

## Secretariat of the Commission for Environmental Cooperation

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

**Submitter:** Name Withheld Pursuant to ECA Article 16(1)(a)  
**Party:** United Mexican States  
**Date of submission:** 11 April 2023  
**Date of determination:** 11 May 2023  
**Submission No.:** SEM-23-003 (*Agave production in Jalisco*)

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#### I. INTRODUCTION

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

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

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

- Committee,<sup>3</sup> providing its reasons as prescribed by USMCA Article 24.28(1); otherwise, it terminates the review of the submission.<sup>4</sup>
3. On 11 April 2023, a Mexican citizen (“the Submitter”), who requested the confidentiality of their data in accordance with Article 16(1)(a) of the ECA, filed a submission with the Secretariat, in accordance with USMCA Article 24.27(1).<sup>5</sup>
  4. The Submitter asserts that Mexico is failing to effectively enforce its environmental laws with respect to deforestation and desertification in the state of Jalisco, Mexico, due to the increasingly extensive planting of agave, and also with respect to the alleged improper handling of wastewater generated in the tequila manufacturing process (referred to as “vinazas” in Spanish and “vinasses” in English).<sup>6</sup>
  5. According to the Submitter, Mexico has failed to effectively enforce various legal provisions and regulatory instruments in force in Mexico:
    - i) the Political Constitution of the United Mexican States (“the **Constitution**”);
    - ii) the General Act on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—**LGEEPA**);
    - iii) the Agrarian Act (*Ley Agraria*);
    - iv) the Federal Law of Rights (*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, which establishes the maximum permissible limits for pollutants in wastewater discharges to receiving bodies from the distillery industry (“**NOM-064**”), and
    - vii) Mexican Official Standard NOM-EM-037-FITO-2002, phytosanitary specifications for the production and movement of Agave tequilana Weber blue variety (“**NOM-EM-037**”).
  6. After examining the submission, the Secretariat finds that it does not meet all the admissibility requirements set forth in USMCA Article 24.27(2), and hereby notifies the Submitter. In particular, the submission is required to cite legal provisions that meet the definition of environmental law established in USMCA Article 24.1 and that support its assertions.
  7. From the date of this determination, the Submitter has 60 days to submit a revised submission. If the revised document is not received by 10 July 2023, the Secretariat will terminate the process regarding submission SEM-23-003 (*Agave Production in Jalisco*). The reasons for the Secretariat's determination are set forth in Section III: “Analysis.”

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

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

<sup>5</sup> SEM-23-003 (*Agave production in Jalisco*), submission under Article 24.27(1) of the USMCA (11 April 2023), in: <https://bit.ly/3LdDwJA> [Submission].

<sup>6</sup> Submission, section “Statement of Facts,” p. 7.

## II. SUMMARY OF THE SUBMISSION

8. In submission SEM-23-003 (*Agave production in Jalisco*), the Submitter asserts that Mexico is failing to effectively enforce its environmental laws with respect to deforestation and desertification in the state of Jalisco due to the increasingly extensive planting of agave, and also with respect to the alleged inadequate management of wastewater generated in the tequila manufacturing process (referred to as “vinazas” in Spanish and “vinasses” in English).<sup>7</sup> The Submitter states that 75% of the water available in the state of Jalisco is contaminated and point to the agave agroindustry and tequila production as the main cause.<sup>8</sup>
9. The submission states that for each liter of tequila produced, an average of 13 to 16 liters of vinasse are generated, which contain methanol, higher alcohols, ketone esters, aldehydes, phenols and furfural, among other contaminating substances. It also maintains that, per liter of tequila, five kilograms of solid waste are produced, generating carbon dioxide and nitrogen salts during fermentation of the agave.<sup>9</sup>
10. The Submitter points out that, according to the available tequila production data, currently more than 16,500 liters of vinasse are produced per minute,<sup>10</sup> which are not adequately treated, causing the contamination of rivers, lakes, and aquifers. According to the Submitter, none of the tequila plants in Jalisco have effective systems for the treatment of their vinasses; moreover, many of the tequila production facilities lack the corresponding permits, thus failing to comply with the applicable regulations for wastewater discharge.<sup>11</sup>
11. As an example, the Submitter presents the case of the serious ecological deterioration caused in the Ayotlán area by the Los Altos wastewater treatment plant, due to the spillage of untreated vinasses that infiltrated and caused “an ecocide” at the San Onofre dam.<sup>12</sup> The Submitter also alludes to the organic waste treatment plant recently installed in the town of Carrozas (municipality of Tototlán), which has essentially the same deficiency in the treatment of vinasses as the now-closed Los Altos plant.<sup>13</sup>
12. Regarding deforestation and soil desertification in Jalisco, the Submitter asserts that these well-known processes are being caused by the planting of agave in vast areas that are already semi-arid, which not only prevents the “recovery of aquifers,” but also gives rise to “serious landslides and floods.”<sup>14</sup>
13. The Submitter includes in their submission several links to download relevant supporting documents, with information confirming their assertions, as well as various communications to federal and state authorities.<sup>15</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at p. 10.

