

Secretariat of the Commission for Environmental Cooperation

**Determination of the Secretariat pursuant to Articles 24.27(2) and (3) of the Treaty
between the United Mexican States, the United States of America and Canada**

Submitters: Pursuant to Section 16(1)(a) of the ECA, the identity of the Submitters is kept confidential.

Represented by: [Confidential]

Party: United Mexican States

Date of submission: May 17, 2023

Date of determination: June 16, 2023

Submission no.: SEM-23-006 (*Illegal logging in Jalisco*)

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA) and the Environmental Cooperation Agreement (ECA) entered into force. After this date, the Submissions on Enforcement Matters (SEM) process originally established by Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) is governed by USMCA Articles 24.27 and 24.28. The Secretariat of Commission for Environmental Cooperation (“CEC Secretariat”)¹ remains responsible for implementing the SEM process, as stipulated in the ECA.²
2. Articles 24.27 and 24.28 of the USMCA provide a process for any national of a Party or entity organized under the laws of a Party to file a submission asserting that a Party to the USMCA is failing to effectively enforce its environmental laws. The CEC Secretariat initially reviews submissions based on the requirements set out in USMCA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements, it then determines, in accordance with the criteria of Article 24.27(3), whether the submission merits a response

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

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

from the Party in question. In light of the Party’s response, the Secretariat then determines whether the matter warrants the preparation of a factual record and, if so, it informs the CEC Council and the Environment Committee,³ providing its reasons under Article 24.28(1); otherwise, the submission is closed.⁴

3. On May 17, 2023, two Mexican nationals whose identities are confidential pursuant to Article 16(1)(a) of the ECA (“the Submitters”) filed a submission with the Secretariat, pursuant to Article 24.27(1) of the USMCA.⁵
4. The Submitters assert that Mexico is failing to effectively enforce its environmental laws with respect to deforestation and change in land use of forest land for avocado cultivation⁶ in Cuautla, Jalisco State, Mexico, and with respect to authorizations for the beneficial use of forest resources.⁷
5. According to the Submitters, Mexico is failing to effectively enforce various legal provisions that are in force in Mexico:
 - 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 General Act on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*);
 - ii. Articles 154 and 155: Sections III, VI, VII, XII and XV of the General Act on Sustainable Forest Development (*Ley General de Desarrollo Forestal Sustentable—LGDFS*); and
 - iii. Articles 225, 226: first and third paragraphs, 227: first paragraph, 229, 231, 232, 233: second paragraph and 234 of the Regulations of the General Act on Sustainable Forest Development (*Ley General de Desarrollo Forestal Sustentable—RGDFS*).
6. After examining the submission, the Secretariat finds that it meets all the admissibility requirements set forth in paragraphs 1) and 2) of Article 24.27 of the USMCA, and determines that, pursuant to paragraph 3), a response is warranted from the Government of Mexico for the reasons set forth in Section III: “Analysis.”

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

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

⁵ SEM-23-006 (*Illegal Logging in Jalisco*), USMCA Article 24.27(1) Submission (April 17, 2023), at: <<https://bit.ly/464cnRY>> [Submission].

⁶ Cf. SEM-23-002 (*Avocado Production in Michoacán*), USMCA Article 24.27(1) Submission (Feb. 2, 2023), at: <http://www.cec.org/wp-content/uploads/wpallimport/files/23-2-sub_en_redacted.pdf>.

⁷ Submission, § 2.

II. SUBMISSION SUMMARY

7. In submission SEM-23-006 (*Illegal Logging in Jalisco*), the Submitters assert that Mexico is failing to effectively enforce its environmental laws with respect to deforestation and forest land use change for avocado plantations in Cuautla, Jalisco.⁸
8. The Submitters claim that a piece of land they own called “Los Amoles” (hereinafter, “the property”) was taken by third parties after threats from people who intend to forcibly buy fractions or the entire property “in order to cut down all the trees, change the use of the forest land and dedicate it to avocado cultivation.”⁹
9. They also state that despite having received an endorsement of the authorization for the beneficial use of forest resources from the Ministry of the Environment and Natural Resources (*Secretaría del Medio Ambiente y Recursos Naturales*—Semarnat) delegation in the state of Jalisco and completion of the forest management program proposed by Semarnat for the property,¹⁰ third parties are illegally logging their property, thereby deforesting the land in order to change the use of the land from forest to avocado plantations.¹¹ According to the Submitters, “to date more than 59 [hectares] have already been invaded and deforested by illegal logging, and the wood obtained has been loaded, transported and extracted in trucks and sold illegally by strangers....”¹²
10. The Submitters state that they have filed a series of complaints, amended complaints, and other written filings before the corresponding authorities, including: a complaint on January 27, 2021, before the public prosecutor's office in Ayutla, Jalisco, regarding threats they received to sell the property;¹³ amendment of the complaint after receiving a telephone threat;¹⁴ another complaint on April 9, 2021, before the same public prosecutor's office, for dispossession,¹⁵ and, on July 27, 2021, amendment of the complaint for dispossession due to the presence of armed people engaged in tree cutting and burning vegetation on the “Los Amoles” property.¹⁶
11. They also state that they have entered several written filings, claims and complaints before the delegations of Semarnat and the Federal Attorney General's Office for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) in the state of

⁸ *Id.*

⁹ *Id.* at § 3.

