Secretariat of the Commission for Environmental Cooperation

Secretariat Notification in accordance with Article 24.28(1) of the Agreement between the United Mexican States, the United States of America and Canada

Submitter:	San Diego Coastkeeper
Party:	United Mexican States
Date of submission:	26 January 2026
Date of notification:	9 November 2026
Submission No.:	**SEM-26-002 (*Tijuana Wastewater Management*)**

I. INTRODUCTION 1
II. ANALYSIS 5
A. Preliminary consideration of the Party response 5
B. Admissibility of submission SEM-26-002 9
(i) The admissibility requirement under Article 24.27(2)(e) 9
(ii) The criterion for requesting a response under Article 24.27(3)(c) 11
(iii) NOM-001-**SEMARNAT**-2021 is environmental law within the meaning of USMCA/CUSMA Article 24.1 13
C. The nature of the SEM process 15
(i) Secretariat determinations are an admissibility review of a submission 15
(ii) The SEM process is not adversarial, nor is the CEC a judicial forum 16
(iii) The SEM process does not examine investment and trade matters between the Parties 18
(iv) Acquiescence 20
(v) Is the trade nexus a structural condition of the whole of Chapter 24? 22
D. The assertions in submission SEM-26-002 in light of the response 23
(i) Wastewater discharges allegedly exceeding the maximum permissible limits 25
(ii) The alleged failure to inspect and monitor 28
(iii) The alleged failure to apply safety measures and sanctions 30
(iv) The alleged failure to revoke or cancel discharge permits 31
(v) The alleged failure to intervene and assume operation of the system 32
(vi) The alleged failure to impose monetary penalties 33
(vii) The alleged failure to require repair, remediation and restoration 34
(viii) The alleged failure to give notice of and report spills and recurrent flows 35
(ix) The alleged failure to refer the matter to the public prosecutor and to bring criminal proceedings 37

(x) The alleged failure to give effect to the human right to a healthy environment 38

E. The Secretariat has explored similar questions in other factual records 39

III. NOTIFICATION 40

Executive Summary

On 26 January 2026, the US organization San Diego Coastkeeper (the "Submitter") filed a submission with the CEC Secretariat pursuant to Article 24.27(1) of the USMCA/CUSMA, asserting that Mexico is failing to effectively enforce its environmental laws with respect to wastewater management, public health, transboundary notification procedures and integrated water resource management in connection with the discharge of wastewater into the Tijuana River.

The Submitter maintains that the border city of Tijuana faces an environmental and public health crisis arising from leaks, spills and constant discharges of untreated wastewater, the contaminants of which affect ecosystems and coastal areas on both sides of the border.[i] It points to widespread failures in sewerage and treatment infrastructure, as well as problems at pumping stations and treatment plants, which have contributed to the flow of such waters into the Tijuana River, its valley and estuary, and the neighboring coastal areas.[ii] It also refers to the presence of pathogens, toxic substances and antibiotic-resistant bacteria, and alludes to the aerosolization of contaminants and its effects on air quality, water, ecosystems and marine wildlife.[iii] While acknowledging the existence of a Memorandum of Understanding concluded between Mexico and the United States in 2025 for the purpose of addressing these problems, the Submitter expresses serious doubts as to Mexico's compliance with these commitments , given the pattern of past non-compliance.[iv] Lastly, the Submitter maintains that the failure to adequately collect, control and treat wastewater constitutes a sustained, recurrent and systematic failure to enforce Mexican environmental law, which has given rise to an environmental and public health problem of a transboundary nature.[v]

On 25 February 2026, the Secretariat determined that the original submission did not meet all of the established admissibility requirements and criteria, principally because the Submitter had not provided information showing that private remedies available under the Party's law had been pursued, as provided in Article 24.27(3)(c).[vi] The Secretariat also noted inconsistencies in the cited provisions of environmental law, some of which did not exist or bore no relation to the assertions made.[vii] The Secretariat accordingly requested supplementary information on the pursuit of remedies available to private parties under Mexican law, together with clarifications regarding the inconsistencies identified in certain cited environmental provisions.[viii]

On 27 April 2026, the Submitter filed a revised submission, accompanied by additional supporting information. After careful examination of the documentation provided, the Secretariat

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[i] SEM-26-002 (*Tijuana Wastewater Management*), Submission under USMCA/CUSMA Article 24.27(1) (26 January 2026), Statement of facts, at. 1, 5-9, at: <https://bit.ly/3UaY3WQ>.

[ii] Id. at 1-2 and 10.

[iii] Id. at 5-9 and 10.

[iv] Id. at 3-4, 14 and 15.

[v] Id. at 8.

[vi] SEM-26-002 (*Tijuana Wastewater Management*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (25 February 2026), §§ 105-106, at: <https://bit.ly/4iVkV5Y>.

[vii] Id. § 110.

[viii] Id. §§ 109-110.

determined that submission SEM-26-002 (*Tijuana Wastewater Management*) met the criterion set out in USMCA/CUSMA Article 24.27(3)(c) and warranted a response from Mexico pursuant to Article 24.27(3).[ix]

On 28 May 2026, the Secretariat requested a response from the Government of Mexico, which it received on 9 September 2026.

The Party response puts forward three *truths* (see footnote below)[x] in which it: i) raises objections to the admissibility of the submission;[xi] ii) maintains that the Secretariat did not correctly interpret the definition of environmental law set out in USMCA/CUSMA Article 24.1 with respect to a Mexican Official Standard cited in the submission;[xii] iii) considers that the Submitter is seeking a forum in which it may obtain a more favorable decision than the one obtained in the proceeding brought in the United States in connection with the Tijuana River wastewater problem;[xiii] iv) refers to the actions taken by Mexico to effectively enforce the environmental law in question,[xiv] and v) characterizes the SEM process as a mechanism tied to trade and foreign investment.[xv] The Party asserts that it is complying with the rules applicable to wastewater management; it emphasizes that, in any event, the United States must meet its own commitments, and it asks the Secretariat to terminate the submission.[xvi]

It should be noted that the Party indicated that the information relating to the compliance program of the Tijuana State Public Services Commission (*Comisión Estatal de Servicios Públicos de Tijuana*—CESPT), the amounts invested by the Government of Mexico to address the Tijuana River problem, and the actions of the National Water Commission (*Comisión Nacional del Agua*—Conagua) and the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) is **confidential**, and it therefore provided a public version of its response with the corresponding redaction (*testado*) of the

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[ix] SEM-26-002 (*Tijuana Wastewater Management*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (28 May 2026), § 22, at: <https://bit.ly/4z4gz1g>.

[x] These *truths* are: 1) "**submission SEM-26-002 does not satisfy the admissibility requirements established in Article 24.27(3) of the USMCA/CUSMA** and […], consequently, the Secretariat should have terminated it before considering whether to request a Party response from the Government of Mexico; " 2) "**Mexico has effectively and consistently enforced its environmental law on wastewater in the Tijuana region through its competent authorities**, in full exercise of the powers assigned to them by the Mexican constitutional and legal design, and within the framework of the bilateral cooperation scheme with the United States of America that the two governments have built and kept active through the International Boundary and Water Commission; " and 3) "**submission SEM-26-002 does not seek the repair of and attention to the Tijuana River problem that it extensively documented in its lawsuit against US authorities**; it seeks to have the Government of Mexico admit the exclusive responsibility which, as is publicly on record, San Diego Coastkeeper voluntarily decided, in the *Settlement Agreement* coordinated with the IBWC and Veolia, not to demand of the actors within US jurisdiction—Veolia and the IBWC—and which the Submitter itself [*sic*] chose not to obtain through its domestic litigation." [translation]. *See* SEM-26-002 (*Tijuana Wastewater Management*), Mexico Response under USMCA/CUSMA Article 24.27(4) (9 September 2026), §§ 3, 5 and 8, at: <https://bit.ly/4s1oBpZ>.

