

Secretariat of the Commission for Environmental Cooperation

Notification by the Secretariat pursuant to Article 24.28 of the Treaty between the United Mexican States, the United States of America and Canada

Submitters: In accordance with Article 16(1)(a) of the ECA, the identity of the Submitters is kept confidential.
Part: United Mexican States
Submission: May 17, 2023
Date of notification: October 16, 2023
Number of submissions: SEM-23-006 (*Illegal Logging in Jalisco*)

Executive Summary

On 17 May 2023, two Mexican citizens (“the Submitters”), whose identity is being withheld pursuant to Article 16(1)(a) of the NAAEC, filed a submission with the CEC Secretariat, pursuant to Article 24.27(1) of the USMCA, in which they assert that Mexico is failing to effectively enforce its environmental laws with respect to the illegal logging, deforestation and change of forest land for avocado cultivation in the Los Amoles property, Cuautla, State of Jalisco, Mexico.[†]

On 16 June 2023, the Secretariat determined that submission SEM-23-006 (*Illegal Logging in Jalisco*) met all of the requirements and criteria for admissibility set forth in Article 24.27 of the USMCA and that a response from the Government of Mexico (“the Party”) was warranted, pursuant to paragraph (3) of the same article.[‡]

On 16 August 2023, the Secretariat received the Party response, which provides information on the actions related to the issue raised by the Submitters; it states that the submission is not admissible and reports the existence of pending administrative proceedings to be resolved.[§]

It is important to clarify that the proceedings reported by the Party do not necessarily conclude the processing of the submission, since they do not have the potential to resolve the substantive issues raised by the Submitters, and the preparation of a factual record could provide information about Mexico's efforts and measures to address the problem of illegal logging and land use change, particularly on the Los Amoles property, Cuautla, Jalisco State.

After its analysis in light of the Party's response, the Secretariat finds that there are central open questions regarding the matter raised in submission SEM-23-006 (*Illegal Logging in Jalisco*) and that the preparation of a factual record is warranted on alleged failures in the effective enforcement of the law with respect to inspection and surveillance actions and the implementation of the citizen complaint mechanism in relation to illegal logging, deforestation and change of forest land use in the Los Amoles property, Cuautla, Jalisco, Mexico.

The Secretariat then sets forth its reasons below and so notifies the Council pursuant to Article 24.28(1) of the USMCA.

[†] SEM-23-006 (*Illegal Logging in Jalisco*), Submission pursuant to Article 24.27(1) of the USMCA (17 May 2023) at: <<https://bit.ly/4979Yr9>>.

[‡] SEM-23-006 (*Illegal Logging in Jalisco*), Determination pursuant to Articles 24.27(2) and (3) of the USMCA (16 June 2023) at: <<https://bit.ly/3QmkCBZ>>.

[§] SEM-23-006 (*Illegal Logging in Jalisco*), Response pursuant to Article 24.27(4) of the USMCA (16 August 2023) at: <<https://bit.ly/3s338SH>>.

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA or “the Agreement”) and the Environmental Cooperation Agreement (ECA) entered into force. As of that date, the Submissions on Enforcement Matters process (“SEM process”), originally established in Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC), is governed by Articles 24.27 and 24.28 of the USMCA. The Secretariat of the Commission for Environmental Cooperation (“CEC Secretariat”)¹ remains responsible for implementation of the SEM process, as stipulated in the ECA.²
2. The SEM process allows any person or entity legally established in Canada, the United States or Mexico to file a submission alleging that a Party is failing to effectively enforce its environmental laws.³ The CEC Secretariat initially reviews submissions based on the criteria and requirements set forth in Article 24.27(1) and (2) of the USMCA. When the Secretariat finds that a submission meets these requirements, it then determines whether, in accordance with Article 24.27(3) of the USMCA, 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, informs the CEC Council and the Environment Committee,⁴ providing its reasons under Article 24.28(1); otherwise, the submission is closed.⁵
3. On 17 May 2023, two Mexican nationals (“the Submitters”), who requested confidentiality under Article 16(1)(a) of the ECA, filed a submission with the Secretariat pursuant to Article 24.27(1) of the USMCA, in which they assert that Mexico is failing to effectively enforce its environmental laws with respect to illegal logging, deforestation and change of use of forest land for avocado cultivation in Los Amoles, Cuautla, Jalisco, Mexico.⁶ The Submitters further contend that the

¹ The Commission for Environmental Cooperation (CEC) was created in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), signed by Canada, Mexico and the United States (the “Parties”). The constituent 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 between the Governments of the United Mexican States, the United States of America and Canada (“Environmental Cooperation Agreement” or ECA), the CEC “shall continue to operate under the modalities in effect as of the date of entry into force of this Agreement.”

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

³ Article 24.27(1) of the USMCA provides that a submission may be made by “any person of a Party,” understood - in accordance with the general definitions in Article 1.5 - as “a national [an individual with nationality or permanent resident status] or an enterprise [any private, public or social entity or organization established or incorporated under applicable law] of a Party.”

⁴ Established under Article 24.26(2) of the USMCA, the Environment Committee is tasked with overseeing the enforcement of Chapter 24 of the Agreement.

⁵ For more details regarding the various phases of the SEM submissions process, the public registry of submissions, and the findings and factual records developed by the Secretariat, see the CEC website at: www.cec.org/peticiones.

⁶ SEM-23-006 (*Illegal Logging in Jalisco*), Submission pursuant to Article 24.27(1) of the USMCA (17 May 2023), in: <https://bit.ly/4979Yr9> [Submission].

representative office of the Federal Attorney General's Office for Environmental Protection in the state of Jalisco (“Profepa-Jalisco”) is failing to implement the citizen complaint procedure and carry out inspection and surveillance activities.

4. According to the Submitters, Mexico is failing to effectively enforce various provisions of the General Act on Ecological Balance and Environmental Protection (**LGEEPA**), the General Act on Sustainable Forest Development (**LGDFS**) and the Regulations of the General Act on Sustainable Forest Development (**RLGDFS**), all regulatory instruments in force in Mexico.
5. On 16 June 2023, the Secretariat determined that submission SEM-23-006 (*Illegal Logging in Jalisco*) satisfied all of the requirements and criteria for admissibility set forth in subparagraphs (1) and (2) of Article 24.27 of the USMCA, and that, pursuant to subparagraph (3), a response from the government of Mexico (“the Party”) was warranted regarding effective enforcement of the following provisions:⁷
 - i) Articles 160: first and third paragraphs, 161: first paragraph, 162: first paragraph, 166, 167, 169: last paragraph, 170: sections I and II, 182: first paragraph, 189: first paragraph, 190, 191: first and third paragraphs, 192, 193, 202: first paragraph and 203 of the LGEEPA;
 - ii) articles 154 and 155: sections III, VI, VII, XII and XV of the LGDFS, and
 - iii) Articles 225, 226: first and third paragraphs, 227: first paragraph, 229, 231, 232, 233: second paragraph and 234 of the RLGDFS.
6. On 16 August 2023, the Secretariat received the Party response.⁸ In its response, the Party notes that the submission is not admissible⁹ and that several of the provisions cited in the submission contain discretionary powers (i.e., the authority is not required to implement them).¹⁰ It further notifies that there are two pending administrative proceedings and two ongoing criminal investigations in relation to the allegations in the submission, and therefore requests that the submission be terminated pursuant to Article 24.27(4)(a).¹¹ The response also provides general information on illegal logging, reforestation and soil change on forest lands in the state of Jalisco.¹²
7. Pursuant to Article 24.28(1) of the USMCA, the CEC Secretariat has examined whether, in light of the Party’s response, submission SEM-23-006 (*Illegal Logging in Jalisco*) warrants the preparation of a factual record.
8. Upon review, the Secretariat found that the citizen complaints reported by the Party as administrative proceedings pending resolution and are not actions initiated by the Party and pursued by it. The same can be said of the complaint (also reported by the Party as a pending proceeding) that the Submitters filed against officials of Profepa-Jalisco for the irregular and late processing of their citizen complaint. Regarding the criminal investigations that the Party refers to, it should be noted

⁷ SEM-23-006 (*Illegal Logging in Jalisco*), Determination pursuant to Articles 24.27(2) and (3) of the USMCA (16 June 2023), at: <<https://bit.ly/3QmkCBZ>> [Determination].

⁸ SEM-23-006 (*Illegal Logging in Jalisco*), Response pursuant to Article 24.27(4) of the USMCA (16 August 2023), at: <<https://bit.ly/3s338SH>> [Response].

⁹ Id. at § 22.

¹⁰ Id. at § 5, 6, 16 and 18.

¹¹ Id. at §§ 37, 53, 66 and 69.

¹² Id. at §§ 54-65.

that one has already concluded and the other is in its initial stage, without any information on the follow-up conducted by the authorities, since the Party response does not include any information in this regard. It is observed that none of the proceedings reported as pending are being *actively* pursued by the Party, and it is not evident that they have the potential to resolve the substantive issues that are the subject of the submission SEM-23-006, and therefore, there is not necessarily a justification to terminate the submission.

