20 *bis* 1, 79 paragraphs I, II, VI and IX; 98, and 99 paragraph XII.

land preservation and sustainable use that must be considered in the drafting of ecological zoning plans.⁷⁶

52. On this note, the Party's response discusses the measures notified by the legal affairs office of the National Forest Commission (*Comisión Nacional Forestal*—Conafor), which reported on measures concerning the mitigation of the environmental problems associated with land use changes due to the expansion of agave planting in the state of Jalisco.⁷⁷ The information provided by the Party in its response is summarized below.

Measures concerning land use changes and land protection

53. The Party reports that Conafor, in cooperation with forested land owners and holders in Jalisco, is implementing a compensation program for land use changes occurring on forested land. The program promotes fire protection activities and works to control erosion, collect rainwater, regenerate forest cover, and restore ecosystems.⁷⁸ The Party states that this program covers a total of 5,742 ha and that its aim is to prevent the expansion of agave production onto forested land by implementing land use policies that promote the stability and sustainability of the forestry sector.⁷⁹
54. The Party reports that the “Sustainable Forest Development for Well-Being” program offers economic support for forest restoration in micro-watersheds, provision of environmental services, and protection of forested areas, the larger goals being to promote sustainable forest development in Jalisco and to comply with the environmental laws under the jurisdiction of Conafor.⁸⁰
55. Concerning the granting of approval for land use changes on forested land and the obligations of the holders thereof,⁸¹ the Party states that the Forest Management, Soils, and Ecological Zoning Branch (*Dirección General de Gestión Forestal, Suelos y Ordenamiento Ecológico*) of Semarnat and its state office in Jalisco have not granted any land use change approvals for the development of agave-related projects.⁸² It states that before the end of 2023, it is planned to update the guide to the preparation of technical studies and the Order concerning Levels of Equivalency for Environmental Compensation of Land Use Changes (*Acuerdo sobre los niveles de equivalencia para la compensación ambiental por el cambio de uso de suelo*), which are land use-related environmental management instruments.⁸³ The Party states that it is also in the process of certifying criteria for the evaluation of applications for land use changes on forested land.⁸⁴
56. The Party reports that there have been 13 approvals for the use of non-timber forest resources in the last eight years, covering an area of 10,494 ha; 99% of the authorized species correspond to *Agave maximiliana*, while 1% correspond to *Agave valenciana* and *Agave vazquezgarciae*.⁸⁵ In sum, from 2014 to the present, the Semarnat office in Jalisco has issued seven certificates for the establishment of *Agave maximiliana* on 172 ha.⁸⁶

⁷⁶ *Ibid.*, § 8.

⁷⁷ Response, Appendix MX-009.

⁷⁸ *Ibid.*

⁷⁹ Response, §§ 21–2.

⁸⁰ *Ibid.*, § 23.

⁸¹ LGDFS Articles 93, 94, 96, 97, 98, and 99.

⁸² *Ibid.*, §§ 25 and 35.

⁸³ *Ibid.*, §§ 35–6.

⁸⁴ Response, § 38.

⁸⁵ *Ibid.*, § 41.

⁸⁶ *Ibid.*

57. The Party reports that the Agriculture, Livestock, Fishing, and Aquaculture Program (2023) does not support cultivation in forested areas beyond the agricultural frontier, nor in protected natural areas. Nor is any such support planned for the core area and for sub-areas devoted to preservation, special use, public use, and recovery in areas covered by management plans.⁸⁷

Ecological zoning measures

58. The Party reports that there are various ecological zoning measures and instruments relating to the matters addressed in the submission.⁸⁸ For example, it mentions the existence of 19 ecological zoning plans, in the regional and local modalities, that have been declared and are effective in the state of Jalisco, as well as 18 processes for the development of such plans.⁸⁹ More particularly, the Party reports that the “Agave Landscape” Regional Ecological and Territorial Zoning Plan is being implemented, covering the municipalities where tequila manufacturing takes place.⁹⁰ This plan has a set of 39 criteria for the sustainable use of natural resources and the preservation of ecological equilibrium. These criteria establish limits, prohibitions, and alternatives relating to agave cultivation.⁹¹