¹⁰ Semarnat-Jalisco, Oficio No. SGPARN.014.02.02.01.954/21, issued by the delegation of Semarnat in the state of Jalisco, with the renewal of the authorization for the beneficial use of forest resources at the end of a harvesting cycle (July 14, 2021).

¹¹ *Id.* at §§ 3-5.

¹² *Id.* at § 43. See also para. 6: “...in a fraction of our property which can be accessed through a breach that goes to several pastures...there were armed people carrying out various actions without our authorization and against our will—since we were unaware of them—upon arriving at the property we corroborated that unknown people had removed the old wire fence and put up a new one which they installed thus modifying the original boundaries and reducing the original surface of the property, cutting and felling trees, burning vegetation and extracting wood with machinery and trucks.”

¹³ *Id.* at § 3. Complaint registered in investigation folder NUC: D-VII/110/2021 before the public prosecutor's office in Ayutla, Jalisco.

¹⁴ *Id.*

¹⁵ *Id.* at § 4. Complaint registered under investigation number: NUC: D-VII/434/2021 before the public prosecutor's office in Ayutla, Jalisco.

¹⁶ *Id.* at § 5.

Jalisco: a complaint filed on August 3, 2021;¹⁷ filings before Semarnat and Profepa to request action on the necessary steps to stop the illegal logging;¹⁸ a filing before Profepa, dated September 27, 2021, informing *ad cautelam* about the coordinates of the property and its boundaries;¹⁹ a filing in which observations were made about the irregularities observed during Profepa's inspection visit;²⁰ a filing dated February 28, 2022 before Profepa, reiterating the urgency of the authority's intervention, and the repeated but unsuccessful request for information on the progress of the citizen complaint procedure;²¹ incidental filings dated March 7 and 9 and April 11, 2022 before Profepa;²² a filing dated March 22, 2022 before Profepa, in which this authority is again requested to formulate a corresponding complaint before the public prosecutor;²³ a statement of claim, dated July 26, 2022, filed before Profepa due to multiple irregularities created by public servants;²⁴ a filing *ad cautelam* dated October 17, 2022 before Profepa;²⁵ filings from October 31 and November 16, 2022 before Profepa to request that the authority require reports or technical opinions in relation to the illegal logging on the property to determine the environmental damages generated;²⁶ a complaint against officials addressed to the delegation of Profepa in Jalisco, filed on March 1, 2022, before the Civil Service Secretariat,²⁷ and a second citizen complaint before Profepa dated February 20, 2023.²⁸

12. The Submitters even state that they have personally appeared on two occasions at the offices of Profepa to request information on the progress of the proceedings derived from the inspection of the property and the progress on the public complaint process initiated in 2021. They were not informed of any progress on their repeated complaints and requests on either of the two occasions.²⁹ They also underscore that on March 27, 2023, they requested Profepa include them in the National Registry of Victims.³⁰
13. Specifically, the Submitters contend that Mexico is not effectively enforcing provisions of the LGEEPA, the LGDFS and the RLGDFS with respect to various citizen complaints filed, as well as with respect to prevention, inspection and oversight related to forests, and enforcement of sanctions and security measures with respect to the property in question.³¹

III. ANALYSIS

14. The CEC Secretariat is empowered to examine submissions alleging that a Party to the USMCA is failing to effectively enforce its environmental laws. The Secretariat reiterates

¹⁷ *Id.* at § 7.

¹⁸ *Id.* at § 9.

¹⁹ *Id.* at § 14.

²⁰ *Id.* at § 17.

²¹ *Id.* at § 22.

²² *Id.* at §§ 25, 28 and 32.

²³ *Id.* at § 29.

²⁴ *Id.* at § 34.

²⁵ *Id.* at § 36.

²⁶ *Id.* at §§ 37 and 38.

²⁷ *Id.* at § 23.

²⁸ *Id.* at § 40.

²⁹ *Id.* at §§ 19 and 21.

³⁰ *Id.* at § 41.