9. In order to determine whether some of the provisions cited in the submission are in fact subject to the discretionary powers, as argued by the Party, the analysis—presented later in this notification—found criteria issued by the Supreme Court of Justice of the Nation (SCJN) that state that in the case of a *regulated* power, “the administrative authority must adhere to the legal framework established by the legal norm that indicates the specific conduct that must be followed when the hypothesis that the legal provision foresees is fulfilled.”¹³
10. On the other hand, it should be noted that, regarding the actions of Profepa-Jalisco, the response corroborates that on 7 August 2023, following the Secretariat's request for a response from the Government of Mexico, the authority notified the complainants—owners of the Los Amoles property and the Submitters—of *the imposition of a temporary total closure order of the inspected area and the obligation to present evidence, including the corresponding authorization for the change in land use*.¹⁴ In this regard, it is noted that Profepa-Jalisco opened an administrative proceeding directed at the complainants themselves and reversed the burden of proof of the illegal activities that they themselves had denounced.
11. It is also noted that from 10 November 2021, the date on which the environmental damage was found (through an inspection visit conducted by officials of Profepa-Jalisco), until the date on which the summons was served by which the alleged corrective measure was issued (7 August 2023), Profepa-Jalisco did not file any complaint with the Attorney General's Office (*Fiscalía General de la República*—FGR) for crimes against the environment pursuant to Articles 169: last paragraph, 182: first paragraph and 202: first paragraph of the LGEEPA. In this regard, it should be noted that in Mexico, public officials are obliged to *immediately* notify the public prosecutor of the probable existence of an action that the law considers to be a crime against the environment.¹⁵
12. After reviewing the submission in light of the Party response, it can be seen that the response leaves open central questions that could be clarified by the preparation of a factual record regarding the effective enforcement of environmental law with respect to: i) the completion of acts of inspection and surveillance and ii) the implementation of the citizen complaint procedure in Cuautla, Jalisco, Mexico.

II. ANALYSIS

¹³ Contradiction of Thesis No. 123/2005-SS BETWEEN THE SECOND COLLEGIAL COURT IN ADMINISTRATIVE MATTERS OF THE FOURTH CIRCUIT AND THE FIRST COLLEGIAL COURT IN ADMINISTRATIVE MATTERS OF THE FIRST CIRCUIT, Judgment Rendered by Unanimous Vote of the Second Chamber, Supreme Court of Justice of the Nation, 30 September 2005, p. 33 <<https://bit.ly/3ZvOFex>> [Contradiction of Thesis No. 123/2005-SS].

¹⁴ Response, § 45.

¹⁵ Federal Environmental Liability Act (*Ley Federal de Responsabilidad Ambiental*—LFRA), Article 54.

a. Preliminary issues

i. The submission cites provisions that contain discretionary powers.

13. The Party argues that articles 166 and 170 of the LGEEPA and 229, 232 and 233: second paragraph of the RLGDFS establish discretionary powers; meaning that it is up to the authority to determine whether to exercise them or not.¹⁶ It adds that the use of the word “*may*” in the text of the law implies a discretionary exercise, so that its enforcement “does not constitute an obligation for the authority.”¹⁷
14. In connection with this argument of the Party, it is important to note that a thesis on administrative matters issued by the SCJN established that since 1997:
- In the legislative sphere, the verb 'power' does not necessarily have the meaning of discretion, but is sometimes used in the sense of 'obligatory', since in such a hypothesis it is understood as a duty....¹⁸
15. This consideration was also reflected that same year in a jurisprudence thesis of the SCJN,¹⁹ which recently served to specify that, in order to determine whether the authority has a discretionary power, it must first analyze whether the verb “*may*” in the text of the law contains a “regulated power,” and whether in the specific case a legal imperative is imposed on the authority:
- In order to define whether the verbal inflection *may* (used to detail the attribution of an authority) expresses a regulated or discretionary power, it is necessary to verify whether the provision in question has a connotation of conditional obligatory nature, which can only be concluded from a harmonious interpretation of other normative portions....²⁰
16. In order to determine whether the provisions that the Party finds as discretionary powers are in fact so, the following SCJN thesis also serves as a guide, from which it follows that the protection of the human right to a healthy environment is not a matter that can simply be left to the discretion of the authority:
- The right to live in a healthy environment is an authentic human right that entails the power of every person, as part of a collectivity, to demand the effective protection of the environment in which he/she develops, but it also protects nature for the value it has in itself, which implies that its essential core of protection even goes beyond the

¹⁶ Response, §§ 5, 6, 16 and 18.

¹⁷ *Id.*

¹⁸ POWER. THE USE OF THIS VERB IN LEGAL PROVISIONS DOES NOT NECESSARILY IMPLY A DISCRETIONARY POWER. Isolated thesis of the Supreme Court of Justice of the Nation, Second Chamber, thesis no. 2a, LXXXVI/97, *Judicial Weekly of the Federation and its Gazette*, 9th edition, volume VI, August 1, 1997, p. 217, digital record 197908 at: <<https://bit.ly/3LAm7uG>>.

¹⁹ HOME VISITS. IT IS NOT DISCRETIONARY THE POWER TO CONCLUDE THEM IN ADVANCE, PROVIDED FOR IN ARTICLE 47: SECTION I, OF THE FEDERAL TAX CODE. Thesis of jurisprudence of the Supreme Court of Justice of the Nation, Second Chamber, thesis number 2a./J. 31/97, *Judicial Weekly of the Federation and its Gazette*, 9th edition, volume VI, 1 August 1997, p. 174, digital record 197900 at: <<https://bit.ly/3LAAbUR>>.

²⁰ REGULATED POWER. IT IS THE POWER DESCRIBED IN ARTICLE 99: SECTION I, OF THE REGULATION OF THE HYDROCARBONS LAW, SINCE THE VERBAL INFLECTION “MAY” CONTAINED IN SUCH REGULATORY PORTION DENOTES OBLIGATORY NATURE. Isolated thesis of the Eleventh Collegiate Court in Administrative Matters of the First Circuit, Judicial Power of the Federation, thesis no. I.11o.A.9 A (11a.), *Judicial Weekly of the Federation and its Gazette*, 11th edition, volume 21, 27 January 2023, p. 6537, digital record 2025847 at: <<https://bit.ly/3Ly2jbi>>.

most immediate objectives of human beings. In this sense, this human right is based on the idea of solidarity, which implies an analysis of legitimate interest and not of subjective rights and freedoms; indeed, in this context, *the idea of obligation prevails over that of right* [emphasis added], since we are dealing with collective responsibilities rather than individual prerogatives. The environmental paradigm is based on an idea of complex interaction between man and nature that takes into account the individual and collective, present and future effects of human action.²¹

17. The response does not address the concept of *regulated* powers, nor does it offer any analysis in this regard. In this regard, it is discussed below whether the law in question establishes specifically what the actions of the authority *must* be (imposing a legal imperative, a mandatory attribution), without the possibility of applying discretionary criteria to its exercise.
18. In this regard, it is noted that the use of the verb “may” in article 166 of the LGEEPA has a *connotation of conditional obligatory nature* and expresses a *regulated* power: it entails the duty of Profepa to request the intervention of the police to carry out an inspection visit when some person or persons obstruct a proceeding (in the case of the subject matter of the submission, it is impossible to carry out a proceeding due to a situation of possible risk, a fact that both the Submitters and the Party point out.)²² Also article 170: Sections I and II of the LGEEPA contains a *regulated* power: it establishes the authority's power with a mandatory connotation to order the implementation of security measures when there is an imminent risk of ecological imbalance or serious damage or deterioration to the natural resources, measures that include the temporary, partial or total closure of the area in question and securing forest resources (in this case, the product of illegal logging); the power lies in using the most suitable means for its enforcement. Regarding articles 229 and 232 of the RLGDFS—whose enforcement is triggered through the security measures of article 170 of the LGEEPA—it can be seen that they clearly contain *regulated* powers, since the environmental authority is obliged to exercise them in a timely manner within the legal framework established by said article 170²³ (in this case, by issuing and implementing security measures in the event of violations provided for by law).
19. With respect to article 233: second paragraph of the RLGDFS, this contains the power of Profepa to use the technical investigation indicated in article 154 of the LGDFS, to determine if there is an imminent risk of ecological imbalance or serious damage or deterioration of the forest resources. In this case, more than a discretionary power, a legal imperative is imposed: that is, in the face of possible imbalance, damage or deterioration of the forest habitat and resources, the authority must specify the seriousness of the circumstances and, for that purpose, it has the function (obligation) to conduct technical investigation actions.²⁴ The Party response does not explain why it did not implement a technical investigation in the face of clear circumstances of illegal logging and land use change on forest lands.

²¹ HUMAN RIGHT TO A HEALTHY ENVIRONMENT, ITS ESSENTIAL NUCLEUS. Isolated thesis of the Supreme Court of Justice of the Nation, First Chamber, thesis no. 1a, CCLXXXIX/2018 (10a.), *Judicial Weekly of the Federation and its Gazette*, 10th edition, 7 December 2018, digital record 2018636 at: <<https://bit.ly/44XIJ00>>.

²² *Cfr.* Submission, § 16 and Response, §§ 44 and 57. In relation to the issue of security, *see also* the assertions on threats received, dispossession and invasion of property with the use of weapons, in paragraphs 2-4 and 6 of the Submission.

²³ Contradiction of Thesis No. 123/2005-SS, p. 33.