<sup>10</sup> *Id.* at p. 11.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at p. 7.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at p. 8.

<sup>15</sup> *Id.* at p. 12 and annexes to the submission.

### III. ANALYSIS

14. The CEC Secretariat may consider any submission alleging that a Party to the USMCA is failing to effectively enforce its environmental laws, provided that the admissibility requirements set forth in the Agreement are met. The Secretariat reiterates—as it has previously stated in determinations under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC)<sup>16</sup> and also under the USMCA<sup>17</sup>—that the requirements of Articles 24.27(1), (2) and (3) of the USMCA are not intended to be an insurmountable procedural screening device and, and must therefore be given a broad interpretation consistent with the objectives of Chapter 24 of the Agreement.<sup>18</sup> The Secretariat reviewed the submission with that perspective in mind.

#### A. Article 24.27(1)

15. USMCA Article 24.27(1) provides that any person of a Party may file a submission with the CEC Secretariat asserting that a Party is failing to effectively enforce its environmental laws.
16. Article 1.5 of the USMCA defines the term *person of a Party* as “a national of a Party or an enterprise of a Party.”<sup>19</sup> In turn, *national* means a natural person with nationality (or permanent resident status) of a Party, while *enterprise* means “an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled...” which includes any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization “constituted or organized under the laws of a Party.”
17. The Submitter is a natural person with Mexican nationality, and therefore qualifies as a person *of a Party as* defined in Article 1.5 and for purposes of USMCA Article 24.27(1).

#### B. Environmental laws in question

18. In order to determine whether the submission identifies or refers to “environmental laws” as set forth in USMCA Article 24.27(1), it is necessary to refer to the meaning provided by the Agreement itself.
19. USMCA Article 24.1 provides the following definition:

**[E]nvironmental law** means a statute or regulation of a Party, or provision thereof, including any that implements the Party's obligations under a multilateral environmental

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<sup>16</sup> SEM-97-005 (*Biodiversity*), Determination under NAAEC Article 14(1) (May 26, 1998); SEM-98-003 (*Great Lakes*), Determination under NAAEC Articles 14(1) and (2) (8 Sept. 1999).

<sup>17</sup> SEM-20-001 (*Loggerhead Turtle*), Determination in accordance with Articles 24.27(2) and (3) of the USMCA (Feb. 8, 2021), § 8, at: <[http://www.cec.org/wp-content/uploads/wpallimport/files/20-1-det\\_24.27\(2\)\(3\)\\_en.pdf](http://www.cec.org/wp-content/uploads/wpallimport/files/20-1-det_24.27(2)(3)_en.pdf)> ; SEM-21-001 (*Fairview Terminal*), Determination in accordance with Articles 24.27(2) and (3) of the USMCA (Mar. 9, 2021), § 6, at: <[https://bit.ly/DET\\_21-001\\_en](https://bit.ly/DET_21-001_en)>; SEM-21-002 (*Vaquita porpoise*) Determination in accordance with USMCA Articles 24.27(2) and (3) (8 Sept. 2021), § 8, at: <[http://www.cec.org/wp-content/uploads/wpallimport/files/21-2-det\\_en.pdf](http://www.cec.org/wp-content/uploads/wpallimport/files/21-2-det_en.pdf)>.