Coordination among authorities

59. The Party reports that an order was issued in September 2018 to establish a digital platform comprising the Mexican land coverage map and other information systems. This platform serves to identify lots potentially eligible for economic support for agricultural activities on land that is either forested or has some forest vegetation.⁹²
60. The Party reports that Sader, Semarnat, and Conafor signed a specific cooperation agreement running until 30 September 2024 that provides for measures to guarantee a healthy environment and to strengthen rural sustainable development, with work focusing on the conservation, protection, and rational use of forest resources so as to contribute to climate change mitigation and adaptation.⁹³
61. In 2020, Semarnat signed a framework coordination agreement with the Ministry of Agrarian, Territorial, and Urban Development (*Secretaría de Desarrollo Agrario, Territorial y Urbano—Sedatu*) and the state of Jalisco. This agreement seeks to unify territorial and environmental planning, complementing and harmonizing local and regional provisions as regards ecological, territorial, and urban development aspects. The objective is to make sustainable use of natural resources and the territory, and the result of this agreement is the creation of the above-mentioned “Agave Landscape” program.⁹⁴
62. The Party reports on its sustainability strategy for the agave-tequila supply chain. This includes sustainability goals and commitments adopted in an effort to achieve maximum efficiency in the use of raw materials, energy, water, and inputs so as to minimize emissions and impacts, centering

⁸⁷ *Ibid.*, § 60.

⁸⁸ *Ibid.*, § 30.

⁸⁹ *Ibid.*, § 31.

⁹⁰ Response, Appendix MX-011 at 3.

⁹¹ *Ibid.*, § 34.

⁹² Response, § 55.

⁹³ *Cf.*, Response, § 26.

⁹⁴ *Ibid.*, § 32.

around reduction of the carbon footprint, electricity consumption, water use, and wastewater generation.⁹⁵

63. In June 2021, a mechanism was created for coordination among authorities in the form of a task force (*mesa de judicialización*) on “Critical Points of Illegal Logging and Deforestation.” Its purpose is to coordinate preventive, intelligence, and judicial measures to halt the loss of forest cover due to deforestation, illegal logging, and associated offenses.⁹⁶ The goals of the task force included reduction of illegal logging and illegal trade in forest products, protection of commercially valuable species, strengthening of the institutions in charge of forest ecosystem protection, and identification and monitoring of critical deforestation areas.⁹⁷

Inspection and surveillance measures

64. The Party states that nationally, from January 2022 to the first week of August 2023, a total of 2,986 measures were implemented by Profepa in 12 states, including Jalisco.⁹⁸ As regards the Profepa office in Jalisco, the Party states that acts of inspection were conducted to verify the existence of land use change approvals issued by Semarnat as prescribed by the LGDFS.⁹⁹
65. In relation to the power to carry out acts of inspection and surveillance under federal jurisdiction, as well as to apply corrective and urgent measures and sanctions,¹⁰⁰ the Party reports on inspection measures taken through the Profepa office in Jalisco further to the citizen complaints filed from 2012 to the present, which gave rise to 84 citizen complaint files relating to vinasse discharges and land use changes on forested land for planting of agave.¹⁰¹
66. With regard to inspection measures, the Party reports that further to the citizen complaints, the Profepa office initiated administrative proceedings relating to land use changes on forested land and wastewater discharges, which led in some cases to the application of safety measures such as the halting of activities and the levying of sanctions for environmental violations.¹⁰²

Environmental offenses relating to illicit logging

67. As regards environmental offenses, the Party states that where the existence of unauthorized logging is substantiated, public servants are obligated to conform to the provisions of LFRA Article 54.¹⁰³

Measures taken by the state authorities and others related to private entities and self-regulation of the agave sector

68. Although these are not authorities responsible for the enforcement of the environmental law in question, the Party presents information that it considers relevant on the measures taken within the sphere of state jurisdiction. In this regard, it states that the government of Jalisco has a

⁹⁵ *Ibid.*, § 59.

⁹⁶ Submission, § 43–4.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, § 49.

⁹⁹ *Ibid.*, § 50.

¹⁰⁰ LGEEPA Articles 160, 161, 162, 170, and 172.