³¹ *Id.* at § 1.

that the requirements of USMCA Articles 24.27(1), (2), and (3) are not intended to be an insurmountable procedural screening device,³² and they must therefore be given a broad interpretation in accordance with Chapter 24 of the Agreement.³³ The Secretariat reviews the submission with that perspective in mind.

i. **Article 24.27(1)**

15. Article 24.27(1) of the USMCA 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 USMCA³⁴ defines the term *person of a Party* as “a national of a Party or an enterprise of a Party.” In turn, *national* means a natural person with the nationality [or permanent resident status] of a Party, while *enterprise* means “any 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 law of a Party.”
17. The Submitters are natural persons with Mexican nationality, and therefore qualify as a *person of a Party* as defined in Article 1.5 and for purposes of Article 24.27(1) of the USMCA.

b. **Environmental laws in question**

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

E]nvironmental law means a statute or regulation of a Party, or provision thereof, including any that implements the Party’s obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

 - a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;
 - b) the control of environmentally hazardous or toxic chemicals, substances, materials, or wastes, and the dissemination of information related thereto; or

³² SEM-97-005 (*Biodiversity*), Determination under Article 14(1) of the NAAEC (May 26, 1998); SEM-98-003 (*Great Lakes*), Determination under Articles 14(1) and (2) of the NAAEC (Sept. 8, 1999); SEM-20-001 (*Loggerhead Turtle*), Determination under Articles 24.27(2) and (3) of the USMCA (Feb. 8, 2021), § 8, at: <https://bit.ly/DET_20-001_es>.

³³ *Cfr.* USMCA, Article 24.2.

³⁴ The Secretariat has 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.

- c) the protection or conservation of wild flora or fauna,¹ including endangered species, their habitat, and specially protected natural areas,²

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources.³⁵

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

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

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;³⁶

20. After analyzing the provisions and legal instruments cited in the submission, in order to assess whether they are indeed environmental law within the meaning of the USMCA and whether they are specifically applicable and relate to the issues raised by the Submitters, the Secretariat found that all of the provisions referred to qualify as environmental law and are admissible for analysis in the SEM-23-006 process. Below, the Secretariat details its reasoning in this regard.
21. The provisions cited by the Submitters include the General Act on Ecological Balance and Environmental Protection, the General Act on Sustainable Forest Development and the Regulations of the General Act on Sustainable Forest Development, as shown in the following table.

Table 1. Regulatory instruments cited in the submission.

Title	Acronym or abbreviation	Provisions cited
General federal laws		
General Act on Ecological Balance and Environmental Protection	LGEEPA	Articles 160: first and third paragraphs, 161: first paragraph, 162: first paragraph, 166, 167, 169: last paragraph, 170: fractions I and II, 182: first paragraph, 189: first paragraph, 190, 191: first and third paragraphs, 192, 193, 202: first paragraph and 203
General Act on Sustainable Forest Development	LGDFS	Articles 154 and 155: fractions III, VI, VII, XII and XV
General federal regulations		
Regulations of the General Act on Sustainable Forest Development	RLGDFS	Articles 225, 226: first and third paragraphs, 227: first paragraph, 229, 231, 232, 232, 233: second paragraph and 234

³⁵ USMCA Article 24.1.

³⁶ *Id.*

a) General Act on Ecological Balance and Environmental Protection

22. **Article 160 of the LGEEPA** states that the provisions of Title Six of that law shall apply to inspection and surveillance actions, enforcement of security measures, determination of infractions and their sanctions, as well as administrative procedures and remedies of federal competence (**first paragraph**), and that, in the case of matters regulated by special laws, the LGEEPA shall apply in a supplementary manner with respect to inspection and surveillance procedures (**third paragraph**). The Secretariat determines that Article 160: first and third paragraphs are related to the assertions in the submission and qualify as environmental law pursuant to USMCA Article 24.1 since its main purpose is the protection of the environment, through control and security measures, including inspection and surveillance actions.
23. **Article 161 of the LGEEPA** establishes that Semarnat will perform inspection and surveillance actions for compliance with the provisions contained in the law and its regulations (**first paragraph**). The Secretariat determines that this provision is related to what was asserted in the submission and qualifies as environmental law pursuant to USMCA Article 24.1 because it is directed toward the protection of the environment, through inspection and surveillance actions.
24. **Article 162 of the LGEEPA** states that the competent authorities may conduct inspection visits, without prejudice to other proposed measures to verify compliance with the LGEEPA (**first paragraph**). The Secretariat determines that this provision is linked to the Submitters' assertions and qualifies as environmental law pursuant to USMCA Article 24.1 since its main purpose is protection of the environment through the execution of inspection and surveillance actions.
25. **Article 166 of the LGEEPA** provides that when there are persons who obstruct or oppose the inspection, the competent authority may request the assistance of the police force to carry out inspection visits. The Secretariat determines that this provision is related to the assertions in the submission and qualifies as environmental law under USMCA Article 24.1 because it establishes mechanisms of assistance for the completion of inspection, surveillance, and other related enforcement actions.
26. **Article 167 of the LGEEPA** establishes that the corresponding authority will require the inspected party, once the inspection report is delivered, to immediately take the corrective or urgent measures to comply with the applicable regulations and with the corresponding permits and authorizations, establishing the term for compliance. It also establishes the procedure for the interested party to respond and present pertinent evidence. The Secretariat determines that the cited provision is related to the issue raised in the submission and qualifies as environmental law under USMCA Article 24.1 because its main purpose is the protection and conservation of the environment through the imposition of corrective measures or urgent enforcement.
27. **Article 169 of the LGEEPA** states that, if appropriate, the federal authority shall inform the public prosecutor of acts or omissions that could constitute one or more crimes (**last paragraph**). The Secretariat determines that this provision is directly related to the facts referred to in the submission and qualifies as environmental law pursuant to USMCA Article 24.1 since its main purpose is the protection and conservation of the environment through the implementation of proceedings for acts and omissions that could constitute environmental crimes.