<sup>18</sup> *Cfr.* USMCA, Article 24.2.

<sup>19</sup> The Secretariat bears in mind the adoption of the Amending Protocol to the Treaty between the United Mexican States, the United States of America and Canada (“the Protocol”), whereby provisions were added to chapters 1 and 24, so that the numbering of some articles of said instrument was changed. This was the case with Article 1.5 “General Definitions,” initially Article 1.4, but later renumbered in accordance with the Protocol. Therefore, in the case of the Spanish version, it is necessary to consult the USMCA and its Protocol.

agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

- a) the prevention, reduction or control of a release, discharge or emission of pollutants or environmental contaminants;
- b) the control of environmentally hazardous or toxic chemicals, substances, materials or wastes, and the dissemination of information related thereto; or
- c) the protection or conservation of wild flora or fauna,<sup>1</sup> including endangered species, their habitat, and specially protected natural areas;<sup>2</sup>

but does not include a statute or regulation, or provisions thereof, directly related to worker safety and health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources.<sup>20</sup>

<sup>1</sup> The Parties recognize that "protection or conservation" may include the protection or conservation of biological diversity.

<sup>2</sup> For the purposes of this Chapter, the term "specially protected natural areas" means those areas as defined by the Party in its law.

In turn, “**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.”<sup>21</sup>

- 20. The Secretariat assessed whether the legal provisions cited in the submission correspond to environmental laws within the meaning of the USMCA and whether they are specifically linked or applicable to the issues raised by the Submitter,<sup>22</sup> and determined that some—but not all—of the individual provisions of laws and regulations cited by the Submitter meet the admissibility criteria. The Secretariat details its reasoning below.
- 21. The provisions cited by the Submitters include the Constitution, the LGEEPA, Agrarian Act, LFD, Protocol of San Salvador, NOM-064 and NOM-EM-037 (see Table 1).

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

Title	Acronym or abbreviation	Provisions cited
Political Constitution of the United Mexican States	Constitution	Article 4
General Act on Ecological Balance and Environmental Protection	LGEEPA	Article 1

<sup>20</sup> USMCA, Article 24.1.

<sup>21</sup> *Id.*

<sup>22</sup> Section 5.1(c) of the *Guidelines for Submissions on Effective Enforcement of Environmental Laws under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* [Guidelines] states that the Secretariat shall analyze on an individual basis the main purpose of each of the cited legal provisions: “The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) of Article 45(2) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.”

Agrarian Act		Articles 115, 116, 117 and 118.
Federal Law of Rights	LFD	Articles 3, 222, 276, 277-B and 278
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights	San Salvador Protocol	Article 11
Mexican Official Standard NOM-064-ECOL-1994, which establishes the maximum permissible limits of pollutants in wastewater discharges to receiving bodies from the distillery industry.	NOM-064	
Mexican Official Standard NOM-EM-037-FITO-2002, phytosanitary specifications for the production and movement of Agave tequilana Weber blue variety.	NOM-EM-037	

**a) Political Constitution of the United Mexican States**

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

**b) General Law on Ecological Balance and Environmental Protection**

23. **Article 1** of the LGEEPA establishes that such law regulates the provisions of the Constitution that refer to the preservation and restoration of the ecological balance, as well as the protection of the environment; it also states that its purpose is to promote sustainable development. Although Article 1 of the LGEEPA may qualify as environmental law because it is oriented to environmental protection, the Secretariat determines *not* to consider it for analysis in relation to submission SEM-23-003 (*Agave production in Jalisco*) since it is not concrete enough to be applied directly.
24. The Secretariat finds that a revised submission would allow the Submitter to cite various articles of the LGEEPA that are directly related to the assertions made in the submission.