²⁴ *Cfr.* LGDFS, Article 154.

ii. Inapplicability of provisions cited in the submission

20. The Party response states that the analysis of the application of articles 189: first paragraph and 190 of the LGEEPA and 231 of the RLGDFS to the Submitters' subject matter is inappropriate, since both regulatory instruments establish a right (the citizen complaint mechanism) which must be exercised by the Submitters, not the authority.²⁵ In this regard, the submission includes information on two files of citizen complaints filed by the Submitters on 3 August 2021²⁶ and 20 February 2023,²⁷ and also recounts facts that are related to the assertion regarding the lack of effective enforcement of the provisions in question.²⁸ From the assertions contained in the submission, it is clear that Profepa-Jalisco has failed in the timely and effective implementation of the citizen complaint mechanism, thus affecting or violating the right granted by law to the Submitters. In effect, the exercise of the citizen complaint mechanism corresponds to the complainant, but without concrete, pertinent and timely actions by the authority, this right becomes ineffective.
21. With respect to article 203 of the LGEEPA, which establishes a five-year term (counted from the moment when the act occurs) to sue for environmental liability and the obligation to repair damages on the part of whoever has caused the deterioration of the environment and affected resources, the Party maintains that the analysis of its application in this case is not appropriate, since the term has not yet expired.²⁹ It is noted that, although the established five years have not yet expired, the Party does not report on the actions that it has implemented to demand the corresponding environmental liability (apart from the appropriate criminal or administrative sanctions) before the expiration of the time limit.
22. With respect to article 154 of the LGDFS, the Party notes that it is not applicable because the Submitters do not allege noncompliance with the provisions and obligations contained in that law, its regulations or any Mexican Official Standard (*Norma Oficial Mexicana*—NOM).³⁰ It is noted that the Submitters state that on two occasions they have resorted to the citizen complaint mechanism³¹ in relation to illegal logging and land use changes on forest lands, both of which are subject to the LGDFS and its regulations.
23. Regarding the infractions foreseen in article 155 of the LGDFS: sections III, VI, VII, XII and XV, the Party reiterates that it is not evident that the Submitters directly relate the timber extraction with the content of the LGDFS, RLGDFS or any NOM.³² The Party states that the provision related to the infraction for illegal harvesting of forest resources (section III) is not applicable in this case, since there are proceedings that are still pending; that, for section VI (infraction for non-compliance with the provisions of an authorization for timber extraction and change of land use on forest land) to be applicable, it would have to be the holder of the authorization—i.e., in this case the Submitters—who failed to comply with its terms. Mexico also states that in the submission there are no facts or evidence of acts, actions or omissions that confirm the change of land use of forest land, therefore section VII is not applicable; that the serious damage or deterioration to the forest

²⁵ Response, §§ 7 and 17.

²⁶ Submission, § 7.

²⁷ *Id.* at § 40.

²⁸ *Id.* at §§ 9-41.

²⁹ Response, § 8.

³⁰ *Id.* at § 9.

³¹ Submission, §§ 7 and 40.

³² Response, § 10.

resources has not yet been accredited through a resolution to the appeals in process, so section XII is not found applicable either, and that since it was never required to accredit the legal origin of the forest raw materials in question, section XV (infraction for transporting, storing, transforming or possessing forest raw materials without documentation or control systems to accredit their legal origin) is also inapplicable.³³

24. It is important to note that the five sections of Article 155 of the LGDFS in question *relate directly to the facts* raised by the Submitters. The submission includes the inspection report from the inspection conducted by Profepa in November 2021, which reads:

It was observed that a risk of damage to the environment was generated by the recent activities of vegetation removal that generated drastic changes to the topography by observing the total removal of vegetation in an area of 57 hectares, which was conducted without authorization for change of land use.³⁴

Likewise, the technical report for the site dated 3 December 2021 refers to the extraction and change of land use on forest land as a problem, affecting pine-oak forest vegetation.³⁵ Both documents directly confirm the facts asserted in the submission and their relationship with the aforementioned provisions, and clearly indicate the problems regarding the extraction of forest resources, the change of forest land use and illegal logging, in violation of the provisions of the LGDFS and its regulations.

25. Now, regarding section VI of Article 155 of the LGDFS, the Secretariat determines *not to consider it for further analysis*, since the only authorization for timber extraction in the “Los Amoles” property is the one granted in favor of the Submitters, and it is clear that it is not the Submitters themselves—but third parties without their consent—who are conducting the illegal logging activities in question.³⁶
26. Regarding Article 227: first paragraph of the RLGDFS, the Party argues that it is not applicable because the submission does not address issues related to concessions, permits, licenses, authorizations, and other administrative acts for the extraction of natural resources whose granting would have resulted in damage to the forest ecosystem.³⁷ The Secretariat determines *not to consider* the article in question for further analysis.
27. Finally, regarding article 234 of the RLGDFS—which establishes that the restoration measures that Profepa imposes (as an administrative sanction in the resolution that finalizes the respective inspection procedure [article 156 of the LGDFS]) shall have the rehabilitation of the forest ecosystem as their objective, so that it totally or partially recovers its functions—the Party notes that this provision is not applicable in this case because the corresponding proceeding is still being

³³ Id. at §§ 10-14.

³⁴ Submission, Annex 16: Profepa-Jalisco, Inspection Record No. PFPA/21.3/2C.27.2/029-21, Representative Office of the Federal Attorney General's Office for Environmental Protection in the State of Jalisco (10 November 2021), p. 5.

³⁵ Submission, Annex 42: Profepa-Jalisco, Technical opinion for summons no. PFPA/21.3/2C.27.2/00032-21 Representation Office of the Federal Attorney General's Office for Environmental Protection in the State of Jalisco (3 December 2021), p. 2.

³⁶ Submission, § 7.

³⁷ Response, § 15.

substantiated.³⁸ Regardless of the results of the analysis of the pending proceedings reported by the Party (*see* paragraphs 32-55), it can be observed that article 234 of the RLGDFS relates to the facts of forest logging and change of land use on forest land reported on 3 August 2021³⁹ and 20 February 2023⁴⁰ with a focus on Profepa-Jalisco acting to safeguard and patrol the affected forest resources.

iii. The assertions cannot be examined in the context of the USMCA.

28. The Party points out that the facts that are the subject of the submission affect a particular interest, a situation that does not fall under Article 24.4(1) of the USMCA, because it is not “a sustained or recurring course of action or inaction.”⁴¹ In this regard, the provision of the USMCA invoked in the response refers to the obligations of the Parties within the framework of the commitments adopted upon the entry into force of the Treaty, enforceable between them through mechanisms such as *environmental consultations*;⁴² *senior representative consultations*⁴³ (Environment Committee representatives from the consulting Parties); *ministerial consultations*,⁴⁴ and *dispute resolution*.⁴⁵
29. The Party also points out, seeking to affirm that “the Submitters refer specifically to facts that affect a particular interest...the illegal logging and deforestation of their land in order to change the use of forest land to avocado plantations. the illegal logging and deforestation of their land in order to change the use of forest land for avocado plantations,”⁴⁶ such that the submission does not refer to the lack of application of Article 4, paragraph five of the Political Constitution of the United Mexican States (“the Constitution”), which provides for the human right to a healthy environment, and that it only refers to provisions related to the powers of Profepa, the authority in charge of the implementation of the citizen complaint mechanism, the completion of inspection and surveillance visits, and the imposition of security measures and administrative sanctions.⁴⁷ In this regard, it is important to clarify that, in effect, the Submitters did not cite provisions of the Constitution and, therefore, the Party was not requested to provide a response on its effective enforcement. All in all, the existence of issues related to the guarantee of the human right to a healthy environment related to the alleged failures asserted in the submission cannot be ruled out.

iv. The submission does not satisfy the admissibility requirements of the USMCA.

30. The Party response states that the submission does not satisfy Article 24.27(2)(c) of the USMCA, since, according to the Party, it does not provide sufficient information to allow for a review of the submission, including the documentary evidence on which it is based.⁴⁸ In this regard, the

³⁸ Id. at § 19.

³⁹ Submission, § 7.

⁴⁰ Id. at § 40.

⁴¹ Cf. USMCA, Article 24.4(1): “No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner that affects trade or investment between the Parties [...]” [footnotes omitted].

⁴² USMCA, Article 24.29.

⁴³ Id. at Article 24.30.

⁴⁴ Id. at Article 24.31.

⁴⁵ Id. at Article 24.32.

⁴⁶ Response, § 20.

⁴⁷ Id. at § 21.

⁴⁸ Id. at § 22.

Secretariat determined that the submission provides sufficient documentary evidence to be considered,⁴⁹ including several communications and official documents issued by the authorities—including an inspection order issued by Profepa-Jalisco and the corresponding inspection report in which illegal activities were reported in the forest lands of Los Amoles,⁵⁰ as well as official letters from Profepa-Jalisco⁵¹ where damage to the forest ecosystem is reported—in addition to attaching copies of such documentation.

b. Notification of pending legal proceedings

31. In its response, the Party reports the existence of pending proceedings under Article 24.27(4) and requests that the Secretariat terminate the processing of the submission.⁵²
32. The transparency and credibility of the SEM process require close scrutiny of the Party's notification regarding the existence of pending proceedings in terms of USMCA Article 24.27(4). The USMCA does not authorize the termination of a submission solely on the basis of a notification from the Party.⁵³ This is corroborated by the CEC's practice throughout the implementation of the SEM process since 1994 with respect to submissions that, in most cases, have resulted in a Council vote in favor of the preparation of a factual record.⁵⁴
33. The Secretariat has previously clarified that it is *not a court* and 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.” Thus, it is not evident how a factual record could in any way interfere with ongoing domestic proceedings in the same way that a judicial ruling could.⁵⁵

⁴⁹ Cf., Determination, §§ 50 and 61.