¹⁰¹ *Cf.*, Response, § 90.

¹⁰² *Ibid.*, § 91.

¹⁰³ Notwithstanding the efforts made, there is no information in the response on the obligation under the LGDFS to detect the presence of forested land that has been burned, cut, or cleared without the corresponding authorization, in which case the land use may not be changed for a period of 20 years; *cf.* LGDFS Article 97.

“compatibility report” containing information on land use in areas proposed as agave plantations for tequila manufacturing and that it promotes registration with an organization called Consejo Regulador del Tequila, A.C.¹⁰⁴ In addition, it mentions various zoning instruments developed by the Jalisco state authorities.¹⁰⁵

69. The Party also mentions measures carried out by Consejo Regulador del Tequila, A.C. (CRT), an organization responsible for inspecting and certifying compliance with the standards applicable to tequila, its products and raw materials, and its protected designation of origin, both in Mexico and abroad.¹⁰⁶ In addition, CRT has adopted a sustainability strategy for the agave-tequila supply chain, including goals and commitments for reducing the carbon footprint, diminishing energy and water consumption, and increasing the percentage of treated wastewater. The organization has also committed to developing environmental information systems, reporting progress, and managing waste and emissions responsibly.¹⁰⁷ It must be clarified that CRT is not an authority, but rather a civil society association.
70. The Party also states that since 2019, the association Comité Nacional del Sistema Producto Agave Tequila, A.C. has produced a master plan that addresses strategic planning of the crop, credit and financing, vegetative material, pest and disease control, promotion of research and technological development, and technical training. This plan was designed with a medium- and long-term perspective.¹⁰⁸ Like CRT, this association is a civil society organization and not a public authority.
71. The Party reports on environmentally responsible agave certification, a self-regulation measure adopted by the tequila industry. It is based on an agreement between the government of Jalisco and CRT signed in May 2021, and its object is fighting climate change and deforestation. The certification guarantees that the agave used as a raw material in tequila manufacturing did not cause deforestation after 2016, so that by 2027, the blue agave supply chain for tequila manufacturing will be deforestation-free.
72. The Party contends that the dispute resolution mechanism implemented between April and July 2023 made it possible to review 3,213 lots, of which 60% maintained incompatible status. The Party estimates that nearly 7,000 hectares will be spared deforestation for planting of the agave used in tequila manufacturing.¹⁰⁹

Database- and information-related measures

73. In its response, the Party shares information from the Agri-food and Fisheries Information System (*Sistema de Información Agroalimentaria y Pesquera—SIAP*) reflecting that the area devoted to blue agave (*Agave tequilana* ‘Weber Azul’) cultivation in Jalisco during the period 2002–2022 reached a peak in 2006 and declined thereafter. This information had to be confirmed with other state and federal authorities.¹¹⁰
74. Concerning the SIAP, Sader mentioned that this system has helped to reinforce geographical information querying systems such as the Protected Agriculture Query System (*Sistema de Consulta de Agricultura Protegida*) and the Agricultural Area Estimation System (*Sistema de Estimación de*

¹⁰⁴ Response, § 58.

¹⁰⁵ *Ibid.*, § 69.

¹⁰⁶ *Ibid.*, § 57.

¹⁰⁷ *Ibid.*, § 59.

¹⁰⁸ *Ibid.*, § 61.

¹⁰⁹ *Ibid.*, § 77.

¹¹⁰ *Ibid.*, § 49.

Superficie Agrícola). These systems use satellite images and space-based remote-sensing techniques to conduct environmental, social, and sustainable development analyses and studies.¹¹¹

75. Having reviewed the information submitted by the Party relating to the assertions in the submission, the Secretariat finds that the response addresses the Submitter's central assertions concerning land use changes on forested land. In the absence of more specific assertions in the submission on land use changes and ecological zoning, and bearing in mind the information provided by the Party, the preparation of a factual record in this regard is not recommended.

ii) Alleged inadequate management of vinasses generated by the tequila manufacturing process