**c) Agrarian Act**

25. None of the provisions of the Agrarian Act cited by the Submitters qualify as environmental law as defined in USMCA Article 24.1, since they do not have as their main purpose the protection of the environment or the prevention of a danger to human life or health. **Article 115** establishes that large estates are prohibited in the United Mexican States. **Article 116** defines the concepts of agricultural land, livestock land and forest land (*tierras agrícolas, tierras ganaderas y tierras forestales*). **Article 117** defines the limits of the areas of agricultural land that qualify as small agricultural property (*pequeña propiedad agrícola*). **Article 118** stipulates that, for the application of the limits of small property, the areas in cases in which the same individual owns agricultural land of different classes or destined to different crops will be added together.

26. The Secretariat therefore determines that the analysis of the effective enforcement of the four above-mentioned provisions is inappropriate in the context of the SEM process because they do not qualify as environmental laws within the meaning of the USMCA.

**d) Federal Law of Rights**

27. The Submitter cites five articles of the Federal Law of Rights, none of which qualify as environmental law under the definition set forth in USMCA Article 24.1, since their main purpose is not the protection of the environment or the prevention of a danger to human life or health.
28. **Article 3** of the LFD provides that individuals and corporations shall pay the fees established in the law (for services or for the use, enjoyment, operation or benefit of public property of the Federation) at the offices authorized by the Ministry of Finance and Public Credit. **Article 222** establishes that for the use, operation or benefit of national waters the corresponding water right will be paid, according to the area of availability in which the extraction is made. **Article 276** stipulates that individuals and legal entities that permanently, intermittently or accidentally discharge wastewater into rivers, basins, riverbeds, watercourses, vessels, marine waters and other water reservoirs or streams, as well as those who discharge wastewater into the soil or infiltrate it into land that is national property or that may contaminate the subsoil or aquifers, are obligated to pay the fee for use or operation of property in the public domain of the Nation as receiving bodies for the discharge of wastewater. **Article 277-B** establishes the fee amount to be paid, based on the volume of wastewater discharged during the quarter and the corresponding fee per cubic meter according to the type of person or entity that completes the discharge. The Secretariat determines that the analysis of the effective enforcement of these four provisions is inappropriate because they do not correspond to environmental laws within the meaning of the USMCA. **Article 278** of the LFD provides that certain taxpayers may obtain a certain reduction in the payment of the wastewater discharge fee based on their activity and the characteristics of the discharge they complete, for which they must obtain (through sampling and analysis) the concentrations of pollutants and total suspended solids of such discharge and the associated chemical oxygen demand.
29. While the cited provisions of the LFD do not in themselves qualify as environmental law, the Secretariat determines that it may take them into account as a reference in further analysis in relation to submission SEM-23-003 (*Agave production in Jalisco*), should a revised submission be received that meets the admissibility requirements established in the Agreement.

**e) Other regulatory instruments cited in the submission**

30. **Article 11** of the **Protocol of San Salvador** recognizes the right to a healthy environment. The Secretariat determines that it is *not* considered environmental law as defined in USMCA Article 24.1 because it is an instrument that does not derive from an Act of the Mexican Congress.
31. **NOM-064**, issued based on the Constitution and the LGEEPA, among other federal laws, and published in the *Official Gazette of the Federation* (DOF) on 5 January 1995, is a Mexican Official Standard intended to establish the maximum permissible limits of pollutants in wastewater discharges to receiving bodies from the distillery industry. NOM-064 was repealed by NOM-001-ECOL-1996, *which establishes the maximum permissible limits of pollutants in wastewater discharges into national waters and property*, published in the DOF on January 6, 1997, which changed its nomenclature in 2003 to become NOM-001-SEMARNAT-1996 and more recently was updated through an amendment published in the DOF on 11 March 2022.

Therefore, although NOM-064-ECOL-1994 would qualify as an environmental law in terms of the definition of USMCA Article 24.1, since its main purpose is the protection of the environment or the prevention of a danger to human life or health, the Secretariat determines that it is not appropriate to analyze it since it is no longer in force in Mexico.

32. **NOM-EM-037** is an official standard issued based on the Constitution and the LGEEPA, among other federal laws, and published in the DOF on 19 June 2002. Its purpose is to establish phytosanitary measures for the propagation, production, and movement of the tequila agave (*Agave tequilana* Weber blue variety) in order to preserve and improve its phytosanitary condition in the zone of tequila appellation of origin. The Secretariat determines that NOM-EM-037 *does not* qualify as an environmental law as defined in USMCA Article 24.1, since its main purpose is not the protection of the environment or the prevention of a danger to human life or health.