⁵⁰ Submission, § 16, regarding inspection order No. PFFPA/21.3/2C.27.2/029(21)002384 (Nov. 8, 2021) and inspection report PFFPA/21.3/2C.27.2/029-21 (Nov. 10, 2021), both documents issued by Profepa-Jalisco and attached to the submission as Annex 16.

⁵¹ Submission, § 33, regarding oficio No. PFFPA/5.3/8C.17.2/03883 (13 May 2022), issued by Profepa-Jalisco and attached to the submission as Annex 33.

⁵² Response, §§ 37, 53, 66 and 69.

⁵³ Cf. SEM-01-001 (*Cytrar II*), Article 14(3) Determination (13 June 2001), p. 5, <<https://bit.ly/3nNzzSR>>: “[O]nly in the specific case where the subject matter of a submission is the subject of a pending proceeding is the Secretariat authorized not to proceed further with a submission...”

⁵⁴ 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*), cumulative; 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 (*Manzanillo Wetlands*); SEM-11-002 (*Sumidero Canyon II*), SEM-10-002 (*Waste ponds in Alberta*); 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*).

⁵⁵ SEM-07-001 (*Minera San Xavier*), Article 15(1) Determination (15 July 2009), § 44, at: <<https://bit.ly/3ZF4rCg>> [15(1) Determination *Minera San Xavier*]. See for further discussion on *lis pendens* §§ 40-44.

34. The threshold for considering whether there are pending judicial or administrative proceedings must be construed narrowly, in order to give full effect to the object and purpose of the SEM process;⁵⁶ in effect, “the Secretariat must attempt to ensure a modicum of predictability and thus fairness [in implementing the SEM process].”⁵⁷ The fact that the Secretariat can determine whether the pending proceedings reported by a Party require termination of a submission process rests on the principle that a treaty cannot contribute to the realization of its express object and purpose if it is not effective.⁵⁸ Accordingly, it is necessary to implement the SEM process under the umbrella of institutional effectiveness, interpreting the provisions of the USMCA in a constructive manner.⁵⁹
35. It is for this reason then, that the Secretariat is only authorized to apply this exceptional form of terminating a submission after examining whether the preparation of a factual record could *duplicate efforts or interfere* in a judicial or administrative proceedings reported by the Party, by considering: i) whether the proceeding in question was initiated by and is being pursued by the Party; ii) whether the proceeding is timely and in accordance with the Party’s law; iii) whether it deals with the same subject matter, including the same environmental law cited by the submitters; and iv) whether there is “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.”⁶⁰ The analysis of each of the factors is presented below.

i) Whether the proceedings in question are being pursued by the Party

36. The Secretariat first analyzes whether any of the pending proceedings reported by the Party were initiated by the Party,⁶¹ and then finds the other three factors necessary to determine the existence of pending appeals.⁶²

⁵⁶ Id. at § 35.

⁵⁷ Id. at § 33.

⁵⁸ 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: CEC, *Environmental Law and Policy in North America: citizen submissions on environmental enforcement*, DPAAN series, vol. 27, Commission for Environmental Cooperation, Montreal, 2010, pp. 1-33 <<https://bit.ly/3PLrwBr>>.

⁵⁹ “[I]nternational law entails the authorization, and even the requirement, for the organization, if it deems it necessary in order to be able effectively to perform all its functions, to interpret its procedures in a constructive manner aimed at the achievement of the objective presumably sought by the parties.” See United Nations-Security Council, *Special Report of the Secretary-General on Ethiopia and Eritrea*, doc. no. S/2006/992, 15 December 2006, § 17; available at: <<https://bit.ly/486xLXJ>>.

⁶⁰ SEM-01-001 (*Cytrar II*), Article 15(1) Notification (29 July 2002), p. 5-6 <https://bit.ly/01-001_NOTen> [Article 15(1) Notification *Cytrar II*].

⁶¹ 15(1) *Minera San Xavier* Determination, § 36: “The proceedings notified by Mexico in this matter were initiated by the Submitter and not by Mexico. They therefore fall - in part - outside the definition of pending proceedings in Article 45(3)(a)” (emphasis in original).

⁶² Cf. SEM-96-003 (*Oldman River I*), Article 15(1) Determination (2 April 1997), at: <<https://bit.ly/3ZG7sTu>> [15(1) Determination *Oldman River I*]. In particular, pp. 3-4:

The pending Federal Court proceeding notified to the Secretariat by Canada is not an action *brought by the Party within the meaning of Article 45(3)(a)* [emphasis in original]. [Given that the current matter before the Canadian court was initiated and is being pursued by a private entity, and not by a ‘Party’ as that term appears to be used in Article 45(3)(a), the Secretariat may find other factors in its review of the submission at this stage.

37. The Party response reports the existence of the following ongoing proceedings: a request for an extension of the authorization for timber extraction;⁶³ a complaint for alleged failures of Profepa in the performance of its duties;⁶⁴ two citizen complaints,⁶⁵ and two criminal complaints.⁶⁶
38. The request for renewal of the authorization to extract forest resources is not in itself an administrative proceeding that seeks the effective enforcement of the provisions cited in the submission, but rather a means by which the Submitters seek approval to continue using the forestry permit they already had. The Party response does not provide information as to why it finds it to be a pending proceeding pursuant to Article 24.27(4) of the USMCA such that continuing with the submission could duplicate efforts or interfere with an ongoing proceeding.
39. The appeal filed in relation to the performance of Profepa's functions corresponds to the complaint that the Submitters filed against officials of Profepa-Jalisco for the irregular and delayed processing of their citizen complaint.⁶⁷ This is an ongoing proceeding that does not constitute an act implemented by the Party for the purpose of enforcing environmental law in relation to the subject matter of the submission. Rather, it relates to Profepa's performance in carrying out its responsibilities related to citizen complaints.
40. Nor do the citizen complaints in question constitute, in and of themselves, acts of the Party that seek the implementation of enforcement measures in relation to the change of land use on forest lands and the sustainable utilization of timber resources. In any case, with these remedies—which the Party reports as ongoing proceedings—the complainants seek to activate the institutional apparatus to address the impacts caused by the felling of trees (illegal logging) and the change of land use on forest land in Cuautla, Jalisco.
41. The criminal complaints are in response to the threats received by the Submitters to force them to sell their land,⁶⁸ and the dispossession of their land.⁶⁹ It is noted that neither of the two complaints

⁶³ *Cf.* Response, §29, regarding the renewal of the authorization for the enjoyment of timber forest resources, No. 14/CB-0312/11/20, official document no. SGPARN.014.02.02.01.954/21 (14 July 2021), Ministry of Environment and Natural Resources, Representation Office in the state of Jalisco. The application was endorsed until 30 June 2031.

⁶⁴ *Cfr.* Response, §§ 49-52, regarding the promotion dated 1 March 2022 filed before the Ministry of Public Function (SFP), referred to the Internal Control Organ of Semarnat and “which is in investigation status,” according to records of the Integral System of Citizen Complaints (Sidec).

⁶⁵ *Cf.* Response, §30, regarding two citizen complaints registered under No. 14DEP-01385/2108 (3 September 2021) and No. 14DEP-01664/2109 (7 September 2021), both sent to Profepa. It should be noted here that the second of these complaints is, in fact, an extension of the first, to inform a new means of contact with the Submitters, and that Mexico's response makes no mention of the citizen complaint filed by the Submitters on 20 February 2023.

⁶⁶ *Cf.* Response, § 35, regarding investigation files 110/2021 and 434/2021.

⁶⁷ Submission, § 23.

⁶⁸ *Cf.* Submission, § 3, regarding the submission of the complaint for threats and the extension of the complaint filed before the agency of the Public Prosecutor's Office of the common jurisdiction, attached to the Regional Prosecutor's Office of the State of Jalisco “Sierra de Amula,” complaints registered in the investigation file NUC: D-VII/110/2021 (complaint: 27 January 2021; extension of the complaint: 26 February 2021).

⁶⁹ *Id.* at §§ 4 and 6, regarding the complaint of dispossession and the extension of the complaint filed before the agency of the Public Prosecutor's Office of the common jurisdiction, attached to the Regional Prosecutor's Office of the State of Jalisco “Sierra de Amula,” registered in the investigation file NUC: D-VII/434/2021 (complaint: 9 April 2021; extension of the complaint: 27 July 2021).

constitutes an act implemented by the Party that seeks to enforce environmental law regarding changes in land use on forest lands, illegal logging or timber extraction. Regarding the complaint for threats, the Party points out that it has already concluded a reparation agreement; therefore, it is not considered to be an ongoing proceeding pending resolution.⁷⁰ Regarding the second complaint, the response does not provide any information on the progress of this case and merely states that an investigation was opened for the crime of dispossession, with the background that the technician of the “Los Amoles” property had already filed a complaint with Profepa-Jalisco as a result of 60 hectares being affected by people who conducted illegal logging.⁷¹

42. The Secretariat has previously determined that the threshold for determining the existence of a pending proceeding materializes when a government is *actively* pursuing the measures provided for in its law in relation to the same matter raised by the authors of a submission. In such a case, the Secretariat is, in effect, obliged to terminate its consideration and close the submission.⁷²
43. In view of the above, it is found that Mexico's response does not confirm that the proceedings reported are being pursued by the Party and, therefore, they do not necessarily justify proceeding no further with submission SEM-23-006 (*Illegal logging in Jalisco*).

ii) If the proceeding is timely and in accordance with the law

44. The Submitters filed a first citizen complaint on 3 August 2021 given the illegal logging and timber extraction activities by third parties on land they own,⁷³ and since 7 September (having spent a reasonable amount of time and without having received any response from the environmental authorities until that moment) they had continued to build the file by filing multiple writs before the representative offices of Profepa and Semarnat in the state of Jalisco, as well as filing other petitions (including with the Presidency of the Republic).⁷⁴ In light of the irregularities and delays in the timely processing of the appeal, they filed a second citizen complaint on 20 February 2023.⁷⁵
45. The Party response, on the other hand, corroborates the completion of an inspection visit on 10 November 2021, in which they found “activities of change of land use of forest land...[and] it was determined that in the case of deterioration and serious damage to the forest ecosystem observed in the proceeding, the imposition of the security measure consisting of the total temporary closure of the inspected area was appropriate.”⁷⁶ In spite of this, and as stated in the corresponding record, it was decided not to implement the security measure at that time, “for reasons of safety of the person acting, the visited party, and the witness.”⁷⁷ It should be underscored that although enforcement actions were conducted in relation to the problem in question, after the request for a response from the Party in the framework of the SEM-23-006 submission (*Illegal logging in Jalisco*), the action

⁷⁰ Response, § 35, regarding investigation file 110/2021.