[xi] Id. §§ 3-9, 13, 15, 70-71, 79, 84-85, 154, 157-190, 193-208 and 372.

[xii] Id. §§ 158 (third), 181-186.

[xiii] Id. §§ 11 and 273-274.

[xiv] Id. §§ 88-93, 95-99, 296-299 and 303-305.

[xv] Id. §§ 10, 69-70, 158 (first), 160-164, 166-169, 199-204, 215 and 220.

[xvi] Id. §§ 372, 390-391 and at 144.

information it considered confidential. For the purposes of its exhaustive analysis, the Secretariat took the confidential version into account, but in preparing this notification it refers to the public version.

As to the inadmissibility of the submission alleged by the Party, the Secretariat observes that reopening the deliberation on the admissibility of a submission is a matter that should be discussed between the Parties within the frame of the SEM process under USMCA/CUSMA and not with respect of a specific submission. While Mexico's response devotes a considerable part of its argument to this point,[xvii] it provides no information disclosing any failing such as would warrant dismissing the submission. In this regard, the Secretariat reaffirms in this notification the analysis carried out in its earlier determinations and confirms the admissibility of the submission in light of the requirements and criteria of Articles 24.27(2) and (3), noting that the points raised by the Party as to the alleged inadmissibility of submission SEM-26-002 (*Tijuana Wastewater Management*) depart from the established terms of the SEM process and therefore do not justify terminating it. In any event, the Party could put its objections directly to the Council.

As to the doubts raised in the response concerning the integrity of the determinations issued by the Secretariat, Mexico asks the Council to examine whether the determinations were issued in accordance with Article 24.27, in order to assess their impartiality and, if appropriate, the Party's right to challenge any recommendation.[xviii] The Secretariat makes no pronouncement in this regard and turns instead to analyzing the substantive aspects of the submission in light of the response.

In the course of its analysis, the Secretariat found that, in its response, the Government of Mexico failed to support with documents the effective enforcement of environmental law to ensure the control, inspection, monitoring and implementation of safety measures and sanctions; the review or revocation of wastewater discharge permits; the control and reporting of accidental spills; the pursuit of criminal proceedings; and the giving of effect to the constitutional guarantee of the right to a healthy environment, all of which are asserted and documented in the submission. Although the Secretariat undertook to examine the Party response, that response contains no documentary support establishing the effective enforcement of environmental law in respect of the assertions in the submission. The response contains no wastewater quality monitoring reports, administrative records, inspection reports or any document capable of supporting the Party's argument.

The annexes to the response consist of Minutes of the International Boundary and Water Commission (IBWC); a memorandum on bilateral cooperation between Mexico and the United States; a collaboration agreement between Profepa and the Office of the Attorney General of the Republic (*Fiscalía General de la República*—FGR); and the file on the proceeding brought in the United States by the Submitter, including notice of a settlement agreement. The documentary evidence provided by Mexico does not include information that supports and establishes the effective enforcement of environmental law with respect to the discharge and management of wastewater in Tijuana, Mexico.

The Party further questions the interest that moves the Submitter to file the submission; it asserts that the Submitter does not pursue environmental but economic interests, and it adds that the SEM process is not a forum for appealing domestic judicial decisions. The Secretariat reiterates

[xvii] Id. §§ 3-9, 13, 15, 70-71, 79, 84-85, 154, 157-190, 193-208 and 372.
[xviii] Id. § 81.

that the SEM process is an instrument of transparency and public participation and not a dispute settlement process.[xix] It further clarifies that USMCA/CUSMA Article 24.27 does not establish an admissibility requirement founded on economic, political, strategic or social-benefit considerations, and the Secretariat is therefore not authorized to terminate a submission on the basis of such considerations but rather considers the facts regarding the effective enforcement of environmental law in light of the USMCA/CUSMA.

Having considered the submission in light of the Party response, the Secretariat concludes that central open questions remain regarding the alleged failure to effectively enforce environmental law in connection with wastewater management in Tijuana, warranting the preparation of a factual record. In particular, beyond the statements contained in Mexico's response—unsupported by documentary evidence—questions persist concerning the discharge permits allegedly issued by Conagua, the [redacted] established under Mexican Official Standard NOM-001-SEMARNAT-2021 (NOM-001), and the absence of documentation establishing enforcement action by the Party.

The Secretariat now sets out its reasons for recommending the preparation of a factual record and so notifies the Council and the Environment Committee, in accordance with USMCA/CUSMA Article 24.28(1).

[xix] SEM-25-001 (*Nazas River Lower Basin*), Determination under USMCA/CUSMA Article 24.28(1) (10 April 2026), at. 2, at: <https://bit.ly/4hSTKaj> ; CEC (2013), *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, Commission for Environmental Cooperation, at. 2, at: <https://bit.ly/4yVGNmx>.

I. INTRODUCTION

1. On 1 July 2020, the Agreement between the United Mexican States, the United States of America and Canada (USMCA/CUSMA or "the Agreement")[1] and the Environmental Cooperation Agreement (ECA or "the ECA")[2] entered into force. As of that date, the Submissions on Enforcement Matters (SEM) process—originally established under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC)—is governed by USMCA/CUSMA Articles 24.27 and 24.28, while the terms governing its implementation and operation by the Secretariat of the Commission for Environmental Cooperation (CEC or "the Commission")[3] are now set out in the ECA.[4]

2. The SEM process allows any person or entity legally established in Canada, the United States or Mexico to file a submission asserting that a Party to the Agreement is failing to effectively enforce its environmental laws. The CEC Secretariat (the "Secretariat") initially reviews submissions based on the criteria and requirements set out in paragraphs (1) and (2) of USMCA/CUSMA Article 24.27. When the Secretariat finds that a submission meets those conditions, it proceeds to determine whether, in accordance with the criteria in Article 24.27(3), the submission warrants a response from the Party in question. In light of the response provided by the Party, 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,[5] providing its reasons pursuant to Article 24.28(1) of the Agreement; otherwise, it terminates the review of the submission.[6]

3. On 26 January 2026, the US organization San Diego Coastkeeper (the "Submitter") filed a submission with the CEC Secretariat pursuant to USMCA/CUSMA Article 24.27(1), asserting that the Government of Mexico (hereinafter, "the Party") is failing to effectively enforce its

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[1] Agreement between the United States of America, the United Mexican States, and Canada, 2020, Chapter 24, at: <https://bit.ly/420Lb6x> and <https://bit.ly/4itON6R> [USMCA/CUSMA].

[2] Agreement on Environmental Cooperation among the Governments of the United Mexican States, the United States of America and Canada ["Environmental Cooperation Agreement" or ECA], at: <Agreement on Environmental Cooperation – Commission for Environmental Cooperation>.

[3] The Commission for Environmental Cooperation (CEC) was created in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), signed by Canada, the United States and Mexico (the "Parties"). Pursuant to Article 2(3) of the 2020 Environmental Cooperation Agreement (ECA), "[t]he Commission will continue to operate under the modalities in place as of the date of entry into force of the ECA, including its rules, policies, guidelines, procedures and resolutions, to the extent that those modalities are compatible with [the ECA]." The constituent bodies of the CEC are the Council, the Secretariat and the Joint Public Advisory Committee (JPAC).

[4] Although the provisions governing the SEM process are set out in Chapter 24 of the USMCA/CUSMA, certain related procedures are also established 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. Environmental Cooperation Agreement, at: <https://bit.ly/4ipSVqZ>.

[5] Established pursuant to Article 24.26(2) of the USMCA/CUSMA, the Environment Committee is responsible for supervising the implementation of Chapter 24 of the Agreement.