28. **Article 170 of the LGEEPA** stipulates that when there is an imminent risk of ecological imbalance or serious damage or deterioration to natural resources, the authority shall impose security measures, including: ordering the temporary, partial or total closure of facilities where forest resources are handled or stored (**section I**) and completing the precautionary seizure of forest resources and instruments related to the conduct that gave rise to the imposition of the security measure (**section II**). The Secretariat determines that these provisions are related to the allegations of the submission and qualify as environmental law pursuant to USMCA Article 24.1 since their main purpose is the protection and conservation of the environment through the imposition of security measures.
29. **Article 182 of the LGEEPA** provides that if Semarnat becomes aware of acts or omissions that may constitute crimes, it will file the corresponding complaint with the federal public prosecutor's office (**first paragraph**). The Secretariat determines that this provision is related to the assertions in the submission and qualifies as environmental law pursuant to USMCA Article 24.1 since its main purpose is the protection and conservation of the environment through the implementation of proceedings for acts and omissions that could be classified as environmental crimes.
30. **Article 189 of the LGEEPA** establishes that any person, social group, organization, association or society may denounce, before Profepa or other authorities, the commission of facts, acts or omissions that produce or may produce ecological imbalance or damage to the environment or natural resources, or that contravene the provisions of the LGEEPA and other regulations that govern environmental protection and the preservation and restoration of the ecological balance (**first paragraph**). The Secretariat determines that this provision is related to what the Submitters have stated and qualifies as environmental law because its main purpose is the protection of the environment through mechanisms, such as the citizen complaint, to make claims about facts, acts or omissions to be investigated by the competent authority.
31. **Article 190 of the LGEEPA** states that the citizen complaint may be exercised by any person by means of a written document containing their identification data; a description of the acts, facts or omissions denounced; data to identify the alleged offender, and the evidence available to the complainant. The Secretariat determines that this provision is related to what was stated in the submission and qualifies as environmental law in terms of USMCA Article 24.1 since its main purpose is the protection of the environment through mechanisms, such as the citizen complaint, which allow any person aware of a fact, act or omission to file a complaint before the competent authority so that the matter is investigated.
32. **Article 191 of the LGEEPA** states that, once the complaint is received, Profepa will acknowledge receipt, assign a file number, and notify the complainant of the corresponding qualification agreement (**first and third paragraphs**). The Secretariat determines that this provision relates to the assertions in the submission and qualifies as environmental law in terms of USMCA Article 24.1 since its main purpose is the protection of the environment through complaint mechanisms, such as the citizen complaint.
33. **Article 192 of the LGEEPA** states that once the complaint is admitted and the complainant is identified, Profepa will notify the person or authorities to whom the alleged facts are attributed; it will carry out the necessary procedures to verify the acts, facts or omissions that constitute the complaint, and will initiate the pertinent inspection and surveillance procedures, according to the cases provided for in the LGEEPA. The Secretariat determines

that this provision is related to what was raised in the submission and qualifies as environmental law in terms of USMCA Article 24.1 because its main purpose is the protection of the environment through mechanisms, such as the citizen complaint, which allow any person aware of a fact, act or omission to file a claim before a competent authority for investigation, with the support of inspection or surveillance actions.

34. **Article 193 of the LGEEPA** establishes that the complainant may cooperate with Profepa by providing evidence, documentation and information that it deems relevant, and that the authority must, at the time of resolving the complaint, make a determination based on the information provided by the complainant. The Secretariat determines that this provision is directly related to the facts referred to in the submission and qualifies as environmental law in terms of USMCA Article 24.1 since its main purpose is the protection of the environment through mechanisms such as the citizen complaint.
35. **Article 202 of the LGEEPA** provides that Profepa is empowered to initiate actions before the competent authorities when it is aware of acts, facts or omissions that constitute violations of administrative or criminal law (**first paragraph**). The Secretariat determines that this provision is related to the assertions in the submission and qualifies as environmental law in terms of USMCA Article 24.1 since its main purpose is to protect the environment through the exercise of Profepa's powers in the face of acts, facts or omissions that could be in violation of applicable legislation.
36. **Article 203 of the LGEEPA** establishes the obligation to repair the damage caused by the person responsible for polluting, deteriorating the environment or affecting natural resources or biodiversity. The Secretariat determines that the provision is related to what was asserted in the submission and qualifies as environmental law in terms of USMCA Article 24.1 since its main purpose is the protection of the environment through liability for environmental damages.