⁷¹ *Id.*, regarding investigation file 434/2021.

⁷² *Cf.* Determination 15(1) *Oldman River I*, pp. 3-4.

⁷³ Submission, § 7, regarding the citizen complaint filed on 3 August 2021 (attached to the submission as Annex 7), same which resulted in the opening of file number PFFA/21.7/2C.28.2/00111-21.

⁷⁴ *Cf.* Submission, §§ 9-41.

⁷⁵ Petition, § 40, regarding the citizen complaint filed on 20 February 2023 (attached to the submission as Annex 40).

⁷⁶ Response, § 44.

⁷⁷ *Id.*

was taken on 7 August 2023—almost two years after the inspection—and was directed to the Submitters (and complainants) themselves, and not to the perpetrators of the environmental damage.

46. As for the two criminal investigations, these were initiated in response to complaints filed by the Submitters before the Public Prosecutor's Office in Ayutla, Jalisco, on 27 January 2021 (complaint for threats) and 27 July 2021 (complaint for dispossession).⁷⁸ The Party confirms the existence of both investigation files: the first one concluded—as already indicated in the previous paragraph—with a reparation agreement, so it is not a proceeding pending resolution.⁷⁹ As to the second one (criminal investigation regarding the crime of dispossession),⁸⁰ from the response it is clear that the process has been ongoing for two years without a resolution concluding it or sanctioning those responsible for the actions denounced by the Submitters. The Party does not provide any further information in this regard; therefore, there is not sufficient information on the actions undertaken in the framework of this ongoing investigation to conclude that the process is being implemented in a timely manner, or to know if it has resulted in any resolution two years after the complaint was filed.
47. In view of the foregoing, the Secretariat finds that it is not possible to conclude that the proceedings reported as pending resolution are timely.

iii) Whether the same matter and environmental law(s) are the subject of the pending proceedings

48. The Secretariat has determined on previous occasions that, when analyzing possible duplication of effort or interference with pending litigation, it is necessary to consider whether the proceedings involve the same matter as the allegations raised in the submission.⁸¹ The Secretariat should examine whether the matter in the proceedings is the same matter raised by the submitter(s)⁸² and

⁷⁸ Submission, § 3, regarding the submission of the complaint for threats and the extension of the complaint filed before the agency of the Public Prosecutor's Office of the common jurisdiction, attached to the Regional Prosecutor's Office of the State of Jalisco "Sierra de Amula," both complaints registered in the investigation file NUC: D-VII/110/2021 (submission: 27 January 2021; extension of the complaint: 26 February 2021), and §§ 4 and 6, regarding the complaint for dispossession and the extension of the complaint filed before the agency of the Public Prosecutor's Office of the common jurisdiction, attached to the Regional Prosecutor's Office of the state of Jalisco "Sierra de Amula," both registered in the investigation folder NUC: D-VII/434/2021 (complaint: 9 April 2021; extension of the complaint: 27 July 2021).

⁷⁹ Response, § 35, regarding investigation file 110/2021.

⁸⁰ *Id.*, regarding investigation file 434/32021.

⁸¹ SEM-00-004 (*BC Logging*) Article 15(1) Notification, p. 17, available at: <<https://bit.ly/00-004NOTen>> [BC Logging Notification]:

In previous determinations, the Secretariat considered the rationale underlying Article 14(3) and identified two reasons for excluding matters that fall within Article 45(3)(a) – a need to avoid duplication of effort and a need to refrain from interfering with pending litigation. The Secretariat has noted in the past that these considerations can also be relevant for a Party's proceedings that fall outside Article 45(3)(a) but nonetheless relate to the same subject matter as is raised in a submission.

⁸² BC Hydro Notification, p. 2 ("the 'judicial or administrative proceeding' must address the same 'matter' as the Submission."); SEM-98-004 (*BC Mining*), Notification pursuant to Article 15(1), p. 15, available at: <<https://bit.ly/3ZGm3gZ>> ("Further, such a proceeding must concern the same subject matter as the allegations raised in the submission."); BC Logging Notification, p.16 ("Only those proceedings ...

narrowly construe the “matter” pending resolution.⁸³ Moreover, the Secretariat has determined that citizen complaints only constitute pending proceedings for the purposes of the SEM process when they lead to the implementation of administrative proceedings.⁸⁴

49. Regarding the criminal investigation for the crime of dispossession, it is noted that this proceeding is not related to the environmental law cited in the submission because, although it is related to the facts that are the subject of the submission (illegal forestry activities), its purpose is the legal security of the real property owned by the Submitters. Therefore, the same legal provisions are not at issue in this proceeding as the provisions raised in the submission.
50. The citizen complaint dated 3 August 2021 and its extension dated 27 September 2021⁸⁵ allude to the application of the following provisions: articles 4, 8, 14 and 35: section V of the Constitution; articles 182, 189, 190: fraction III, 191, 192, 193, 201, 202, 203 and 204 of the LGEEPA; article 154 of the LGDFS; article 231 of the RLGDFS; article 418 of the Federal Criminal Code (CPF), and articles 13, 15, 15^a: fractions I and III, 16: fractions III, IV, V, VI, VII, VIII, IX and X, 19: third paragraph, 30: second paragraph, 44, 49, 50, 59, 62, 70 and 75 of the Federal Law of Administrative Procedure (*Ley Federal de Procedimiento Administrativo*—LFPA). In addition to these provisions, the citizen complaint of 20 February 2023,⁸⁶ also cites the following: article 1 of the Constitution, and article 7: sections XII, XXIV, XXVI and XXVII of the General Victims Law (LGV).
51. It should be recalled that the Secretariat requested a response from the Party regarding the effective enforcement of the following provisions in relation to submission SEM-23-006 (*Illegal Logging in Jalisco*):
- i. Articles 160: first and third paragraphs, 161: first paragraph, 162: first paragraph, 166, 167, 169: last paragraph, 170: sections I and II, 182: first

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*), Notice to Submitters and Council on Court Proceedings Served by Canada (7 May 2014), available at: <https://bit.ly/12-001_14-3DETen> §18 regarding the location of salmon farms cited in the submission and in a court appeal; and §4 regarding that the court proceedings concern aquaculture licenses and not regulations on the deposition of substances in water.

⁸³ Cfr. SEM-01-001 (*Cytrar II*), Article 15(1) 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.

⁸⁴ Cfr. SEM-15-001 (*La Primavera Forest*), Article 15(1) Notification (4 November 2016), § 25 <<https://bit.ly/3nR3ZDv>>:

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 made this process available to individuals.

See also: SEM-00-004 (*BC Logging*), Article 15(1) Notification (27 July 2001) at 20-21 <<https://bit.ly/00-004NOTen>>:

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.

⁸⁵ Submission, Annexes 7 and 14.

⁸⁶ Id. at Annex 40, p. 6.

- paragraph, 189: first paragraph, 190, 191: first and third paragraphs, 192, 193, 202: first paragraph and 203 of the LGEEPA;
- ii. articles 154 and 155: sections III, VI, VII, XII and XV of the LGDFS, and
- iii. Articles 225, 226: first and third paragraphs, 227: first paragraph, 229, 231, 232, 233: second paragraph and 234 of the RLGDFS.

52. Although some of the provisions referred to in the ongoing citizen complaints are related to those cited in the submission and on which a response was requested from the Party (Articles 182: first paragraph, 189: first paragraph, 190, 191: first and third paragraphs, 192, 193, 202: first paragraph and 203 of the LGEEPA; 154 of the LGDFS, and 231 of the RLGDFS, applicable to the reporting of environmental crimes; the implementation of inspection and surveillance procedures; the mechanisms for citizen complaints—who can file them, their processing and the participation of the complainant; the authority in charge of forest prevention and surveillance, and the right of any person to report to Profepa any act or omission that produces or may produce ecological imbalance), it is reiterated that the ongoing citizen complaints were not initiated by the Party nor did they give rise to administrative proceedings that are being *actively and timely* implemented. Thus, there is no room for possible duplication of effort or possible interference with pending litigation in the event that a factual record is developed with respect to submission SEM-23-006 (*Illegal Logging in Jalisco*). The Secretariat therefore determines to proceed with its analysis.

iv) Whether the proceeding can potentially resolve the matter raised in the submission.