### C. Article 24.27(2) Requirements

33. Article 24.27(2) establishes five requirements that a submission must meet to be admissible.
- a. *is in writing in English, French, or Spanish;*
34. The submission is written in Spanish, thus satisfying the admissibility requirement set forth in USMCA Article 24.27(2)(a).
- b. *clearly identifies the person making the submission;*
35. The submission includes the name, address, e-mail address, and telephone number of the Submitter: sufficient and appropriate information to identify the Submitter, communicate with them and assess whether they satisfy the requirements of Article 24.27(1). In this regard, the Secretariat concludes that the submission satisfies the condition set forth in Article 24.27(2)(b) of the Agreement.
- c. *provides sufficient information to allow for the review of the submission, including any documentary evidence on which the submission may be based and identification of the environmental law of which the failure to enforce is asserted;*
36. The submission includes links to download written, photographic and video documentation evidencing the alleged contamination of the Zula and Santiago rivers, as well as photographs of the alleged effects of water contamination on nearby communities.
37. In addition, the Submitter attaches information regarding the process of developing tequila and the pollutants generated;<sup>23</sup> data from a study by the State Water Commission of Jalisco,<sup>24</sup> and information on the processing of permits for special management waste<sup>25</sup> and wastewater discharge<sup>26</sup> related to the tequila agroindustry in Jalisco.

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<sup>23</sup> Contamination of alcoholic distillates (n/d).

<sup>24</sup> CEA-Jalisco (2011), *Geographic Information System “El Ahogado,”* State Water Commission, Jalisco, March 2011.

<sup>25</sup> Semadet, *Annex to the environmental diagnostic guide for collectors and transporters of special handling waste,* Ministry of Environment and Territorial Development of Jalisco.

<sup>26</sup> Conagua, *Permit to discharge wastewater,* National Water Commission, National Catalog.



38. The Secretariat notes that the information attached to the submission indicates that, in addition to the Zula River, contamination by vinasses from tequila production extends to other bodies of water in the state of Jalisco, including the Santiago River and the El Ahorcado watershed.
39. The Secretariat determines that the submission complies with USMCA Article 24.27(2)(c). However, it should be noted that the Submitter may include information related to tequila vinasse contamination in other bodies of water in the region in a revised submission, if they so wish.

*d. appears to be aimed at promoting enforcement rather than at harassing industry; and*

40. The Secretariat finds that the submission satisfies USMCA Article 24.27(2)(d), since it is clear from the information and documentation included in the submission and its annexes that it is not aimed at harassing an industry, but rather seeks effective enforcement of the applicable environmental law regarding deforestation and desertification in the state of Jalisco as a result of agave planting and also in relation to the alleged improper handling of the vinasses generated during the tequila manufacturing process.

*e. indicates whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any*

41. The submission annexes information on requests made to the office of the Presidency of the Republic; the Ministry of the Interior; the Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat);<sup>27</sup> the National Water Commission (*Comisión Nacional del Agua*—Conagua);<sup>28</sup> the Federal Attorney General's Office for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa);<sup>29</sup> the Ministry of Economy; the National Guard; the Federal Judiciary Council; and the State Human Rights Commission in the state of Jalisco.
42. While the communications attached to the submission describe the issues raised by the Submitter, the Secretariat notes that not all of the authorities that have been approached are competent to effectively enforce environmental legislation in relation to the subject matter of submission SEM-23-003. Therefore, the Secretariat will only consider for further analysis those communications completed to Semarnat, Conagua and Profepa.
43. The Secretariat determines that the submission satisfies the requirement of USMCA Article 24.27(2)(e).

#### **D. Article 24.27(3) Criteria**

44. Article 24.27(3) provides four more criteria that are part of the Secretariat's review process:

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<sup>27</sup> Semarnat, official document no. OIC/TAQ/1703/2020 (5 August 2020), OIC/TOIC-CAS/0262/2022 (24 June 2022) and OIC/OIC-CAS/1342/2022 (29 Sept. 2022), Internal Control Body, Ministry of Environment and Natural Resources.