b) General Act on Sustainable Forest Development

37. **Article 154 of the LGDFS** establishes that Semarnat, through Profepa, is responsible for prevention and surveillance in the forests, which includes functions like patrolling and protecting forest resources, as well as completing technical investigations and inspections, surveillance and verification of compliance with environmental laws and regulations. Investigations, which include the diagnosis of critical forest areas, may be initiated by a complaint or during inspection and surveillance activities, and Profepa will promote the training of operational personnel in charge of forest inspections. The Secretariat determines that the provision in question is related to the assertions in the submission and qualifies as environmental law pursuant to USMCA Article 24.1 because it is directed toward the protection of the environment through actions of the authority in matters of forestry inspection and surveillance.
38. **Article 155 of the LGDFS** lists infractions of the LGDFS, among which are included: beneficial use of forest resources and engaging in forestation and reforestation in violation of the terms of the law and its regulations (**fraction III**); failure to comply with the provisions regarding authorizations for beneficial use of the forest and change of land use of forest land (**fraction VI**); changing the land use of forest land without the corresponding authorization (**section VII**); causing serious damage or deterioration to forest ecosystems (**section XII**); and transporting, storing, transforming or possessing raw forest materials without the

documentation or control systems that prove the legality of their origin (**section XV**). The Secretariat determines that the cited provisions are related to what was raised in the submission and qualify as environmental law pursuant to USMCA Article 24.1 because they are aimed at protecting the environment through the imposition of penalties for violations of or noncompliance with forestry law.

c) Regulations of the General Act on Sustainable Forest Development

39. **Article 225 of the RLGDFS** provides that Profepa will complete the inspection and surveillance acts for compliance with the provisions of the LGDFS, the RLGDFS and other regulations that emanate from it. The Secretariat determines that this provision is related to the assertions in the submission and qualifies as environmental law pursuant to USMCA Article 24.1 as it is directed toward the protection of the environment through inspection and surveillance procedures.
40. **Article 226 of the RLGDFS** establishes that, upon detecting the possible commission of flagrant infractions to the LGDFS or the RLGDFS, Profepa will issue a report with the facts (**first paragraph**). It also states that “flagrancy” will be understood as when the offender is caught carrying out the acts contrary to the forestry regulations, or after completion of the acts, is pursued or pointed out by any person, and when he/she has in his/her possession the object or product of the infraction (**third paragraph**). The Secretariat determines that these provisions are related to the allegations of the submission and qualify as environmental law in terms of USMCA Article 24.1 since their main purpose is the protection of the environment in accordance with USMCA Article 24.1 through enforcement actions for violations in forestry matters.
41. **Article 227 of the RLGDFS** provides that Profepa may request the corresponding agencies and entities of the federal public administration to suspend, modify, revoke, or cancel permits and authorizations, and to initiate other administrative procedures to stop the damage caused to forest ecosystems (**first paragraph**). The Secretariat determines that this provision is related to what was stated in the submission and qualifies as environmental law pursuant to USMCA Article 24.1 because it is oriented to the protection of the environment, through mechanisms for the imposition of sanctions in case of violations or omissions in the compliance of the forestry legislation in order to stop damage.
42. **Article 229 of the RLGDFS** states that Profepa, when seizing goods, may designate the forest harvesting rights holder or owner of the commercial forest plantation, among other persons, as depositary, and states that the authority may place seals or marks on the seized goods and dictate measures to guarantee their care. The Secretariat determines that this provision is linked to the Submitters’ arguments and qualifies as an environmental law in terms of USMCA Article 24.1 because it is oriented to the protection of the environment, through the imposition of corrective measures such as the seizure of goods and the imposition of seals for monitoring purposes.
43. **Article 231 of the RLGDFS** provides that any person may report to Profepa or other authorities, any fact, act or omission that produces or may produce ecological imbalance to the forest ecosystem or damage to forest resources; it states that the complainant shall provide all the elements of evidence available to confirm the complaint, and that the complaint procedure will be carried out in accordance with the LGEEPA. The Secretariat determines that this provision is related to the assertions of the submission and qualifies as environmental

law in terms of USMCA Article 24.1 since its purpose is the protection of the environment through the implementation of mechanisms to denounce violations or lack of enforcement in relation to compliance with the law on forestry matters.