53. In examining notification of ongoing judicial or administrative proceedings, we take into consideration whether their processing and resolution have the potential to address and resolve the issues raised in the submission.⁸⁷ Recently, the Secretariat found that the resolution of ongoing judicial proceedings and, in particular, the implementation of alternative dispute resolution mechanisms could address the concern raised in a submission and—potentially—contribute to its resolution.⁸⁸ It also examined, in the same case, whether the development of environmental damage studies to assess the impact of activities related to the submission, as part of the corrective measures adopted in the framework of administrative proceedings under the responsibility of Profepa, and the subsequent implementation of such studies could contribute to resolving the issues raised in the submission.⁸⁹ However, the mere existence of a complaint filed with the competent authority does

⁸⁷ Cf. Article 15(1) Notification *Cytrar II*, p. 6:

In order to apply this exceptional form of terminating a submission [i.e., applying Article 14(3)(a) in termination of a submission], [...] it must be reasonable to expect that the “pending judicial or administrative proceeding” invoked by the Party will address, and potentially resolve, the issues raised in the submission.

See also SEM-21-003 (*North Atlantic right whale*), Notification Pursuant to USMCA Article 24.28(1) (3 June 2022), § 27, and SEM-13-001 (*Tourism Development in the Gulf of California*), Notice Regarding a Proceeding Reported by Mexico (16 May 2014), § 22.

⁸⁸ Cf. SEM-22-001 (*Pollution in Playa Hermosa*), Article 24.28(1) Determination (4 November 2022), §§ 41-43, at: <<https://bit.ly/3Rw2zeu>>.

⁸⁹ Id. at § 32, where it was found that the implementation of an environmental damage study by Profepa could contribute to resolve the Submitters’ assertion.

not necessarily give rise to an administrative proceeding with a view to imposing sanctions or corrective measures and, therefore, does not in itself qualify as a pending proceeding.⁹⁰

54. Regarding submission SEM-23-006 (*Illegal Logging in Jalisco*) and the ongoing administrative proceedings that the Party reports, the response alludes to measures derived from the inspection visit carried out in November 2021, in response to the citizen complaint of August 3rd of that same year: points out that on 7 August 2023, Profepa-Jalisco notified the complainants of the imposition of “the security measure consisting of the temporary total closure of the activities of change of land use in forest land” of the Los Amoles property, as well as “the corrective measure consisting of presenting the authorization of change of land use,” stating the facts and offering other relevant evidence.⁹¹ The Party also notes Profepa-Jalisco's intention to file “the appropriate criminal complaint before the Attorney General's Office in the state of Jalisco,”⁹² and adds that, at the appropriate time, in order to stop the damage to the forest ecosystem, it will find the possibility of requesting the seizure of assets and the cancellation of concessions, permits, licenses and authorizations granted.⁹³
55. The actions taken do not support the assertion that the resolution of the ongoing administrative proceedings “may also contribute to resolving the issue raised in the submission.”⁹⁴ As already noted, the ongoing citizen complaints—reported in the Party response as pending proceedings—were not initiated by the Party nor are they being actively and timely implemented; although they deal with the same subject matter as the submission and coincide with some of the provisions cited in the latter, their processing has so far been against the complainants, with no evidence of actions against the perpetrators of the environmental damage. Even if its conclusion could help to address the Submitters’ concern, everything suggests that its implementation has been—so far—in the opposite direction and does not seem to have the potential to resolve the issue raised in the submission. To date, the authorities have imposed measures directed at the Submitters themselves, and during this period (two years since the citizen complaint was filed), there have been no actions, proceedings, studies, inquiries, and, in short, material acts to find the perpetrators and, ultimately, to stop the illegal logging and the change in land use on the Los Amoles property.
56. In view of the foregoing, the Secretariat continues with its analysis to determine whether the preparation of a factual record is warranted.

c. About the assertions in the submission SEM-23-006

57. The Secretariat determines whether, in light of the Party response, it is warranted to develop a factual record regarding alleged failures in effective enforcement as it relates to: (i) the actions of Profepa-Jalisco in conducting acts of inspection and oversight (and the failure to file a complaint with the FGR), and (ii) the implementation of the citizen complaint mechanism, with respect to illegal logging, deforestation and change of use of forest land to devote it to avocado cultivation on the Los Amoles property, Cuautla, Jalisco.

⁹⁰ Id. at § 45.

⁹¹ Response, § 45.

⁹² Id. at § 46.

⁹³ Id. at § 47.

⁹⁴ Id. at § 69.

i) On the completion of inspection and surveillance actions

58. The Submitters argue that Mexico is not effectively enforcing provisions of the LGEEPA, the LGDFS and the RLGDFS with regard to the completion of forest inspection and surveillance activities, as well as the application of sanctions and security measures, in relation to illegal logging and land use change activities in the Los Amoles property, Cuautla, Jalisco.⁹⁵ Some of the provisions in question contain—as already established in section a) “Preliminary Issues” of this analysis—*regulated* powers, which impose a legal imperative on the authority; that is, they are mandatory powers. Such is the case of articles 166 and 170: sections I and II of the LGEEPA and 229, 232, 233: second paragraph and 234 of the RLGDFS, whose exercise is mandatory for the authority.
59. The aforementioned provisions of the LGEEPA regarding control and safety measures, as well as imposition of sanctions, indicate the cases in which acts of inspection and surveillance, execution of safety measures, determination of infractions and crimes, imposition of sanctions and implementation of administrative proceedings and remedies will be conducted (article 160: first and third paragraphs), and establish: that the authority shall conduct *acts of inspection and surveillance* for compliance with provisions contained in said law and its regulations (article 161: first paragraph); that the authority may conduct *inspection visits*, without prejudice to other measures provided to verify compliance with the LGEEPA (article 162: first paragraph); that, when there are persons who obstruct or oppose the proceeding, **the authority may request the assistance of the police to conduct inspection visits** (article 166); that, once the inspection visit is concluded, the authority shall require the interested party to *immediately adopt corrective measures or measures of urgent application* (article 167); that, when there is imminent risk of ecological imbalance or serious damage or deterioration to the natural resources, the authority shall impose *security measures*, among which may include: ordering the temporary, partial or total closure of facilities where forest resources are managed or stored, and conducting the precautionary seizure of forest resources and instruments (article 170: fractions I and II); that, in appropriate cases, the federal authority **shall inform the public prosecutor's office of the acts or omissions that could constitute a crime and shall file the corresponding complaint** (articles 169: last paragraph and 182: first paragraph); that the federal authority may *initiate actions* before the competent authorities when it becomes aware of acts, facts or omissions that constitute violations of administrative or criminal law (article 202: first paragraph), and that whoever has caused environmental damage or deterioration, as well as affecting natural resources or biodiversity, shall have the obligation to repair them (article 203).
60. The submission also cites article 154 of the LGDFS, which establishes that Profepa is the *authority responsible for forest prevention and surveillance*, which includes: patrolling and protecting forest resources; *conducting inspection, surveillance and enforcement activities*; and conducting technical investigations, which may be initiated as a result of a complaint or as part of inspection and surveillance activities. It also cites several provisions of article 155 that indicate actions or omissions that constitute violations of said law: taking advantage of forest resources and conducting forestation and reforestation in violation of the provisions of said law and its regulations (section III); failing to comply with the provisions of the authorizations for timber extraction and change of land use on forest land (section VI); conducting a change of land use on forest land without the corresponding authorization (section VII); causing serious damage or deterioration to forest

⁹⁵ Cf. Submission, § 17 and p. 9 (closing paragraph of the “Statement of Facts”).

ecosystems (section XII), and transporting, storing, transforming or possessing forest raw materials without the documentation or control systems that accredit the legality of their origin (section XV).

61. As for the provisions of the RLGDFS cited in the submission, these detail the procedure that Profepa will follow when conducting inspection and surveillance actions for compliance with forestry regulations (Article 225), including functions such as filing a report with the facts before the possible commission of flagrant violations (Article 226: first and third paragraphs); to practice *securing forest resources*, placing seals or marks on the secured items and to dictate measures to ensure their care (article 229); to order the *application of security measures* when during the acts of inspection, surveillance and verification it is determined that there is an imminent risk of ecological imbalance, damage or serious deterioration of forest resources (article 232); to be aided by technical investigations to determine such risk (article 233: second paragraph), and to *impose restoration measures* to rehabilitate a forest ecosystem so that it recovers, partially or totally its original functions (article 234).
62. After the Submitters filed a citizen complaint before the then delegations—now representative offices—of Semarnat and Profepa in the state of Jalisco for “excessive and predatory timber extraction activities” carried out on the Los Amoles property, which they owned.⁹⁶ Inspectors from Profepa-Jalisco conducted, on 10 November 2021, an inspection visit, in which they verified the existence of illegal activities of change of land use and logging that were being carried out in forest lands of the property in question,⁹⁷ as stated in the corresponding inspection report:

A risk of damage to the environment was generated by recent vegetation removal activities that [generated] drastic changes to the topography [including the] *total removal of vegetation in an area of 57 [hectares]*, which was conducted without authorization for a change of land use.⁹⁸

It should be noted that the damage recorded in the inspection report was corroborated in the technical report dated 3 December 2021, which states that the extraction and change of land use caused damage to the pine-oak forest ecosystem on 57 hectares.⁹⁹

63. Although the inspection report clearly stated the risk of damage to the environment, at the time of the visit, the inspectors refrained from imposing safety measures of total closure of activities, placement of seals or closure notices, and precautionary seizure of forest resources, machinery, or transport vehicles on the property, citing safety issues.¹⁰⁰

Use of police

64. The Party response corroborates the assertion made by the Submitters: that on 10 November 2021, at the time of the completion of the inspection, no security measures were implemented “for security reasons of the person performing the inspection, the visited, and the witness”¹⁰¹ and that “it was

⁹⁶ Submission, § 7.