76. The Submitter asserts that the Party is failing to effectively enforce its environmental laws in connection with alleged inadequate management of the wastewater (vinasses) generated by the tequila manufacturing process.¹¹² In addition, he or she asserts that a large part of the water available in the state of Jalisco is polluted and indicates that the main cause of this state of affairs is the agave industry and tequila manufacturing.¹¹³
77. The Submitter states that for each liter of tequila produced, an average of 13 to 16 liters of vinasses are generated and that this wastewater contains methanol, superior alcohols, ketone esters, aldehydes, phenols, and furfural, among other pollutants. The Submitter adds that 5 kg of solid waste is generated per liter of tequila, causing carbon dioxide and nitrogen salt generation during the fermentation of agave.¹¹⁴
78. The Submitter states that according to the available tequila production data, more than 16,500 liters of vinasses are being generated per minute,¹¹⁵ and contends that these are not being given adequate treatment, causing contamination of rivers, lakes, and groundwater. According to the Submitter, none of the wastewater treatment plants receiving vinasses in Jalisco has an effective treatment system for this purpose, and that many of the tequila manufacturing establishments lack the corresponding permits, thereby violating the regulations applicable to wastewater discharges.¹¹⁶
79. In its response, the Party contends that the environmental harm-related provisions are not applicable in this instance;¹¹⁷ that environmental harm-related conduct that could constitute one or more offenses has not been documented;¹¹⁸ that 22 inspection visits were conducted between 2018 and 2023 to assess compliance with the LAN and NOM-001 by persons and entities involved in agave production and tequila manufacturing in Jalisco, and that these led to the application of sanctions;¹¹⁹ that a voluntary environmental auditing program is in progress;¹²⁰ that Profepa is carrying out inspection and surveillance measures, which have led to the application of safety measures,

¹¹¹ *Ibid.*, § 56.

¹¹² Submission, "Exposición de hechos," at 7.

¹¹³ *Ibid.* at 8.

¹¹⁴ *Ibid.* at 10.

¹¹⁵ *Ibid.* at 11.

¹¹⁶ *Ibid.*

¹¹⁷ Response, § 11.

¹¹⁸ *Ibid.*, § 96.

¹¹⁹ *Ibid.*, § 99.

¹²⁰ *Ibid.*, §§ 83–6.

including the closing of facilities,¹²¹ and that Profepa has given timely notice to Conagua as a consequence of its inspection measures.¹²²

80. Having considered the information provided in the submission in the light of the Party's response, the Secretariat finds that the response leaves central issues unresolved with respect to responsibility for environmental harm in connection with vinasse discharges in the state of Jalisco.¹²³ A factual record could yield factual information to clarify the matters in question and gather public information with respect to the substantiation of environmental harm.

Environmental harm caused by vinasse discharges

81. Concerning LFRA Articles 10 and 54, the Party states that their application "is directed at natural or legal persons who, by their actions or omissions, directly or indirectly cause harm to the environment" and that they are not applicable with respect to the authorities.¹²⁴ In this regard, it must be kept in mind that the nation and its states and municipalities are also legal persons¹²⁵ and that in Mexico, environmental responsibility is a special class of administrative responsibility with its own rules, entailing the duty of the authority to interpret the legal provisions in question in accordance with the constitutional mandate to protect from and repair harm.¹²⁶ The general purpose of the constitutionally enshrined environmental responsibility regime is to guarantee the repair of environmental harm and to provide for the prevention and internalization of environmental risks,¹²⁷ and the LFRA is the special law governing environmental responsibility.
82. Concerning measures taken to enforce LFRA Article 10, the Party states that according to information provided by Profepa, "no conduct entailing the existence of environmental harm and/or that could constitute an offense has been observed or deduced."¹²⁸ However, the information contained in the response¹²⁹ documents the existence of environmental harm that could result in environmental responsibility, in addition to the fact that vinasses were presumably discharged onto the ground without authorization. For example, there are several examples of discharges onto natural soils,¹³⁰ and a case of dumping of vinasses in the vicinity of the Los Altos wastewater treatment plant is mentioned. In this regard, the Submitter contends that environmental harm occurred in the area of Ayotlán, allegedly causing "an ecocide" in the San Onofre reservoir.¹³¹ The submission also refers to the wastewater treatment plant in the locality of Carrozas, Tototlán, Jalisco as exhibiting similar deficiencies.¹³² In this regard, the Party's response does not shed light on the

¹²¹ *Ibid.*, § 94.