[6] For further details regarding the various stages of the Submissions on Enforcement Matters (SEM) process, the public registry of submissions, and the determinations and factual records prepared by the Secretariat, please consult the CEC website at: <Submissions on Enforcement Matters – Commission for Environmental Cooperation>.

environmental laws with respect to wastewater management, public health, transboundary notification procedures and integrated water resource management in connection with the discharge of wastewater into the Tijuana River.[7] The Submitter maintains that the border city of Tijuana faces an environmental and public health crisis arising from leaks, spills and constant discharges of untreated wastewater, the contaminants of which affect ecosystems and coastal areas on both sides of the border.[8] It points to widespread failures in sewerage and treatment infrastructure, as well as problems at pumping stations and treatment plants—particularly the San Antonio de los Buenos wastewater treatment plant (WWTP SAB), which was out of operation between 2020 and 2025—[9], which has contributed to the flow of such waters into the Tijuana River, its valley and estuary, and the neighboring coastal areas.[10] It also refers to the presence of pathogens, toxic substances and antibiotic-resistant bacteria, and alludes to the aerosolization of contaminants and its effects on air quality, water, ecosystems and marine wildlife.[11] While acknowledging the existence of a memorandum of understanding concluded between Mexico and the United States in 2025 for the purpose of addressing these problems, the Submitter expresses serious doubts as to Mexico's compliance with the commitments it undertook, given the pattern of past non-compliance.[12] Lastly, it maintains that the failure to adequately collect, control and treat wastewater constitutes a sustained, recurrent and systematic failure to enforce Mexican environmental law, which has given rise to an environmental and public health problem of a transboundary nature.[13]

4. On 25 February 2026, the Secretariat issued a determination (hereinafter, the "First Determination") in which it concluded that the submission did not satisfy all of the admissibility requirements—principally because the Submitter had not provided information showing that private remedies available under the Party's law had been pursued, as provided in Article 24.27(3)(c), and because inconsistencies were found in some of the cited environmental provisions—and notified the Submitter that it had 60 days in which to file a revised submission.[14] On 27 April 2026, the Submitter filed a revised submission, accompanied by additional supporting information.[15]

5. On 28 May 2026, the Secretariat determined that submission SEM-26-002 (*Tijuana Wastewater Management*) satisfied all of the admissibility requirements and criteria set out in USMCA/CUSMA Articles 24.27(2) and (3) (the "Second Determination") and that, under

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7 SEM-26-002 (*Tijuana Wastewater Management*), Submission under USMCA/CUSMA Article 24.27(1) (26 January 2026), at: <https://bit.ly/3UaY3WQ> [Submission].

8 Id. at 1, 5-9.

9 Id. at 3.

10 Id. at 2 and 10.

11 Id. at 5-7 and 10.

12 Id. at 3-4, 14 and 15.

13 Id. at 8.

14 SEM-26-002 (*Tijuana Wastewater Management*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (25 February 2026), §§ 109-111, at: <https://bit.ly/4iVkV5Y> [First Determination].

15 SEM-26-002 (*Tijuana Wastewater Management*), Revised submission under USMCA/CUSMA Article 24.27(1) (27 April 2026), at: <https://bit.ly/4C0JohY> [Revised submission].

Article 24.27(3), it warranted a response from the Government of Mexico in relation to the effective enforcement of the following legal instruments:[16]

a. Article 4 (sixth and eighth paragraphs) of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*—CPEUM);

b. Articles 15, paragraphs IV and XVII; 88, paragraphs I, II and IV; 89, paragraphs II, V and VI; 92; 93; 117, paragraphs I, II, III and IV; 118, paragraph V; 121; 122, paragraph I; 123; 124; 129; 130; 132; 133; 161; 170, paragraphs I and II and final paragraph; 171; 172, and 182 of the General Act on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA);

c. Articles 44 (third paragraph); 86, paragraphs IV and V; 88 (first paragraph); 88 *bis*, paragraphs I, II, IX and X; 89 (third paragraph); 91 *bis* 1; 92, paragraphs I and II and its final two paragraphs; 93; 94; 95; 96 *bis*; 96 *bis* 1; 118 *bis* 2; 118 *bis* 3; 119, paragraphs I, XV and XVII; 120 (first paragraph); 122, paragraph I, and 123 *bis* 1 of the National Waters Act (*Ley de Aguas Nacionales*—LAN);

d. Articles 416 and 421, paragraphs I, II and V, of the Federal Criminal Code (*Código Penal Federal*—CPF), and

e. Articles 1 (first and second paragraphs) and 10 of Mexican Official Standard NOM-001-SEMARNAT-2021 (NOM-001).

6. On 30 June 2026, the Government of Mexico gave notice that it was taking the necessary steps to obtain information from the Baja California Peninsula Basin Agency of the National Water Commission (Conagua) and that its response would therefore be submitted no later than 28 August 2026.[17]

7. On 27 August 2026, the Party asked the Secretariat to "set 9 September 2026 as the deadline for [submitting its] response" in view of the volume of technical and legal information; that is, it again gave notice of an extension of the time limit for filing the response.

8. On 9 September 2026, 44 days after the original time limit set out in USMCA/CUSMA Article 24.27(4), the Secretariat received the response of the Government of Mexico.[18] In it, the Party seeks to demonstrate what it frames as three *truths*, namely: that the submission does not satisfy the established admissibility requirements; that Mexico is effectively enforcing its environmental law in relation to the matter raised in the submission; and that the submission

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[16] SEM-26-002 (*Tijuana Wastewater Management*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (28 May 2026), § 22, at: <https://bit.ly/4kBaoy5> [Second Determination].

[17] UCAI, file no. UCAI/02631/2026 (30 June 2026), Unidad Coordinadora de Asuntos Internacionales, Semarnat, at: <https://bit.ly/4s40Rl4>.

[18] SEM-26-002 (*Tijuana Wastewater Management*), Mexico Response under USMCA/CUSMA Article 24.27(4) (9 September 2026), at: <https://bit.ly/4s1oBpZ> [Response].

does not seek the repair of and attention to the Tijuana River problem, but rather the Submitter's economic benefit.[19]

9. The Party asks the Secretariat to terminate the review of the submission.[20] It further puts forward, should that not occur, three "subsidiary requests": i) that the Secretariat determine that Mexico "has fully complied with its obligations to effectively enforce environmental law";[21] ii) that the Secretariat not recommend the preparation of a factual record,[22] and iii) that the Secretariat "expressly recognize…Mexico's right to exercise discretion with respect to its regulatory and compliance actions…, the prioritization of inspection resources and the determination of when circumstances warrant the bringing of environmental criminal proceedings."[23] The Party also includes a section it calls "Reservation of rights."[24]

10. The Secretariat has examined submission SEM-26-002 (*Tijuana Wastewater Management*) in light of the Party response and considers that central open questions remain regarding the alleged failure to effectively enforce environmental law in connection with wastewater management in Tijuana, and that the preparation of a factual record is therefore warranted.

11. The Secretariat is mindful that Article 2(3) of the ECA authorizes it to ground the reasoning of its determinations in policies, guidelines, procedures, determinations and resolutions put into practice while the NAAEC was in force, to the extent that those modalities are compatible with the USMCA/CUSMA and the ECA. References to earlier determinations and Council resolutions guide the Secretariat in applying the Agreement predictably.[25]

12. The Secretariat now sets out the reasons for its recommendation.

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[19] Mexico argues these purported *truths* in the following terms: 1) "**submission SEM-26-002 does not satisfy the admissibility requirements established in USMCA/CUSMA Article 24.27(3)** and […], consequently, the Secretariat should have terminated it before considering whether to request a Party response from the Government of Mexico; " 2) "**Mexico has effectively and consistently enforced its environmental law on wastewater in the Tijuana region through its competent authorities**, in full exercise of the powers assigned to them by the Mexican constitutional and legal design, and within the framework of the bilateral cooperation scheme with the United States of America that the two governments have built and kept active through the International Boundary and Water Commission; " and 3) "**submission SEM-26-002 does not seek the repair of and attention to the Tijuana River problem that it extensively documented in its lawsuit against US authorities**; it seeks to have the Government of Mexico admit the exclusive responsibility which, as is publicly on record, San Diego Coastkeeper voluntarily decided, in the *Settlement Agreement* coordinated with the IBWC and Veolia, not to demand of the actors within US jurisdiction—Veolia and the IBWC—and which the Submitter itself [*sic*] chose not to obtain through its domestic litigation." [translation]. Response, §§ 3, 5 and 8. See also the conclusion of the response: at 141-143, at: <https://bit.ly/4s1oBpZ>.