44. **Article 232 of the RLGDFS** stipulates that when it is determined that there is an imminent risk of ecological imbalance, damage, or serious deterioration of forest resources during the acts of inspection, surveillance, and verification, Profepa may order the application of the security measures established in the LGEEPA. The Secretariat determines that this provision is related to the issue raised by the Submitters and qualifies as environmental law pursuant to USMCA Article 24.1 since it is oriented to the protection of the environment through the imposition of security measures to avoid or stop instances of ecological imbalance or damage to forest resources.
45. **Article 233 of the RLGDFS** states that the authority may use the technical investigation referred to in Article 154 of the LGDFS to determine the imminent risk of ecological imbalance, damage, or serious deterioration of forest resources (**second paragraph**). The Secretariat determines that the provision in question is related to the assertions in the submission and qualifies as environmental law pursuant to USMCA Article 24.1 because it is oriented to the protection of the environment through actions to avoid ecological imbalance, in addition to the fact that it is related to Article 154 of the LGDFS, an environmental law also cited by the Submitters.
46. **Article 234 of the RLGDFS** states that the restoration measures imposed by Profepa will be focused on rehabilitation of a forest ecosystem to recover, partially or totally, its original functions, and states that Profepa will promote the integration of alliances between retailers and transporters, in order to avoid illegal trafficking of forest resources, raw materials and forest products. The Secretariat determines that this provision is directly related to the facts referred to in the submission and qualifies as environmental law pursuant to USMCA Article 24.1 since it is directed toward the protection of the environment through restoration measures.

c. Requirements of USMCA Article 24.27(2)

47. Article 24.27(2) establishes five requirements that a submission must satisfy to be admissible. After examining submission SEM-23-006 (*Illegal Logging in Jalisco*) with respect to the five subparagraphs in this article, the Secretariat concludes that it meets these requirements, as follows.

The CEC Secretariat may consider a submission under this Article if it finds that the submission:

a) is in writing in English, French, or Spanish;

48. 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;

49. The submission includes the name, address, e-mail address and telephone number of the Submitters: sufficient information to identify and communicate with the Submitters. Therefore, the submission satisfies USMCA Article 24.27(2)(b).

- c) *provides sufficient information to allow for the review of the submission including any documentary evidence on which the submission may be based and identification of the environmental law of which the failure to enforce is asserted;*

50. The submission includes references to several communications and official letters issued by the authorities, including an inspection order and record issued by Profepa, in which the Submitters point out that “the acting personnel verified...the innumerable illegal activities that were being carried out on the forest land [of the property].”³⁷ The same situation was confirmed by another official letter from Profepa, which “concluded...the existence of damage to the ecosystem.”³⁸ The Secretariat finds that the submission provides sufficient documentary evidence to be reviewed.
51. As already noted in Section III of this determination, dedicated to the analysis of the environmental law in question, the submission cites several provisions of the LGEEPA, the LGDFS and the RLGDFS related to filing environmental complaints and execution of inspection and surveillance actions regarding the effective enforcement of the cited laws.
52. The Secretariat finds that the information attached to the submission confirms the assertions regarding citizen complaints, inspection, and surveillance actions, change of forest land use and illegal logging.
53. In this regard, the Secretariat determines that the submission satisfies USMCA Article 24.27(2)(c).

- d) *appears to be aimed at promoting enforcement rather than at harassing industry;*

54. 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 directed at harassing an industry, but rather seeks the effective enforcement of the relevant environmental law in relation to: attention to citizen complaints; execution of forest inspection and surveillance actions; imposition of sanctions and corresponding security measures, and addressing illegal logging, with the consequent unauthorized change of land use and the resulting deforestation in order to cultivate avocado in Cuautla, Jalisco, Mexico.

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

55. The Submitters refer to documentation to confirm that the matter has been communicated to the relevant authorities of the Mexican government, namely: claims, petitions, and complaints, including claims and written filings before the delegations of Semarnat and

³⁷ Submission, § 16, regarding Inspection Order No. PFPA/21.3/2C.27.2/029(21)002384, issued by the Federal Attorney General's Office for Environmental Protection (Nov. 8, 2021) and the respective inspection report: Profepa, PFPA/21.3/2C.27.2/029-21 (Nov. 10, 2021).

³⁸ Submission, § 33, regarding oficio No. PEdPA/5.3/8C.17.2/03883 dated May 13, 2022, also issued by Profepa.

Profepa in order to communicate the matter to the relevant authorities of the Party,³⁹ follow-up submissions regarding the actions of the delegations of Profepa and Semarnat in the state of Jalisco in relation to the complaints filed,⁴⁰ and a writing before the Presidency of the Republic in which the situation in question is communicated.⁴¹ The submission also includes a communication to the Civil Service Secretariat,⁴² and several communications from the delegation of Profepa in Jalisco in relation to the complaints and various writings submitted by the Submitters.⁴³

56. In addition to the aforementioned complaints filed before the Jalisco delegations of Semarnat and of Profepa, the Submitters previously tried filing appeals before the public prosecutor's office in Ayutla, Jalisco, attached to the regional state prosecutor's office "Sierra de Amula."⁴⁴
57. The Secretariat determines that the submission satisfies USMCA Article 24.27(2)(e).

d. Criteria established in USMCA Article 24.27(3)

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

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

59. The Submitters allege that damage to forest resources is occurring as a result of the lack of environmental law enforcement with respect to the change in forest land use and illegal logging activities to convert the land on the affected property to avocado cultivation. They claim that the authorities confirmed the damages produced and allowed the activities to continue, even though they were already aware of the illegality of the acts, which were documented during the inspection visit of November 10, 2021:

...the acting personnel, despite having witnessed flagrant, serious infractions of forestry and environmental regulations that corroborated what we had denounced in a timely manner, that is, land invasion, immoderate logging, deforestation, extraction, transport and illegal commercialization of timber and change of land use, did not impose the obligatory security measure consisting of closure with the placement of seals or corresponding notices, the immobilization of machinery and vehicles that would somehow prevent the continuation of these illegal activities, thus leading to the continuation of illegal logging, deforestation, extraction and

³⁹ Petition, § 7; Annex 7: Citizen complaint dated August 2, 2021, filed with the delegations of Semarnat and Profepa in the state of Jalisco (August 3, 2021), and Annex 10: Oficio No. SEMARNAT.JA.UJ.-120/2021, dated August 4, 2021, in which the delegation of Semarnat in Jalisco notifies having forwarded the submission filed by the Submitter to the state delegation of Profepa.

⁴⁰ *Id.* at § 9 and Annex 9: Briefs to the delegations of Profepa and Semarnat (September 7, 2021).

⁴¹ Submission, § 12 and Annex 12: Letter to the Presidency of the Republic (September 13, 2021).

⁴² Submission, Attachment 23: Letter to the Civil Service Secretariat (March 1, 2022).

⁴³ Submission, §§ 13-16 and Annex 36: Written communication addressed to the representation of Profepa in Jalisco, dated October 17, 2022, whereby the Submitters submit *ad cautelam* information in connection with the citizen complaint proceeding identified with oficios No. PFFPA/21.7/2C.28.2/00111-21 and PFFPA/21.3/2C.27.2/00032-21.

⁴⁴ Submission, §§ 3, 4 and 6, and Annex 18: Submissions to the public prosecutor's office in Ayutla, Jalisco, attached to the regional state prosecutor's office "Sierra de Amula" (January 27, April 9 and July 27, 2021).

commercialization of illegal timber in the area of our property without any problem or restriction, terminating the existing trees.⁴⁵

60. The submission also states that in an official letter issued by the General Director of Environmental Claims, Complaints and Public Participation of Profepa, “an account of the matter was made, mentioning that an inspection visit was completed in which land use change activities were observed on forest lands, the removal of natural vegetation of 57 [hectares], without having the corresponding authorization, [and] it was concluded...that there was damage to the ecosystem....”⁴⁶
61. In addition, the technical report for the site issued on December 3, 2021 “determined the various ecosystem services that were affected on [the] property and the values that corresponded to each one of them, in accordance with what was recorded in the inspection report issued on November 10, 2021.”⁴⁷
62. The Secretariat considers that several documents issued by Profepa provide evidence of the damage caused to the property and corroborate the assertions made by the Submitters.
63. Moreover, the Submitters argue that there is a risk of similar damage continuing on other properties:
- As a consequence of our constant refusal to sell some fractions or the totality of the land of our property called 'Los Amoles' to various messengers that have come to us, [even though] to date more than 59 [hectares] have already been invaded and deforested by illegal logging and the timber obtained has been loaded, transported and removed in trucks and marketed illegally by strangers, they have been sending messages that they would also invade the other lands of our property called 'Terreno Colorado' and 'Los Metates', and that they would also take the timber from them.⁴⁸
64. The Secretariat has previously determined that, in considering the issue of damage, it must examine whether the alleged harm referred to in the submission is due to the alleged lack of effective enforcement of environmental laws and whether such harm is related to environmental protection.⁴⁹ Consistent with the practice in implementation of the SEM process, the Secretariat determines that the submission satisfies the criterion set forth in USMCA Article 24.27(3)(a).

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

⁴⁵ Submission, § 21.

⁴⁶ *Id.* at § 33, regarding official letter No. PEPA/5.3/8C.17.2/03883 with registration number 2 2 2-03182, issued by the General Directorate of Environmental Complaints, Complaints and Public Participation of Profepa on May 13, 2022.

⁴⁷ Submission, § 42.

⁴⁸ *Id.* at § 43.

⁴⁹ See: SEM-19-004 (*Barred Owl*), Determination under Articles 14(1) and (2) of the NAAEC (Nov. 21, 2019), § 28; SEM-11-002 (*Sumidero Canyon II*), Determination under Articles 14(1) and (2) of the NAAEC (Sept. 6, 2012), § 36; SEM-13-001 (*Gulf of California Tourism Development*), Determination under Articles 14(1) and (2) of the NAAEC (Nov. 23, 2013), § 62. *Cf. Guidelines for Submissions Regarding Effective Enforcement of Environmental Law Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, § 7.4.