¹²² *Ibid.*, § 95.

¹²³ Where environmental harm is construed in the sense of LFRA Article 2 paragraph 3: "Adverse and measurable loss, change, deterioration, impact on, or modification of habitats, ecosystems, elements, or natural resources, their chemical, physical, or biological conditions, the interactions among them, or the environmental services they provide."

¹²⁴ Response, § 11.

¹²⁵ *Cf.* Article 25 of the Federal Civil Code, which defines as legal persons "I. The nation, the states, and the municipalities."

¹²⁶ RESPONSABILIDAD AMBIENTAL, ESTÁ SUJETA A UN RÉGIMEN DE ESPECIALIDAD REGULATORIA EN QUE CONFLUYEN LA LEY FEDERAL DE RESPONSABILIDAD Y OTROS ORDENAMIENTOS, *op. cit.*, at 2066.

¹²⁷ *Ibid.*

¹²⁸ Response, § 96.

¹²⁹ *Ibid.*, §§ 90–1.

¹³⁰ *Ibid.*, unnumbered table, §90.

¹³¹ Submission at 7.

¹³² Response, §90.

nature and circumstances of these incidents that may have given rise to responsibility for environmental harm.¹³³

83. In regard to acts of enforcement by Conagua, the Party reports that 22 inspection visits were conducted to verify compliance with the LAN and NOM-001 by persons and entities engaged in agave cultivation and tequila manufacturing in Jalisco from 2018 to 2023. The enforcement measures gave rise to six fines and a temporary ban on the use of national waters.¹³⁴ None of these cases included sanctions applied to vinasse discharges onto the ground.
84. The Party reported on the National Environmental Auditing Program (*Programa Nacional de Auditoría Ambiental*—PNAA) and its relationship to the tequila industry, a voluntary mechanism whereby businesses submit to a regulatory review of their processes as regards environmental contamination and risk.¹³⁵ The Party mentions that six of the 21 companies listed in the submission are enrolled in the PNAA and that three of them possess valid certification under this program.¹³⁶
85. The Party states that Profepa, in the process of carrying out acts of inspection and surveillance leading to the application of safety measures such as closing of operations, has observed compliance with LGEEPA Articles 160, 161, 162, 170, 171, and 173.¹³⁷ It further states that as a consequence of the inspection measures carried out, Profepa took cognizance of wastewater discharges onto adjacent land and that this matter was referred to Conagua.¹³⁸
86. In relation to the acts of inspection and surveillance carried out by Conagua, the Party states that the Water Regulation and Exchanges Office (*Gerencia de Regulación y Bancos del Agua*) of the Water Administration Division (*Subdirección General de Administración del Agua*—SGAA) of Conagua conducted 22 inspection visits between 2018 and 2023 to agave growers and tequila manufacturers in Jalisco.¹³⁹
87. At the state level, from January 2019 to July 2023, Proepa received 67 complaints relating to discharges into national bodies of water and property. These complaints were referred to the Profepa office in the state of Jalisco and to the Lerma-Santiago-Pacífico watershed body of Conagua.¹⁴⁰
88. On another note, the response reports various measures taken by the federal authorities, including coordination measures for the purpose of regulating sustainable use, as well as the updating of NOM-001.¹⁴¹ In addition, the Water Regulation and Exchanges Office possesses a technical and operational guide to repairing environmental harm caused to water resources.¹⁴² How this instrument is being implemented with respect to vinasse discharges is unknown.

¹³³ Response, unnumbered table, §90.

¹³⁴ *Ibid.*, § 99.

¹³⁵ *Ibid.*, §§ 83–6.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*, § 94.

¹³⁸ *Ibid.*, § 95.

¹³⁹ *Ibid.*, Appendix MX-019 at 2–5.

¹⁴⁰ *Ibid.*, § 79.

¹⁴¹ *Ibid.*, § 100.

¹⁴² *Ibid.*, § 101.