[20] Id. §§ 372, 390-391.

[21] Id. § 373.

[22] Id. § 376. See also paragraphs 154, 158-159, 208, and 382.

[23] Id. § 378.

[24] Id. § 380.

[25] SEM-97-001 (*BC Hydro*), Recommendation under NAAEC Articles 14 and 15 (27 April 1998), footnote 9, at: <https://bit.ly/3GkdZfg> [Recommendation, *BC Hydro*].

> At a minimum, references to previous determinations will assist in ensuring that the Secretariat consistently applies the provisions of the *NAAEC*. Such a contextual approach to a treaty is suggested by general canons of statutory interpretation as well as Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

II. ANALYSIS

A. Preliminary consideration of the Party response

13. The Party puts forward various arguments throughout its response:

a. *On the issue raised*: i) that Mexico does not appear in order to justify itself;[26] ii) that the United States shares responsibility with the Party;[27] iii) that it remains for the United States to comply.[28]

b. *On the Submitter*: i) that it is seeking a forum in which it may obtain a more favorable decision;[29] ii) that San Diego Coastkeeper is not seeking the effective enforcement of environmental law, but an economic benefit.[30]

c. *On the admissibility of the submission*: i) that the Submitter did not communicate the matter to the relevant authorities;[31] ii) that the *submission* is not accompanied by documentation supporting the Submitter's assertions;[32] iii) that the Submitter did not exhaust the remedies available to it under Mexican law,[33] and iv) that the submission does not set out its contribution to the goals provided for in USMCA/CUSMA Chapter 24.[34]

d. *On the Secretariat*: i) that the Secretariat did not correctly interpret the definition of environmental law set out in USMCA/CUSMA Article 24.1 with respect to a standard cited in the submission;[35] ii) that the Secretariat's mandate is to deal with submissions in which trade and investment disputes between the Parties are established;[36] iii) that the Secretariat has extended the scope of its analysis beyond the assertions in the submission,[37] and iv) that the two Secretariat's determinations improperly conclude that the Party has failed to enforce its environmental law.[38]

e. *On the enforcement of environmental law and other enforcement actions*: i) that the enforcement of environmental law is documented;[39] ii) that *there* are documented

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[26] Response, Introduction, section A, at 23 and §§ 1-14, at: <https://bit.ly/4s1oBpZ>.

[27] Id. "Antecedentes y contexto fáctico", sections A(i y ii) and B(ii), §§ 29, 31-34; "Contexto histórico y estructural", section ii, at 61-62; "Refutación específica de los señalamientos del Secretariado en los documentos Det1 y Det2", section IV.K, at 133-135, and §§ 4, 19, 25-27, 29, 34-36, 54, 70, 111-116, 128-131, 235, 312, 340, 360-365 and 385.

[28] Id. at 144.

[29] Id. §§ 11 and 273-274.

[30] Id. §§ 79, 152, 267-272, 382 and 386-387.

[31] Id. §§ 170, 175, 178, 180, 188 and 193.

[32] Id. §§ 13, 35 (En primer lugar…), 68, 86 and 103.

[33] Id., §§ 4, 99, 189, 204, 372 (first).

[34] Id. §§ 168-169 and 372 (first).

[35] Id. §§ 158 (third) and 181-186.

[36] Id. §§ 10, 69-70, 158 (first), 160-164, 166-169, 199-204, 215 and 220.

[37] Id. §§ 13, 73-75. At paragraph 75, the Party states: "México no está obligado a responder señalamientos que no estaban contenidos en la petición original de Coastkeeper".

[38] Id. "Refutación específica de los señalamientos del Secretariado en los documentos Det1 y Det2", apartado IV. L, at 135 and §§ 294, 300, 303, 306, 313, 327 and 370.

[39] Id. "Antecedentes y contexto fáctico," section D, at 49-50 and §§ 6, 86-99, 109-117 and 369.

investments and investment commitments in hydraulic infrastructure that form part of the Party's actions;[40] and iii) that the discharges of the Tijuana State Public Services Commission (CESPT) operate within the framework of the law.[41] The information on the enforcement of environmental law was designated confidential by the Party. The Secretariat asked the Party to reconsider the confidentiality designation of the information it had provided. However, no reply was received.[42]

14. The response dwells on the concepts of *forum shopping*, *cosa juzgada*, *lis pendens*, *res judicata* and abuse of process[43]—categories belonging to adjudicative proceedings. The transposition of these concepts to the SEM process, which does not adjudicate rights yields an analogy without clear similarity.[44] Additionally, the response presupposes the evidentiary regime of litigation, which the Council has repeatedly ruled out in declaring that the SEM process is not adversarial.[45]

15. After examining the response closely, the Secretariat notes that it lacks supporting documentation. The Party provided no information on the discharge permits, on the compliance program of the Tijuana State Public Services Commission (CESPT) or on the existence of the alleged administrative proceedings, nor any documentation substantiating the examples of effective enforcement actions given. Despite repeated references to [redacted], the response includes no reference to official communications, records or determinations, nor does it attach the programs allegedly issued under the applicable rules to give effect to NOM-001. Nor are there any identifying references (such as a date, file or communication number, or issuing authority). The response is not accompanied by inspection orders or records, enforcement actions, the imposition of corrective measures, a compliance

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40 Id. "Antecedentes y contexto fáctico", section D(iii), at 56; "Contexto histórico y estructural", section iii, at 62; "Refutación específica de los señalamientos del Secretariado en los documentos Det1 y Det2", section IV.L, at 135 and §§ 6, 109-110, 113, 132-134, 121, 236, 239, 307-309, 366-368 and 374.

41 Id. §§ 88-91, 104-106, 141, 197, 228-229, 233, 314-316 and 320-321.

42 Request by communication no. A24.27/SEM/26-002/45/REC issued by the SEM Unit to Semarnat's UCAJ (9 October 2026).

43 Response, §§ 207, 273-279 and 286-291.

44 Id. § 342. The Party states that the Secretariat "is not an environmental tribunal […]" and "is not an audit body," [translation] and immediately describes it as a "quasi-judicial technical body" [translation]. The response first denies the adjudicative character of the CEC Secretariat and then requires it to adopt procedural doctrines that operate between adjudicative bodies.

45 *See* CEC (2013), *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, Commission for Environmental Cooperation, at 2, at: <https://bit.ly/4yVGNmx> [Guidelines]; Council Resolution 00-09 (13 June 2000), at: <https://bit.ly/3V89kHG> (as regards recognition of the SEM process as a mechanism of transparency and public participation subject to review by the constituent bodies of the Commission); Council Resolution 01-06 (29 June 2001), at: <https://bit.ly/4iE00mP> (on the Council's obligation to state its reasons where it decides to instruct against the preparation of a factual record, and which upholds the principle of transparency, public participation, timeliness and efficiency of the SEM process); Council Resolution 12-06 (11 July 2012), at: <https://bit.ly/4jTWfMe> (as regards recognition of the SEM process as an "information-sharing mechanism established to promote public participation regarding the effective enforcement of environmental law"); CEC (2014), "CEC Ministerial Statement – 2014," Commission for Environmental Cooperation, Canada, 17 July 2014, at: <https://bit.ly/4z6vKXM> (on the Council's ongoing commitment to transparency and to the modernization of the submissions on enforcement matters process).

schedule, parameters, sampling, audits, or any documentation supporting the Party's statements as to the discharge of its obligations with respect to the effective enforcement of the environmental law in question.