⁹⁷ Cf. Submission, § 16.

⁹⁸ Submission, Annex 16, p. 5 (emphasis added).

⁹⁹ Id. at Annex 42, p. 2.

¹⁰⁰ Cf. Submission, § 16.

¹⁰¹ Response, § 44.

unnecessary to request the assistance of the police to conduct the...inspection visit, as stated in article 166 of the LGEEPA.”¹⁰²

65. It is important to note that the Submitters had already informed Profepa-Jalisco—through the citizen complaint of 3 August 2021¹⁰³—of the presence of unknown, armed people conducting excessive and predatory activities of illegal timber extraction (logging, burning, and extraction of wood with machinery and trucks) without authorization on the Los Amoles property.¹⁰⁴ In other words, prior to the inspection visit of 10 November 2021, Profepa-Jalisco was aware of the security situation that the Submitters experiencing, so it would have had the opportunity to conduct the necessary and pertinent proceedings, and even request the assistance of the police to exercise its authority. For its part, the Party response acknowledges that the region is experiencing a climate of insecurity attributed to organized crime, which poses a risk not only for the inhabitants but also for the Profepa-Jalisco inspectors.¹⁰⁵ It is unclear, however, why the authority, with knowledge of the situation—and with full powers and authority—lacked sufficient grounds to request the assistance of the police during the inspection visit of 10 November 2021.

Complaint to the Attorney General's Office (Fiscalía General de la República—FGR)

66. On 27 January 2021, the Submitters filed a complaint for threats with the public prosecutor's office in Ayutla, Jalisco, since, as stated in the submission, a person was trying to force the Submitters to sell the Los Amoles property, which they owned, in order to change the use of the forest land and use it for avocado cultivation.¹⁰⁶ On 9 April 2021, the Submitters filed a complaint for dispossession with the same public prosecutor's office,¹⁰⁷ a complaint that they expanded on 27 July 2021 by virtue of the fact that in Los Amoles unknown and armed people were conducting logging, burning of vegetation, and extraction of wood with machinery and trucks.¹⁰⁸ In a letter dated 27 September 2021, but received by the Submitters almost a month later (21 October), the General Directorate of Crime Prevention and Community Services of the Attorney General's Office determined that the events that occurred in Los Amoles constituted an “urban or suburban conflict” because they affected public lighting, and that it corresponded to local authorities and not to the Attorney General's Office, despite the fact that the complaint clearly states that these are “criminal acts in environmental and forestry matters of federal competence.”¹⁰⁹
67. On 16 November 2021, one of the Submitters filed a written document with Profepa-Jalisco containing observations regarding irregularities that occurred during the inspection visit carried out

¹⁰² *Id.* In this regard, the response makes it clear that the owners did not oppose the inspection and argues that, therefore, the use of public force was not necessary: “since, at the time of the inspection visit, there was no opposition to the inspection, it was unnecessary to request the assistance of public force [...]” However, in this case, the owners of the inspected property are the complainants themselves, who clearly informed the authority (through citizen complaints) of unlawful acts conducted by third parties.

¹⁰³ Submission, § 7.

¹⁰⁴ *Cf.* Submission, § 7 and Annex 7, p. 2.

¹⁰⁵ *Cf.* Response, §§ 44, 46 and 57.

¹⁰⁶ Submission, § 3.

¹⁰⁷ *Id.* at § 4.

¹⁰⁸ *Id.* at § 6.

¹⁰⁹ *Id.* at § 15.

on 10 November 2021, and in which, among other elements, it requests that the public prosecutor's office be informed regarding the possible commission of environmental crimes.¹¹⁰

68. For its part, the Party states that, “given the circumstances stated in the inspection report carried out on 10 November 2021,” Profepa-Jalisco would file the appropriate criminal complaint with the Attorney General's Office, for the purpose of criminal investigation.¹¹¹ However, the Secretariat notes that, from the date on which the environmental damage was found (10 November 2021) until the date on which the Party submitted its response (16 August 2023), Profepa-Jalisco has not filed any complaint with the Attorney General's Office for crimes against the environment, despite the obligation of the environmental authority - and of all public servants in Mexico - to *immediately* notify the public prosecutor's office of the existence of a fact (act or omission) that could constitute a crime against the environment.¹¹²
69. The response notes that on 7 August 2023, Profepa-Jalisco notified “the interested party”—in this case, the complainants themselves, owners of the Los Amoles property and now Submitters—of a summons imposing a temporary closure order and the obligation to present relevant evidence, including the authorization for change of land use on forest land.¹¹³ It is noted that the summons was issued after the request for a response from the Government of Mexico in relation to submission SEM-23-006 (*Illegal Logging in Jalisco*), and that Profepa-Jalisco exercised enforcement actions against the complainants themselves, initiating an administrative proceeding and reversing the burden of proof for illegal activities denounced by the victims.
70. In conclusion, except for the late enforcement of article 167 of the LGEEPA regarding the adoption of corrective measures (which in this case were demanded to the owners of the Los Amoles property, but not to the perpetrators of the violations), neither the response nor the attached documents show any material acts to identify, stop, and sanction the illegal logging and the change of forest land use on the property in question, either through the use of police or through a corresponding complaint to the Attorney General's Office.
71. In this regard, the Mexican Judiciary has established that:

[T]he failure to protect and safeguard a healthy environment does not imply a simple act of non-enforcement, since it entails a lack of compliance with the obligation set forth in article 4 of the Constitution....This obligation constitutes, in turn, a guarantee of protection, so that *the failure to protect the environment, although it is an omissive act, brings with it a material execution*. This is to the extent that with the referenced failure, the right provided for in the aforementioned constitutional provision is violated. For this reason, it cannot be said that such conduct has no effect or that it does not entail any

¹¹⁰ Id. at § 17.

¹¹¹ Response, § 46.

¹¹² Federal Environmental Liability Act (LFRA), Article 54.

¹¹³ Response, §45.

consequence; on the contrary, it generates an effect that will not cease until the aforementioned duty is complied with.¹¹⁴

72. For all of the above, the Secretariat finds that a factual record would allow for the presentation of relevant factual information on the enforcement actions for the effective implementation of Articles 160: first and third paragraphs, 161: first paragraph, 162: first paragraph, 166, 167, 169: last paragraph, 170: sections I and II, 182: first paragraph, 202: first paragraph and 203 of the LGEEPA; 154 and 155: sections III, VII, XII and XV of the LGDFS, and 229, 232, 233: second paragraph and 234 of the RLGDFS.

ii) On the implementation of the citizen complaint mechanism

73. The provisions of the LGEEPA regarding citizen complaints that are cited in the submission establish the right of any person to report to the Profepa facts, acts or omissions that produce or may produce ecological imbalance or damage to the environment or natural resources (article 189: first paragraph); this right may be exercised by any person by means of a written document containing his or her identification data and a description of the acts, facts or omissions denounced, as well as data to identify the alleged offender and the evidence available (article 190). Once the complaint is received, Profepa will acknowledge receipt, assign a file number, and notify the complainant of the corresponding admissibility decision (article 191: first and third paragraphs). Once the complaint is admitted, Profepa will notify those who are accused of the facts denounced, carry out the necessary proceedings for their verification and initiate the pertinent inspection and surveillance procedures (article 192); and the complainant may cooperate with Profepa by providing evidence, documentation, and information that it deems pertinent (article 193). The submission also cites Article 231 of the RLGDFS, which provides that any person may report to Profepa any fact, act or omission that produces or may produce ecological imbalance to the forest ecosystem or damage to forest resources.
74. The Submitters have filed two citizen complaints to notify the acts of illegal logging and change of forest land use that have occurred on their property, and to request the environmental authority to conduct the necessary actions to impose measures and sanctions for the infractions committed, as well as to stop the environmental damage and deterioration taking place in Ayutla, Jalisco: the first, dated 3 August 2021¹¹⁵ and a second, on 20 February 2023.¹¹⁶
75. In addition, the Submitters state that they have submitted additional documents and photographic and video evidence of the damage to the ecosystem to the representative offices of Semarnat and Profepa in the state of Jalisco in order to follow up and facilitate the processing of the first citizen complaint,¹¹⁷ as well as multiple communications and complaints to denounce irregularities in the process:

¹¹⁴ JURISDICTION TO HEAR THE INDIRECT AMPARO LAWSUIT FILED AGAINST THE FAILURE TO MONITOR, PRESERVE AND PROTECT THE ENVIRONMENT: IT CORRESPONDS TO THE DISTRICT JUDGE THAT EXERCISES JURISDICTION IN THE LOCATION WHERE IT HAS MATERIAL EXECUTION, SINCE IT IS AN OMISSIVE ACT WITH POSITIVE EFFECTS. Isolated thesis of the Third Collegiate Court in Administrative Matters of the Second Circuit, Judicial Power of the Federation, thesis no. II.3o.A.9 A (11a.), *Judicial Weekly of the Federation and its Gazette* 11th Edition, 23 June 2023, digital record 2026742 At: <<https://Bit.Ly/3rbslpi>> (emphasis added).