89. The Party mentions other measures such as updating of mean annual groundwater availability;¹⁴³ preparation of the National Drought Response Plan (*Programa Nacional Contra la Sequía*);¹⁴⁴ assessment of water quality via the National Water Quality Monitoring Network of Conagua,¹⁴⁵ and implementation of a work plan for conducting inspection visits to the tequila industry.¹⁴⁶
90. All things considered, the information contained in the Party's response does not allow one to ascertain the measures taken by the federal authorities in relation to vinasse (wastewater) discharges into receiving bodies under federal jurisdiction, and in particular the dumping of such wastewater onto the ground as alleged by the Submitter. On this score, the information in the Party's response confirms that such discharges are occurring or have occurred but that the authority determined that no measures needed to be taken in this regard.¹⁴⁷
91. The Submitter asserts that there have been discharges of vinasses that have soaked into the subsoil or been dumped directly into the Zula river.¹⁴⁸ On this point, although the Party states that continuous monitoring of the quality of wastewater discharges into the the Zula river is ongoing,¹⁴⁹ there is no mention of measures relating to environmental harm caused by vinasse discharges onto the ground or into the subsoil, nor of the allegation that such discharges are reaching bodies of water.¹⁵⁰ Nor is there certainty that Conagua is enforcing LAN Article 88 with respect to the granting of permits to dump wastewater onto the ground and into the subsoil within the maximum permissible limits established by Mexican Official Standard NOM-001.
92. The Secretariat's review of the documents indicates that the environmental authorities stop at noting that the vinasse discharges taking place are onto natural soils and not into bodies of water,¹⁵¹ evidently because they do not consider soil a receiving body under federal jurisdiction.¹⁵² For example, file no. PFPA/21.7/2C.28.1/00002-18 was closed on the grounds that the Profepa office in Jalisco lacks jurisdiction to address the matter because the wastewater was being discharged onto natural soils and not into bodies of water under federal jurisdiction. One can also adduce file no. PFPA/21.7/2C.28.1/00007-20, which was closed because the vinasses were being discharged onto an agricultural field and the authority found that soil is not a receiving body under federal jurisdiction.¹⁵³
93. In this regard, LAN Article 3 paragraph XVII defines the term "receiving body" as:
- Natural water flows or deposits, reservoirs, riverbeds, marine areas, or property of the nation into which wastewater is discharged, as well as land into which such water infiltrates or is injected, where it may contaminate soils, the subsoil, or aquifers

¹⁴³ Semarnat, *Acuerdo por el que se actualiza la disponibilidad media anual de agua subterránea de los 653 acuíferos de los Estados Unidos Mexicanos, mismos que forman parte de las regiones hidrogeológico-administrativas que se indican*, Diario Oficial de la Federación, online at < <https://bit.ly/3MRaujT> > (17 September 2020).

¹⁴⁴ Response, § 106.

¹⁴⁵ *Ibid.*, § 108.

¹⁴⁶ *Ibid.*, § 112.

¹⁴⁷ *Ibid.*, unnumbered table at §90.

¹⁴⁸ Submission at 8.

¹⁴⁹ Response, § 112.

¹⁵⁰ *Ibid.*, 113.

¹⁵¹ *Ibid.*, §90.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*, §§ 90–1.

94. That is, since the term “receiving body” comprises “land into which [such water] infiltrates ... where it may contaminate soils,” to contend that the scope of application of the LAN is limited to bodies of water would appear to omit an important aspect of the effective enforcement of this instrument and its accompanying environmental responsibility regime. Thus, the provisions of the LAN are applicable in cases of vinasse discharges onto land “where [they] may contaminate soils, the subsoil, or aquifers.” Consequently, an analysis of the duty of the federal environmental authorities within the scope of their jurisdiction is in order. In this regard, Article 96 *bis* 1, cited in the submission, reads as follows:

Natural or legal persons who discharge wastewater in violation of the applicable legal provisions and cause contamination in a receiving body shall bear the responsibility of repairing or compensating for the environmental harm caused, as prescribed by the National Waters Act and its regulation, without prejudice to the application of any administrative, penal, or civil penalties that may apply, by removing the contaminants from the affected receiving body and restoring it to its condition prior to the occurrence of the harm.