16. The response demands of the Submitter "individualized and methodologically rigorous technical evidence,"[46] yet, in turn, Mexico's response does not provide rigorous and technical evidence of enforcement actions by Mexican authorities. The only identifiers of enforcement actions in the record were supplied by the Submitter,[47] not by the Party. The Secretariat also noted that the resolution of the relevant sanctioning proceeding took 25 months (from inspection on 19 July 2023 to the resolution on 29 August 2025), even though the response states that it was processed [redacted][48]

17. The Secretariat also noted that, with the exception of the glossary text, almost none of the passages placed in quotation marks as verbatim in the body of the response match the corresponding source literally (the USMCA/CUSMA, provisions of domestic law, or Secretariat determinations, as the case may be). Because Mexico's response contains provisions quoted in quotation marks and erroneously attributed, as well as quotations that are altered or that could not be verified with proper references, the Secretariat analysis of the arguments put forward by the Party was hampered (see Annex 1 to this notification). Consequently, certain formulations in the response made the Secretariat's analysis more difficult because, while they contain a seemingly valid reasoning, they do not rest on valid premises.[49]

18. For example, the Party states:

    a. that Article 24.27(3)(c) requires the Secretariat to consider "whether the submission identifies the environmental law," when in fact the provision refers to private remedies available under the Party's law;[50]

    b. that Article 24.27(3)(d) requires the Secretariat to assess prior communication of the matter to the authorities, when in truth the provision addresses whether the submission is not drawn exclusively from mass media reports,[51]

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[46] Response, §§ 80(ii), 86 and 103, at: <https://bit.ly/4s1oBpZ>.

[47] Conagua, unnumbered file (20 April 2026), in response to request for information no. 340009400052126 filed with the PNT, Comisión Nacional del Agua [File Conagua, response to request for information no. 340009400052126; Profepa, file no. PFPA/1.3/12C.6/0283/2026 (10 February 2026), annex, file PFPA/3.2/2C.27.1/0070-23, in response to request for information no. 34002440003926, Procuraduría Federal de Protección al Ambiente.

[48] Response, § 305.

[49] "It is impossible for the same thing to belong and not to belong to the same thing at the same time and in the same respect." [translation]. *See* the principle of non-contradiction in: Aristotle (2003), *Metafísica*, Book IV, chapter III, 1005b19-20, trans. T. Calvo Martínez, Gredos, Madrid, at 173, at: <https://bit.ly/4yGGLzB>.

[50] Response, § 181, at: <https://bit.ly/4s1oBpZ>.

[51] Id. § 187.

c. that a "de minimis rule"[52] (*sic*) exists in Article 24.27(3)(e), when in fact Article 24.27(3) has no subparagraph (e) (that is, it contains only subparagraphs *a* through *d*).

d. that Article 24.4(1) provides that "[n]o Party shall fail to effectively enforce its environmental laws…" without referring to "sustained or recurring course of action or inaction", and "affecting trade or investment between the Parties", although these form part of the instrument, and unfortunately quoting the provision incorrectly and incompletely;[53]

e. that quotes the definition of environmental law contained in Article 24.1 but removes by ellipsis the phrase "that is enforceable by action of the federal level of government," thereby omitting a logical clause that serves to define the concept,[54]

f. and that "Mexican Official Standards (NOMs) do not satisfy this definition [of environmental law]" adding that "the SCJN has consistently held that NOMs are administrative provisions of sub-regulatory rank [and not] 'regulation[s] promulgated pursuant to an Act of Congress' within the meaning of USMCA/CUSMA Article 24.1,"[55] but without providing any citation giving the registry number, chamber or *época* of that jurisprudential criterion, so that corroborating the Party's statements is made exceedingly difficult;

g. with respect to Article 24.27(3)(b), it refers to "matters whose advancement would contribute," when in fact that provision reads "matters about which *further study* would contribute."[56]

h. as to the enforcement of criminal law—whose punishable conduct is described precisely in the statutory text—the Party states that CPF Article 416 refers to a discharge "without a permit," when that provision literally reads "whoever unlawfully discharges."[57]

i. refers repeatedly to a [redacted] allegedly grounded in LAN Article 88 *bis* and Article 12 of its implementing regulation,[58] when in reality such program is provided for in the fourth transitory article of NOM-001 and the administrative guidelines issued on 5 December 2022, both publicly available;[59]

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[52] The "de minimis rule" designates an action or conduct which, by reason of its small magnitude, is not considered significant enough to be corrected or sanctioned. The USMCA/CUSMA contains a rule of this kind in the context of rules of origin—Article 4.12, which permits non-originating materials whose value does not exceed ten percent of the value of the good to be disregarded—but Articles 24.27 and 24.28 do not include it among the admissibility requirements and criteria.

[53] Response, § 161, at: <https://bit.ly/4s1oBpZ>.

[54] Id. § 182.

[55] Id. § 184.

[56] Id. § 198.

[57] Id. §§ 141, 233 and 319-320.

[58] Id. §§ 227, 258 and 298.

[59] Semarnat (2022), "Guidelines establishing general Administrative Provisions for the submission of compliance programs pursuant to the fourth transitional article of Official Mexican Standard NOM-001-

j. displays discrepancies as to the number of inspections carried out, referring in places to [redacted][60] and elsewhere to [redacted].[61]

19. The Secretariat also notes that the Party insists on the maxim of the literal meaning of the legal rule when regrettably its own verbatim quotations include inaccuracies.[62]

B. Admissibility of submission SEM-26-002

(i) The admissibility requirement under Article 24.27(2)(e)

20. Article 24.27(2)(e) establishes as an admissibility requirement for a submission that it indicate "whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any."[63] In this regard, Mexico maintains that the Submitter did not meet that requirement; that although it should and could have presented "a specific written communication addressed to the competent authority," it did not do so; and that submission SEM-26-002 does not exhibit "any document constituting such prior written communication to Conagua, Profepa, Semarnat or any other Mexican environmental authority with jurisdiction over the matter."[64] The Party further states that, while the Tijuana River problem is publicly known and various Mexican agencies have acted on it, this does not mean that Article 24.27(2)(e) has been satisfied, since "diffuse institutional knowledge is not equivalent to the specific written communication that the provision requires."[65]

21. The Secretariat has found on repeated occasions that written communication to the relevant authorities of the Party is intended to "ensure that the competent authorities are aware of the matter at issue"[66] "before a submission is filed with the Secretariat, and to give those authorities

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SEMARNAT-2021, which establishes the maximum permissible limits for pollutants in wastewater discharges into receiving water bodies that are national property." [*Lineamientos que establecen las Disposiciones administrativas de carácter general para la presentación de los programas para el cumplimiento establecidos en el artículo cuarto transitorio de la Norma Oficial Mexicana NOM-001-SEMARNAT-2021, Que establece los límites permisibles de contaminantes en las descargas de aguas residuales en cuerpos receptores propiedad de la nación*], Secretaría de Medio Ambiente y Recursos Naturales, publicados en el DOF el 5 de diciembre de 2022, en: <https://bit.ly/4BIrOz7> [Guidelines NOM-001].

60 Response, §§ 95 and 303, at: <https://bit.ly/4s1oBpZ>.

61 Id, §§ 231 and 374.

62 Id. §§ 157, 161, 162, 201, 205, 208, 234 and 321. The maxim of the literal meaning of the rule holds that the interpreter of the law may not alter, broaden or restrict the normative text where that text is unambiguous, thereby preventing any distortion of the original intent of the legislature. *See* J. Chaires Zaragoza (2026), "La interpretación literal de la Constitución, hacia un *référé législatif*," *Cuestiones Constitucionales. Revista Mexicana de Derecho Constitucional*, 27(54), at: <https://bit.ly/3VYvIn3>.