<sup>28</sup> Conagua, official documents no. OIC-CONAGUA/113/TAQ/974/2020, Internal Control Body, National Water Commission (10 August 2020), and B00.812.02.-552, National Water Commission, Lerma-Santiago-Pacifico Basin Organization (24 Sept. 2020).

<sup>29</sup> Profepa, official document no. PFPA/5.3/2C.28.3/12634, General Directorate for Crimes, Commutations, Claims and Complaints of the Attorney General's Office, Federal Attorney General's Office for Environmental Protection (27 Dec. 2022).

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

45. The Secretariat has found in previous determinations that, when considering the question of harm, it must determine whether the harm asserted is due to the alleged failure to effectively enforce the environmental law and whether the harm is related to environmental protection.<sup>30</sup>
46. The submission alleges that the intensive planting of agave over increasingly more extensive areas is causing extensive deforestation in the state of Jalisco, which in turn contributes to desertification in already semi-arid areas; the occurrence of large avalanches or landslides and floods in some municipalities, and the depletion of aquifers. It also states that during the tequila distillation process, wastewater is generated—the so-called tequila vinasses—which, due to its characteristics, causes considerable damage when it infiltrates the subsoil and when it is discharged into bodies of water without prior treatment. Particular reference is made to the untreated vinasses being discharged into the Zula River, with direct repercussions for water quality.<sup>31</sup> The Submitters assert that 75% of the water available in the state of Jalisco is contaminated and point to the tequila production industry as the main culprit.<sup>32</sup>
47. The Secretariat finds that the asserted damage is due to the alleged lack of environmental law enforcement and determines that the submission satisfies the criterion set forth in Article 24.27(3)(a) of the Agreement.

*b. the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter;*

48. USMCA Article 24.2(2) states that the objectives of Chapter 24 of the Agreement are “to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation, in furtherance of sustainable development.”
49. The submission raises questions about deforestation and desertification of vast areas in the state of Jalisco, as a result of the planting of agave for the tequila agribusiness. It also points to the serious contamination of the Zula River caused by the discharge of wastewater—vinasses—generated during the tequila production process.<sup>33</sup> Addressing the issues raised is fully consistent with the objectives of Chapter 24 of the USMCA, which is why the Secretariat finds that the submission satisfies Article 24.27(3)(b).
50. The Secretariat believes that addressing the issues raised in the submission would contribute to promoting high levels of environmental protection, as well as effective enforcement of environmental laws, with respect to agave planting and tequila production in Jalisco, Mexico.

*c. private remedies available under the Party’s law have been pursued; and*

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<sup>30</sup> See SEM-19-004 (*Barred Owl*), Determination under Articles 14(1) and (2) of the NAAEC (21 Nov. 2019), § 28; SEM-11-002 (*Sumidero Canyon II*), Determination under Articles 14(1) and (2) of the NAAEC (6 Sept. 2012), § 36; and SEM-13-001 (*Gulf of California Tourism Development*), Determination under Articles 14(1) and (2) of the NAAEC (23 Nov. 2013). See also: SEM-20-001 (*Loggerhead Turtle*), Determination under USMCA Articles 24.27(2) and (3), § 58.

<sup>31</sup> Submission, section “Statement of Facts,” pp. 7 and 8.

<sup>32</sup> *Id.* at p. 7.

<sup>33</sup> *Id.* at pp. 7-8.