95. On another note, concerning the investigation and prosecution of environmental offenses, where the existence of unauthorized wastewater discharges into receiving bodies under federal jurisdiction is substantiated, public servants are obligated to act in accordance with LFRA Article 54:¹⁵⁴

Every public servant is obligated to give immediate notice to the Office of the Public Prosecutor of the probable existence of a fact deemed by the Act to be an environmental offense, as well as of the identity of anyone who may have committed or participated in committing the offense, relaying all relevant information in his possession and transferring custody of the accused if they have been detained.

96. A factual record could afford clarity on the effective enforcement of the LAN with respect to wastewater discharges from the tequila industry onto land where they could cause contamination of the soil, subsoil, or aquifers. In addition, it could present information on responsibility for environmental harm; the implementation of harm repair mechanisms, and notification of alleged commission of environmental offenses.
97. Most of the information presented in a factual record would be based on aggregate data relating to vinasse discharges and their components, effects on the environment, and applicable parameters under Mexican law. The information would not specify production units; rather, it would consist of aggregate data compilation and analysis, affording an overview of the problems raised by the Submitter in relation to vinasses. On this note, the Council has previously instructed the Secretariat to prepare factual records with respect to water quality.¹⁵⁵

¹⁵⁴ On this point, Article 416 of the Federal Penal Code (*Código Penal Federal*) establishes penalties for “anyone who illegally discharges or dumps wastewater, chemical or biochemical fluids, waste, or pollutants or allows them to infiltrate into soils, subsoils, marine waters, rivers, watersheds, reservoirs, or other bodies of water or watercourses under federal jurisdiction, thereby causing harm or the risk of harm to natural resources, flora, fauna, water quality, ecosystems, or the environment.” This is relevant with respect to the alleged dumping of vinasses onto the ground.

¹⁵⁵ See, e.g., SEM-97-002 (*Río Magdalena*), SEM-97-001 (*BC Hydro*), SEM-97-006 (*Oldman River II*), SEM-02-003 (*Pulp and Paper*), SEM-03-003 (*Lake Chapala II*), SEM-03-005 (*Montreal Technoparc*); SEM-04-005 (*Coal-fired Power Plants*), SEM-17-001 (*Alberta Tailings Ponds II*), and SEM-18-003 (*Hydraulic Fracturing in Nuevo Leon*).

III. NOTIFICATION

98. Having reviewed submission SEM-23-003 (*Agave Production in Jalisco*) in the light of the response of the United Mexican States, the Secretariat finds that there are central issues left unresolved in relation to wastewater discharges into receiving bodies under federal jurisdiction, consisting of vinasses from the tequila manufacturing process in Jalisco, Mexico. A factual record can provide information on the effective enforcement of the following provisions:
- i. Article 4, fifth and sixth paragraphs, of the **Constitution**;
 - ii. **LAN** Articles 9 paragraph XXXVI, 14 *bis* 5 paragraphs X, XII and XVII, 47, 85, 86 paragraph V, 88 *bis* paragraphs I, II, III, V, VI, VII, VIII, IX and X, 91, 92 paragraphs I and II, 96 *bis*, 96 *bis* 1, 119 paragraphs I, II, XII, XIV, XV and XVII, and 123 *bis* 1;
 - iii. **LFRA** Articles 10 and 54, and
 - iv. **NOM-001**.
99. In accordance with USMCA Article 24.28(1), the Secretariat hereby notifies the CEC Council and the Environment Committee of its determination that in pursuit of the objectives of chapter 24 of the USMCA,¹⁵⁶ a factual record should be prepared for submission SEM-23-003 (*Agave Production in Jalisco*).
100. Pursuant to USMCA Article 24.28(2), the Secretariat “shall prepare a factual record if at least two members of the Council instruct it to do so.”

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation

(original signed)

Per: Jorge Daniel Taillant
Executive Director

cc: Miguel Ángel Zerón, alternate representative, Mexico
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Submitter

Appendix: Environmental laws in question

¹⁵⁶ USMCA Article 24.2(2): “The objectives of this Chapter are to ... promote high levels of environmental protection and effective enforcement of environmental laws;...”