63 USMCA/CUSMA Article 24.27(2)(e) at: <https://bit.ly/420Lb6x> and <https://bit.ly/4itON6R>

64 Response, §§ 170, 172, 174, 175 and 180, at: <https://bit.ly/4s1oBpZ>.

65 Id. § 175.

66 SEM-06-003 and SEM-06-004 (*Ex Hacienda El Hospital II and III*), Notification to Council under NAAEC Article 15(1) (12 May 2008), at 18, at: <https://bit.ly/4rNpT6V> [Notification, *Ex Hacienda El Hospital II and III*].

the opportunity to take measures within the scope of their administrative powers."[67] Nothing in Article 24.27(2)(e) provides that it must be the Submitter, rather than a third person, who communicates the matter to the relevant authorities of the Party,[68] nor does it prescribe the form such communication must take.[69] The Secretariat has found that where it is shown that the situation being duly documented before the authorities and sufficiently substantiated by the submitter and that authorities are aware of the matter raised in the submission and have had the opportunity to remedy it, the requirement in Article 24.27(2)(e) is satisfied.[70]

22. It should further be noted that, according to the Party, "USMCA/CUSMA Article 24.27(3)(d) requires the Secretariat to assess whether the submission 'indicates that the matter has been communicated in the terms of Article 24.27(2)(e)' [*sic*],[71] when in fact the text quoted does not exist and subparagraph (d) of the provision refers—as already noted—to the consideration of "whether the submission is not drawn exclusively from mass media reports."

23. Without seeking to reopen the review of the submission's admissibility that Mexico demands, the analysis made by the Secretariat in its determination is transcribed below:[72]

> The Submitter explains that the Mexican government is well aware of the Tijuana wastewater crisis and that the relevant authorities recognize that the problem is "sustained, institutional, and documented through multiple formal channels"; that Conagua has publicly acknowledged that the coastal waters are "highly contaminated"; that the Memorandum of Understanding between Semarnat and the US Environmental Protection Agency recognized the sanitary and environmental situation in the Tijuana–San Diego border; that the Secretariat of Foreign Affairs (*Secretaría de Relaciones Exteriores*) acknowledged further cooperation is needed to resolve the water sanitation problem in the US-Mexico border; that the International Boundary and Water Commission (*Comisión*

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67 SEM-09-004 (*Quebec Mining*), Determination under NAAEC Article 14(1) (20 October 2009), at 8, at: <https://bit.ly/4bhsmQ8>; SEM-24-002 (*Cadereyta Refinery*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (6 June 2024), § 26, at: <https://bit.ly/4lvIkuJ>; SEM-24-001 (*Time Ceramics*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (5 June 2024), § 10, at: <https://bit.ly/4aTzgMs>.

68 *See* Notification, *Ex Hacienda El Hospital II and III*, at 18, at: <https://bit.ly/4rNpT6V>.

69 *See* SEM-26-007 (*Hydrocarbon Contamination in Salina Cruz*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (22 July 2026), § 46, at: <https://bit.ly/4epPLAX> [Determination, *Hydrocarbon Contamination in Salina Cruz*]. "In general, communications satisfying this requirement have been addressed and submitted to the relevant authorities in the form of a letter or email setting out the situation to which the submission refers" [translation]. What follows from this is a customary practice, not an exhaustive enumeration: letters and email are the usual means, but not the only ones, for communicating the matter in writing to the relevant authorities.

70 SEM-26-005 (*Vehicle Emissions Control*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (29 September 2026), § 20, at: <https://bit.ly/4ilOAUH>; SEM-97-007 (*Lago de Chapala*), Determination under NAAEC Article 15(1) (14 July 2000), at 4 (where the Secretariat underscores the coincidence of the matter raised), at: <https://bit.ly/4zzzsdv>; SEM-04-005 (*Coal-fired Power Plants*), Notification under NAAEC Article 15(1) (5 December 2005), at 16 (where the communications referred in the submission were broad in scope but they touched on the submitter assertions), at: <https://bit.ly/3WoRxMR>.

71 Response, § 187, at: <https://bit.ly/4s1oBpZ>.

72 First Determination, §§ 89-90, at: <https://bit.ly/4iVkV5Y>. Footnotes contained in the original text are omitted.

> *Internacional de Límites y Aguas, CILA*) planning documents have "diagnosed structural system failures and transboundary impacts" including the need to invest USD $728 million for adequate infrastructure. The Submitter contends that there is sufficient information evidencing that Mexican federal authorities are well aware of the wastewater and sanitation issues in Tijuana.
>
> The documents attached to the submission include several minutes by IBWC and CILA in which concept plans are adopted to address sanitation in the San Diego–Tijuana region and, at least since 1990, authorities have recognized that "it has not yet been possible to eliminate the uncontrolled flows of wastewater that continuously drain through Goats Canyon and the Tijuana River." The submission includes a Minute setting up a binational technical framework to study water quality in the Tijuana River watershed and adjacent canyons/drains, stating that there exist several matters demanding binational cooperation including "flood control, capture and beneficial use of surface and groundwater, sediment and solid waste deposition in the transboundary channels, water quality and the control of wastewater discharges, environmental protection and restoration" and a minute adopting and sequencing major rehabilitation/expansion projects to mitigate transboundary flows, including expanding the SBIWTP and related Mexican infrastructure, while noting concern on behalf of IBWC and CILA commissioners…

24. The documentation submitted by the Submitter predates the filing of the submission; it clearly sets out the matter to which it relates; it is attributable to the relevant authorities of the Party, and it manifestly reflects the situation regarding wastewater treatment in Tijuana. The Secretariat considers that this is not a mere presumption but proof that the competent authorities of the Government of Mexico are fully aware of the matter.

25. The Secretariat reiterates that the submission satisfies the requirement set out in Article 24.27(2)(e).

(ii) The criterion for requesting a response under Article 24.27(3)(c)

26. The Party states that, before turning to the SEM process, the Submitter had taken various formal steps before the judicial authorities of the United States, including—among others—the filing of complaints; the use of administrative procedures; actions before federal courts; and the conclusion of a settlement agreement.[73] On that basis, the Party maintains that this "is exactly what Article 24.27(2)(e) of the USMCA/CUSMA requires as a prior communication" (*sic*) with the competent authorities in Mexico regarding the matter raised, comparable to that undertaken in the United States.[74]

27. The Secretariat notes that the response refers to the USMCA/CUSMA provision requiring written communication to the relevant authorities (Article 24.27(2)(e)) and not to the article concerning the pursuit of private remedies (Article 24.27(3)(c)).[75] This distinction matters because satisfying the criterion in Article 24.27(3)(c)—*private remedies available under the Party's law*—does not automatically satisfy the requirement in Article 24.27(2)(e)—*communication of the matter to the relevant authorities*—a difference the Secretariat has

[73] Response, § 192, at: <https://bit.ly/4s1oBpZ>.

[74] Id. § 193.

[75] Id.

already addressed in earlier determinations.[76] The argument sketched out in the response here is that, by failing to take steps equivalent to those taken in the United States—*pursue of private remedies*—the submission does not satisfy the requirement of "prior communication" to the relevant authorities.[77]

28. In another section of its response, the Party argues that "the available Mexican domestic remedies have not been exhausted."[78] It maintains that neither the citizen complaint (*denuncia popular*) mechanisms before Conagua and Profepa that in case of the latter would give rise to inspection visits and administrative files.[79] The Party also concedes that "[t]he argument that the exhaustion of domestic remedies is not an express requirement of Article 24.27(3) is formally correct but functionally irrelevant" (*sic*).[80] The Secretariat notes that the Party is not consistent in its arguments: on the one hand it argues that it is irrelevant to consider whether remedies were exhausted, yet earlier it asserts that they "have not been exhausted"[81] to indicate later that "a minimum of prior interaction with the national authorities" is presupposed.[82]

29. Without seeking to reopen the analysis of this requirement, it is recalled that the Secretariat has stated that the pursuit of private remedies has been interpreted broadly and that this criterion may be satisfied by presenting information relating to a complaint or by referring to a complaint filed by another person, organization or entity.[83] The Secretariat has determined in earlier decisions that this criterion is assessed against a standard of reasonableness, bearing in mind that in some cases there are obstacles to resorting to such mechanisms.[84]

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[76] *See* Determination, *Hydrocarbon Contamination in Salina Cruz*, §§ 46-49, at: <https://bit.ly/4epPLAX>; SEM-26-004 (*Wetlands in Chalacatepec*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (8 July 2026), §§ 40-46, at: <https://bit.ly/3TWJ8zi>.