¹¹⁵ Submission, § 7 and Annex 7.

¹¹⁶ Id. at § 40 and Annex 40.

¹¹⁷ Id. at § 9.

- i) a letter dated 27 September 2021, informing *ad cautelam* about the coordinates of the property and its boundaries, “questioning the irregular and late procedure”¹¹⁸ followed and requesting “to carry out as soon as possible the necessary proceedings [... and to involve] the federal public prosecutor's office for environmental crimes that could be configured...”;¹¹⁹
- ii) a letter dated 16 November 2021, describing the irregularities observed during the inspection visit of Profepa-Jalisco;¹²⁰
- iii) a letter submitted to Profepa-Jalisco on 28 February 2022, in which the urgency of the authority's intervention is reiterated and the repeated, but unsuccessful, request for information on the progress of the citizen complaint procedure is pointed out;¹²¹
- iv) letters dated 7 and 9 March and 11 April 2022 by which incidents were filed before Profepa-Jalisco due to errors and irregularities in the actions of the corresponding authorities;¹²²
- v) a letter dated 22 March 2022 in which Profepa-Jalisco is again requested to order the suspension of the illegal activities in progress at the Los Amoles property, to file the corresponding complaint before the Public Prosecutor's Office and to authorize the author of the citizen complaint access to the documents that make up the file;¹²³
- vi) a written complaint dated 26 July 2022, addressed to the head of Profepa, regarding the multiple irregularities in which various public servants assigned to Profepa-Jalisco have incurred in the processing of the citizen complaint;¹²⁴
- vii) a writ *ad cautelam* dated 17 October 2022, filed with Profepa-Jalisco, requesting access to the file and allowing the owners of the property, as victims, to participate as coadjutants,¹²⁵ and
- viii) letters dated 31 October and 16 November 2022 in which Profepa-Jalisco is requested to resort to reports or technical opinions useful in determining the environmental damages generated by the illegal logging registered in the property, as well as to order the completion of a new inspection visit and to file the corresponding complaint before the federal public prosecutor's office.¹²⁶

¹¹⁸ Id. at § 14.

¹¹⁹ Id. at Annex 14, p. 3.

¹²⁰ Id. at § 17.

¹²¹ Id. at § 22.

¹²² Id. at §§ 25, 28 and 32.

¹²³ Id. at § 29.

¹²⁴ Id. at § 34.

¹²⁵ Id. at § 36.

¹²⁶ Id. at §§ 37 and 38.

76. Another of the remedies that the Submitters state they have undertaken is a complaint against officials assigned to Profepa-Jalisco, filed on 1 March 2022 before the Ministry of Public Function,¹²⁷ complaint which in turn was forwarded to the Semarnat, for its attention.¹²⁸
77. Regarding the processing of the citizen complaint by the environmental authority, the Party points out that Profepa-Jalisco has conducted several actions.¹²⁹ It argues that on 12 August 2021, a warning notice was issued in which it requested the Submitter to provide the precise coordinates of the fraction of the Los Amoles property where the denounced facts were taking place.¹³⁰ In this regard, it should be noted that the Submitters did not receive notification of said warning notice until more than a month later, on 22 September.¹³¹
78. The Party response states that, by means of an admissibility decision for investigation dated 13 October, compliance with the warning notice was documented and the citizen complaint was admitted. In this regard, the Party acknowledges that it was not until 11 March 2022 that the complainant was notified of the corresponding acknowledgment of receipt and the admissibility decision.¹³²
79. On the same day that the citizen complaint was admitted (13 October 2021), it was turned over to the corresponding administrative unit (Subdelegation of Natural Resources Inspection of Profepa-Jalisco) in order to “carry out the inspection and surveillance actions that would allow for corroboration of the probable commission of violations of federal environmental regulations.”¹³³
80. The Party confirms that, after issuing the corresponding inspection order,¹³⁴ on 10 November 2021, the inspection visit was conducted where the deterioration and serious damage to the forest ecosystem in the Los Amoles property was recorded.¹³⁵
81. Finally, the response states that on 7 August 2023, the competent authority “notified the interested party of the summons...through which the corrective measure consisting of presenting the authorization for the change of land use [and other relevant evidence] was issued, as well as the security measure consisting of the temporary total closure of the activities of change of use on forest land that was necessary and stating in writing what was in their right, offering relevant evidence.”¹³⁶ It should be noted that with this proceeding—which took place two years after the citizen complaint was filed—Profepa-Jalisco opened an administrative proceeding directed toward the complainants

¹²⁷ Id. at § 23.

¹²⁸ Id. at §§ 27 and 30.

¹²⁹ Response, § 38.

¹³⁰ Id. at § 40.

¹³¹ Submission, § 13.

¹³² Response, § 41.

¹³³ Id. at § 42.

¹³⁴ Id. at § 43.

¹³⁵ Id. at § 44.

¹³⁶ Id. at § 45.

themselves, the owners of the affected property, and not toward the “interested party”¹³⁷ responsible for the acts or omissions that motivated the inspection visit.

82. The facts stated by the Submitters in connection with the processing of their citizen complaints reflect their sustained interest in prompting Profepa-Jalisco to act and implement acts and measures of effective enforcement of the relevant environmental law with respect to the events at the Los Amoles property.
83. Likewise, the Submitters have availed themselves of an appeal (administrative proceeding) against Profepa-Jalisco personnel who have failed to comply with their powers and obligations in relation to the timely processing of the citizen complaint mechanism in the case that is the subject of the submission, but to date this has not yielded any results.
84. In summary, it is noted that the information in the Party response indicates that, once the citizen complaint was filed, the environmental authority effectively acknowledged receipt; requested precise identification data on the acts, facts or omissions denounced; assigned a file number; and notified the complainants of the admissibility decision, thus complying with articles 190 and 191 of the LGEEPA, even if it did not do so in an expeditious manner. Therefore, the Secretariat determines *to stop considering for further analysis* both provisions. However, the limited diligence in implementing the inspection and surveillance procedures provided for in article 192 of the same law and the impediment to the complainants participating in the proceedings in a timely manner (as provided for in article 193), have meant that in the case of the submission SEM 23-006 (*Illegal logging in Jalisco*) the right provided for in articles 189 of the LGEEPA and 231 of the RLGDFS is not guaranteed with the effective enforcement of the law.
85. Regarding the effective enforcement of this important mechanism provided for in the LGEEPA, the Secretariat has pointed out on previous occasions that “the effective enforcement by the environmental authority of the citizen complaint procedure is fundamental to encourage and promote citizen participation in environmental protection.”¹³⁸
86. By virtue of the above, the Secretariat believes that the preparation of a factual record would shed light on the enforcement actions of articles 189: first paragraph, 192 and 193 of the LGEEPA, and 231 of the RLGDFS regarding the implementation of the citizen complaint mechanism in the case of the submission SEM-23-006.

III. NOTIFICATION

87. Having examined submission SEM-23-006 (*Illegal logging in Jalisco*) in light of the response from the United Mexican States, the Secretariat finds that there are central open questions regarding the conduct of inspection and oversight actions and the implementation of the citizen complaint mechanism in relation to illegal logging, deforestation and change of use of forest land for avocado cultivation in the Los Amoles property, Cuautla, Jalisco State, Mexico, and

¹³⁷ Article 192 of the LGEEPA refers to “the person or persons, or the authorities to whom the denounced facts are imputed or who may be affected by the result of the action taken,” to whom the Profepa must notify the denunciation “in order for them to present the documents and evidence that they deem appropriate within a maximum period of 15 business days...”

¹³⁸ SEM-00-006 (*Tarahumara*), Notification under Article 15(1) (229 August 2002), p. 13, at: <<https://bit.ly/3QmKUoA>>.

recommends the preparation of a factual record regarding the effective enforcement actions of the following provisions:

- i. Articles 160: first and third paragraphs, 161: first paragraph, 162: first paragraph, 166, 167, 169: last paragraph, 170: sections I and II, 182: first paragraph, 189: first paragraph, 192, 193, 202: first paragraph and 203 of the LGEEPA;
 - ii. Articles 154 and 155: sections III, VII, XII and XV of the LGDFS, and
 - iii. Articles 225, 226: first and third paragraphs, 229, 231, 232, 233: second paragraph and 234 of the RLGDFS.
88. Pursuant to Article 24.28(1) of the USMCA, the Secretariat notifies the CEC Council and the USMCA Chapter 24 Environment Committee of its determination that, in furtherance of the objectives of Chapter 24 of the Agreement,¹³⁹ a factual record be developed regarding submission SEM-23-006 (*Illegal Logging in Jalisco*).
89. The Council shall vote on the matter, normally within 60 working days of receiving the Secretariat's recommendation, and—in accordance with the provisions of Article 24.28(2) of the USMCA—the Secretariat “shall develop a factual record if directed to do so by at least two members of the Council.”

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation

(original signed)

By: Jorge Daniel Taillant
Executive Director

ccp: Miguel Ángel Zerón, Alternate Representative of Mexico
Sandra McCardell, Alternate Representative of Canada
Jane Nishida, Alternate Representative of the United States
Environment Committee Contact Points
Paolo Solano, Director of Legal Affairs and SEM Unit
Submitters

Annex: Environmental laws in question

¹³⁹ USMCA, Article 24.2(2): “The objectives of this chapter are...to promote high levels of environmental protection and effective enforcement of environmental laws....”