51. The Secretariat believes that *pursuing private remedies* can be interpreted broadly, so that it is possible to meet this criterion through the Submitter filing a complaint, but also by referring to complaints, claims or grievances filed by a third party, whether an individual person or an organization or entity. This criterion is evaluated according to a standard of reasonableness, keeping in mind that in some cases barriers exist to pursuing such remedies.<sup>34</sup>
52. The Submitters include a complaint filed with Profepa that is related to the allegations set forth in the submission. The complaint alleges “the alleged discharge of industrial wastewater (vinasse), without prior treatment, into the body of water identified as the Zula River, near the municipality of Tototlán, Jalisco, pointing out as possible responsible parties the Los Altos Wastewater Treatment Plant, S.A. de C.V., the Tequila La Madrileña company and the tequila industry in general.”<sup>35</sup>
53. In addition, the submission includes information on a citizen complaint filed with the Internal Control Body of Semarnat and forwarded to the Coordinating Unit for Public Participation and Transparency of Semarnat and the General Directorate for Crimes, Commutations, Claims and Complaints of Profepa.<sup>36</sup>
54. Also attached is information regarding a document filed with the Conagua on 28 July 2022, through the Portal of the Integrated System of Citizen Complaints and Claims, in which the contamination of the Zula River derived from the discharge of vinasse and the deficient operation of the Los Altos wastewater treatment plant is stated, and the various damages caused by the tequila industry are exposed.<sup>37</sup>
55. The Submitter also refers to a complaint filed with the Office of the Attorney General of the Republic (*Fiscalía General de la República*—FGR) on 18 February 2022; however, the Submitter does not include a copy of the document in question, so it is not possible to corroborate whether it refers to the matter raised in the submission.<sup>38</sup> The Secretariat determines that, in a revised submission, the Submitter may submit more detailed information and attach the complaint in question.
56. The Secretariat concludes that the submission meets the criteria set forth in USMCA Article 24.27(3)(c). However, the Submitter is urged to include in a revised submission a copy of the complaint filed with the FGR and any other relevant information as to the remedies available to individuals in connection with the subject matter of submission SEM-23-003.

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<sup>34</sup> See SEM-18-001 (*Transboundary Agricultural Burning*), Determination under Articles 14(1) and (2) of the NAAEC (19 Feb. 2018), §§ 27 and 28 (“In similar situations, the Secretariat has considered if reasonable actions were taken prior to file a submission. It has also [concluded] that in some cases, the lack of resources may limit a submitter’s ability to undertake private remedies before filing a submission. The Secretariat considers that a barrier to a private remedy may include economic and social factors.”).

<sup>35</sup> See Profepa, official document no. PFPA/5.3/2C.28.3/12634, General Directorate for Crimes, Commutations, Claims and Complaints of the Attorney General’s Office, Federal Attorney General’s Office for Environmental Protection (27 Dec. 2022).

<sup>36</sup> See Semarnat, official document no. OIC/OIC-CAS/1342/2022, Internal Control Body, Ministry of Environment and Natural Resources (29 Sept. 2022).

<sup>37</sup> See Conagua, official document no. B00.812.02.-552, National Water Commission, Lerma-Santiago-Pacifico Basin Organization (24 Sept. 2020).

<sup>38</sup> Submission, section “Statement of Facts,” p. 7.

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

57. The Secretariat finds that the submission is *not* based on media reports, but on the Submitter's direct knowledge of the area and the prevailing environmental situation, as well as on information gathered with respect to these matters.
58. Consequently, the Secretariat concludes that the submission meets the criterion set forth in Article 24.27(3)(d) of the Agreement.

#### **IV. DETERMINATION**

59. For the reasons stated in its analysis, the Secretariat determines that submission SEM-23-003 (*Agave production in Jalisco*) does not satisfy all the admissibility requirements established in Article 24.27(2), and that additional information is required for the process to continue and—in any case—a response from the Government of Mexico is requested in terms of Article 24.27(3).
60. The Submitter is required to cite the specific articles of federal environmental laws and regulations that the Party is allegedly failing to effectively enforce. In this regard, the Submitter is urged to refer to the USMCA definition of *environmental law* (cited in paragraph 19 of this determination). In addition, a revised submission may include missing information, such as a copy of a complaint filed with the FGR on 18 February 2022, as well as relevant documentation related to the communication of the matter to the competent Mexican authorities.
61. The Submitter has 60 calendar days from the date of this determination (i.e., until **10 July 2023**) to submit a revised submission that includes the requested information. It is not necessary to include again the documents already submitted with the original submission. The Secretariat will then proceed to reconsider whether submission SEM-23-003 (*Agave production in Jalisco*) meets the admissibility requirements.

Respectfully submitted for your consideration,

#### **Secretariat of the Commission for Environmental Cooperation**

*(original signed)*

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

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