[77] Response, § 193, at: <https://bit.ly/4s1oBpZ>.

[78] Id. § 189.

[79] Id.

[80] Id. § 190.

[81] Id. § 189.

[82] Id. § 190.

[83] *See* SEM-21-001 (*Fairview Terminal*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (27 April 2021), §§ 30-31, at: <https://bit.ly/4bv5dvj> (in which it was determined that the filing of a complaint with the Canadian Transportation Agency satisfied the criterion in USMCA/CUSMA Article 24.27(3)(c)).

[84] *See* SEM-18-001 (*Transboundary Agricultural Burning*), Determination under NAAEC Articles 14(1) and (2) (19 February 2018), §§ 27-28 at: <https://bit.ly/48G9wAY> ("In similar situations, the Secretariat has considered if reasonable actions were taken prior to file a submission. It has also considered that in some cases, the lack of resources may limit a submitter's ability to undertake private remedies before filing a submission. The Secretariat considers that a barrier to a private remedy may include economic and social factors. [footnotes contained in the original text are omitted]"); SEM-23-002 (*Avocado Production in Michoacán*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (6 March 2023), §§ 74-77, at: <https://bit.ly/4yWNW61> (in which it was determined that the submission satisfied Article 24.27(3)(c) since the Submitter provided a reasonable explanation of the impossibility of pursuing remedies in respect of the matter under Mexican law); SEM-23-007 (*Vessel Pollution in Pacific Canada*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (4 December 2023), § 49, at: <https://bit.ly/4trhNSP> (in which it was determined that a letter sent to the ministry was not sufficient to satisfy the criterion that private remedies have been pursued).

30. As the Secretariat listed in its Second Determination:[85]

> …The documents submitted comprise: The documents submitted comprise (1) a citizen complaint (*denuncia popular*) filed by environmental organizations in Mexico before [Conagua]; (2) Conagua's response to the citizen complaint; (3) a response from [Profepa] in relation to the citizen complaint; (4) an acknowledgement of receipt following an access to information request directed at the Baja California State Environmental Protection Agency (*Procuraduría de Protección al Ambiente para el Estado de Baja California* – Propae); (5) Propae's response to the information request; (6) an access to information request directed at Profepa; (7) Profepa's response to the information request; (8) an access to information request directed at Conagua; and (9) Conagua's response to the information request

Bearing in mind, further, that:[86]

> The citizen complaint alleges that the San Antonio de los Buenos wastewater treatment plant is exceeding its capacity, resulting in infrastructure failures and in the discharge of untreated sewage into the ocean. According to the Submitter, this citizen complaint is "the formal invocation of a remedy available to private persons. It is a written citizen complaint submitted to competent public authorities in Mexico requesting official action in respect of contamination attributed to wastewater discharges." The Submitter adds that "the 2019 complaint chain […] shows that a complaint-based remedy available to private persons was invoked before Mexican authorities, and that it generated official written acts by the competent federal authorities."

31. The Secretariat's Second Determination likewise records 21 complaints filed between 2024 and 2025 concerning wastewater disposal, inspections, administrative proceedings and remedial measures arising from such complaints.[87]

32. The Secretariat reiterates that submission SEM-26-002 (*Tijuana Wastewater Management*) satisfies the requirement set out in Article 24.27(3)(c).

(iii) NOM-001-SEMARNAT-2021 is environmental law within the meaning of USMCA/CUSMA Article 24.1

33. The Party maintains that the submission invokes NOM-001 as an instrument whose effective enforcement is said to have been omitted, but argues that that NOM does not constitute "environmental law" within the meaning of USMCA/CUSMA Article 24.1, because Mexican Official Standards (NOMs)—issued under the Quality Infrastructure Act—have a different constitutional and statutory basis.[88]

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[85] Second Determination, § 13, at: <https://bit.ly/47KsXIv>. Footnotes contained in the original text are omitted.
[86] Id. § 14. Footnotes contained in the original text are omitted.
[87] Id. § 17. Footnotes contained in the original text are omitted.
[88] Response, §§ 184-185, at: <https://bit.ly/4s1oBpZ>.

34. In this regard, the Secretariat considers that NOM-001 satisfies two elements of the definition in USMCA/CUSMA Article 24.1: i) being issued pursuant to an Act of Congress, and ii) being enforceable by action of the federal level of government.[89]

35. The Secretariat determined that NOM-001 qualifies as environmental law within the meaning of USMCA/CUSMA Article 24.1 for those same reasons: i) it derives from federal statutes, since its enabling source—as the Party rightly notes—is the Quality Infrastructure Act (*Ley de Infraestructura de la Calidad*), together with LGEEPA Articles 117, 118 and 123 and LAN Article 88 *bis*, all of them federal statutes enacted by Congress,[90] and ii) it entrusts oversight of its application to Conagua and Profepa, federal-level authorities responsible for enforcing environmental law.

36. In addition to the foregoing, NOM-001 implements provisions of the LGEEPA and the LAN by establishing technical parameters applicable to wastewater discharges, and its object is to establish "the permissible limits of pollutants in wastewater discharges into receiving bodies owned by the Nation,"[91] so that it falls squarely within the purpose of protecting the environment through the prevention, reduction and control of discharges of environmental pollutants, as provided in subparagraph (a) of Article 24.1 of the Agreement.

37. The Party also maintains that a NOM does not fall within the concepts of an "statute" or a "regulation" under USMCA/CUSMA Article 24.1 because under the Mexican legal system, a regulation is the means by which the Federal Executive exercises its regulatory authority under Article 89, paragraph I, of the Constitution, "providing in the administrative sphere for its exact observance."[92]

38. In this regard, it cannot be overlooked that the text of the Treaty encompasses a "statute or regulation of a Party, or provisions thereof" "including any" that implements a Party's obligations under a multilateral environmental agreement. The Secretariat considers that the text of the Agreement recognizes the existence of provisions comparable to regulations implementing a statute.

39. The foregoing is important because LAN Article 88 *bis*, paragraph II, of the LAN requires anyone discharging wastewater into federal water bodies to comply with the applicable official Mexican standards and empowers Conagua to grant the corresponding permits on the basis of those NOMs. In other words, the LAN operates through referral to provisions establishing parameters and maximum permissible limits for discharges—in this case, NOM-001.

40. Likewise, the regulatory instrument invoked by the Party in a confidential section of its response is based precisely on NOM-001—not in a statute.[93] Also, on a central aspect of the response, the Party relies on the regulatory content of the NOM to substantiate effective

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[89] First Determination, § 73, at: <https://bit.ly/4iVkV5Y>.

[90] SEM-22-001 (*Pollution in Playa Hermosa*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (1 July 2022), § 61, at: <https://bit.ly/4zqcQMp>.

[91] Mexican Official Standard NOM-001-SEMARNAT-2021, *Que establece los límites permisibles de contaminantes en las descargas de aguas residuales en cuerpos receptores propiedad de la nación*, published in the DOF on 11 March 2022, at: <https://bit.ly/4jmnTBk> [NOM-001].