65. 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 the furtherance of sustainable development.”
66. The Submitters explain the importance of effective enforcement of environmental laws and the linkages between their situation and trade:
- ...the acts, facts or omissions that are highlighted have several implications, not only because of the forestry and environmental deterioration that is being caused in the region, but also because they have a significant impact on the economic and commercial field, since they introduce into the commercial and industrial market a large amount of timber whose origin is illegal and also, in the possible near future, the entrance into that country of large quantities of avocado from orchards whose origin, establishment and operation have criminal roots, suggesting that in order to discourage this harmful practice, the U.S. authorities should require Mexican avocado exporters to prove that their product comes from orchards that are constituted and operated legally. For all of the above reasons, it is necessary to request the Mexican government to review this case, so that it can effectively enforce environmental laws and other applicable laws.⁵⁰
67. The submission also notes that:
- This phenomenon of deforestation is not exclusive to the area or the state of Jalisco, but has been spreading and worsening in different parts of the country, due to the change in land use from forests to other types of crops and plantations that allow for greater immediate income, such as avocado and then agave, *lechuguilla* or berries, having not only environmental implications, but also direct implications in commercial and economic areas....⁵¹
68. 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 the processing of citizen complaints, the execution of forest inspection and surveillance actions, the enforcement of sanctions and corresponding security measures, and the illegal occupation and logging of land in Jalisco for the commercial cultivation of avocado trees.⁵²
69. The Secretariat concludes that the Submission satisfies USMCA Article 24.27(3)(b).

⁵⁰ Advocacy by the Submitters before Ambassador Katherine Tai, Trade Representative of the United States of America (September 22, 2021).

⁵¹ Submission, conclusion of section "G. Statement of Facts."

⁵² In this regard, it should be noted that submissions SEM-23-002 (*Avocado production in Michoacán*) and SEM-23-003 (*Agave production in Jalisco*) also raise the phenomenon of deforestation that occurs when changing the use of forest land to other crops, such as avocado and agave. The Secretariat has concluded that these submissions raise issues whose further study would contribute to the achievement of the goals of Chapter 24 of the USMCA, in accordance with Article 24.27(3)(b). Cf. SEM-23-002 (*Avocado Production in Michoacán*), Determination Pursuant to USMCA Articles 24.27(2) and (3) (March 6, 2023), §§ 68-72, at: <<https://bit.ly/464VkiC>>, and SEM-23-003 (*Agave Production in Jalisco*), Determination Pursuant to Articles 24.27(2) and (3) of the USMCA (May 11, 2023), §§ 49-50, at: <<https://bit.ly/3NxUCmI>>.

c) private remedies available under the Party's law have been pursued;

70. The Secretariat has found that pursuing (or having recourse to) private remedies can be interpreted broadly, so that this criterion can be met by filing a citizen complaint, but also by referring to a remedy initiated by a third party, be it an individual person or an organization or legal entity.
71. The submission documents that action has been sought from the federal authorities through the presentation of claims, petitions, and complaints to various relevant agencies of the Mexican government. The Submitters state that after the third parties took their property, they filed complaints with the public prosecutor's office attached to the regional prosecutor's office of the state of Jalisco, first, and then with Profepa and Semarnat, among others.⁵³ However, the result of the illegal occupation of their property has been deforestation and a change in the use of forest land for avocado plantations.⁵⁴
72. The Secretariat finds that the submission satisfies USMCA Article 24.27(3)(c) since the Submitters have included documentation and information demonstrating that they have sought remedies available to individuals under Mexican law.

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

73. Regarding USMCA Article 24.27(3)(d), the Secretariat finds that the submission is *not* based exclusively on media reports, but rather is based on documentation and information regarding the environmental situation in question that the Submitters gathered in large part from claims, complaints, and petitions filed by them directly.
74. Accordingly, the Secretariat concludes that the submission meets the criteria set forth in USMCA Article 24.27(3)(d).

IV. DETERMINATION

75. For the reasons set forth in its analysis, the Secretariat determines that submission SEM-23-006 (*Illegal Logging in Jalisco*) satisfies the admissibility requirements set forth in USMCA Article 24.27(2) and merits a response from the Government of Mexico, in terms of Article 24.27(3), concerning effective enforcement of the environmental laws listed below:
- 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 **RGDFS**.

⁵³ *Id.* at Annexes 7: Citizen complaint dated August 2, 2021, filed with the delegations of Semarnat and Profepa in the state of Jalisco (August 3, 2021) under docket: PFPA/21.7/2C.28.2/00111-21, and 40: Citizen complaint, filed with the delegation of Profepa in the state of Jalisco (February 20, 2023) (“...against the same facts, acts or omissions that have already been brought to their attention through the citizen complaint registered under file number PFPA/21.7/2C.28.2/00111-21....”). See also: Submission, §§ 3-10 and 13-42.

⁵⁴ Submission, §§ 3-5.

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76. In accordance with USMCA Article 24.27(4), the Party may provide a response to the submission within sixty days of receipt of this determination, i.e., no later than **August 16, 2023**.

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation

(original signed)

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