[92] Response § 183, at: <https://bit.ly/4s1oBpZ>.

[93] Id. §§ 88, 228-229, 258, and 297-299.

enforcement actions. The regulatory character of NOM-001 is confirmed by the LAN's referral to the applicable parameters, non-compliance with which may be sanctioned under Article 119, paragraph I of this law. In short, treating NOM-001 as an instrument disconnected from the LAN on the grounds that it is not a regulation would imply that, because the LAN does not establish specific compliance parameters, the maximum permissible limits for wastewater discharges could not be enforced either.

41. On the other hand, NOM-001 is not the only Mexican Official Standard that has qualified as environmental law for the purposes of the USMCA/CUSMA and that the Secretariat has examined within the SEM process. In every case, the statute that the NOM in question implements, its scope of application and the authority responsible for its enforcement have been analyzed.[94] Nor is it overlooked that the members of the Council have authorized the preparation of a factual record relating to the enforcement of this regulatory category.[95]

42. To exclude NOM-001 without considering its normative function in relation to the environmental statutes it implements would mean disregarding the parameters by which compliance with the obligations established to effectively control water pollution is determined. In this framework, the principle of *effet utile* (effectiveness) requires that, among the possible interpretations, preference be given to the one that allows the provision to produce its effects fully and to achieve its purpose,[96] namely: the protection of the environment or the prevention of a danger to human life or health.[97]

43. NOM-001 gives concrete form to that purpose by establishing the parameters that make it possible to control discharges of pollutants into waters under national jurisdiction and to give effect to the obligations provided for in federal legislation. To exclude it from the concept of environmental law would deprive of practical effect the very standards by which those obligations are given concrete form and verified, even though the statutory provisions that serve as their foundation form part of the submission and have been found to be environmental law.

C. The nature of the SEM process

(i) Secretariat determinations are an admissibility review of a submission

44. The Secretariat wishes to place on record various assertions made by the Party, since sections IV.A, IV.B and IV.C of the response open with the formula "[T]he Secretariat's assertion…," followed by a purported assertion by the Secretariat as to alleged failings of the Government of Mexico.[98] In the same vein, the Party reproaches the Secretariat for assessing environmental

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[94] *See* SEM-20-001 (*Loggerhead Turtle*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (8 February 2021), § 38, at: <https://bit.ly/4AkqVez>, regarding NOM-059-SEMARNAT-2010; SEM-24-002 (*Cadereyta Refinery*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (6 March 2024), §§ 28-29, at: <https://bit.ly/4zxNPPd>, regarding NOM-148-SEMARNAT-2006 and NOM-022-SSA1-2019; SEM-26-005 (*Vehicle Emissions Control*), Determination under USMCA/CUSMA Articles 24.27(2) and (3) (8 July 2026), § 44, at: <https://bit.ly/3VOOYmP>, regarding NOM-041-SEMARNAT-2015.

[95] SEM-11-002 (*Sumidero Canyon II*), Council Resolution 14-05 (10 June 2014), at: <https://bit.ly/4Apj2oh>.

[96] Vienna Convention on the Law of Treaties, adopted in the city of Vienna, Austria, on 23 May 1969, Article 31, at: <https://bit.ly/4zf99bD> [Vienna Convention].

[97] USMCA/CUSMA, Article 24.1, at: at: <https://bit.ly/420Lb6x> and <https://bit.ly/4itON6R>.

[98] Response, §§ 294, 303 and 306, at: <https://bit.ly/4s1oBpZ>.

policy in Mexico;[99] for suggesting or "insinuating" in its determinations the allegedly "inadequate" institutional structure for addressing the problem raised;[100] for conducting an "incomplete and partial" analysis of the submission;[101] and for having "once again extended" the scope of the Submitter's assertions.[102]

45. The Secretariat wishes to emphasize that it neither makes nor has made such statements or arguments in its determinations with respect to submission SEM-26-002. In our view it is important that the Party offers citation, transcription or excerpt from the documents issued by the Secretariat when asserting that such statements come from this body.[103] It is recalled that the determinations of 25 February and 28 May 2026 deal strictly with admissibility provisions applicable to the submission under USMCA/CUSMA Chapter 24 and, in any event, summarize the Submitter's assertions without formulating conclusions or opinions on the Party's conduct and without being framed as an endorsement or ratification of a submitter's assertions; nor do they make any value judgment or insinuation of any kind as to the adequacy of environmental institutions, nor do they extend or elaborate beyond the assertions in the submission. The Secretariat abides by principles of collaboration and transparency that permeates the ECA and USMCA/CUSMA.

(ii) The SEM process is not adversarial, nor is the CEC a judicial forum

46. The response appears to present the SEM process as a dispute settlement forum and the Secretariat as the body charged with settling disputes as demonstrated in the Party's arguments concerning the choice of a convenient forum (*forum shopping*),[104] *cosa juzgada*,[105] abuse of process[106] and *lis pendens*.[107] These arguments are not aligned with the non-adjudicative nature of the process, which is far removed from a procedure for settling disputes between opposing parties.

47. Despite this, the response adopts opposing characterizations, stating that the Secretariat "is not an environmental tribunal with the power to order corrective measures"[108] and that it "is not a body that audits institutional management,"[109] or else that it is a kind of "quasi-judicial technical body"[110] or that the Secretariat determinations constitute "binding precedents" and

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99 Id. § 341.

100 Id. § 327.

101 Id. § 333.

102 Id. §§ 13 and 73.

103 On a reading of the response, it may be observed that it contains only one footnote—at paragraph 327—and not a single verbatim quotation of the Secretariat's determinations.

104 Response, § 61.

105 Id. § 287.

106 Id. §§ 287 and 372 (Third).

107 Id. § 287.

108 Response, § 342, at: <https://bit.ly/4s1oBpZ>.

109 Id.

110 Id.

have "no *res judicata* authority"[111] but then states that these constitute a "definitive argumentative mirror."[112] The Secretariat has clarified that:

> At a minimum, references to previous determinations will help ensure that the Secretariat applies the provisions of the NAAEC consistently. Such an approach, contextual to a treaty, is suggested by the general canons of statutory interpretation as well as by Articles 31 and 32 of the Vienna Convention on the Law of Treaties.[113]

48. As to the notion of the SEM process as a judicial forum, it must be borne in mind that Article 24.27(3)(c) does not require the exhaustion of domestic remedies before a submission is filed,[114] but only the pursuit of private remedies available under domestic law.[115] This follows from the nature of the process, which "was established to foster transparency and public participation in order to promote understanding of environmental law and its enforcement in North America."[116] Its design is intended to "encourage the dissemination of information, with a view to enabling members of the public to reach their own conclusions regarding the effective enforcement of that law."[117]

49. That is the reason the SEM process is not conceived as an adversarial procedure or as a mechanism for settling disputes. Consequently, characterizing it as an instrument of first or last instance[118] is a reading that misapprehends the nature of the process and may generate confusion in the analysis of the requirements and criteria established in Articles 24.27(2) and 24.27(3), particularly as regards the criterion in Article 24.27(3)(c) concerning the pursuit of domestic remedies. The Council—with Mexico's participation and concurrence—has emphasized that "the SEM process is not a mechanism for settling disputes, nor can it result in a Party being required to adopt specific corrective measures,"[119] since it is a "non-adversarial" procedure.[120]

50. This point has also been addressed in earlier Secretariat determinations, in which it has emphasized that the SEM process differs—in purpose and in nature—from forums of judicial review. Given its non-adversarial character, it is not consistent to apply to the SEM process adjudicative categories such as "convenient forum," "cosa juzgada," "lis pendens" or "abuse of process," as invoked in the response.

51. Lastly, the Party makes a "reservation of rights" to "submit additional information at any stage of the procedure" and to "object to any determination of the Council."[121] In this regard, the

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[111] Id. § 207 (Fourth).

[112] Id. § 207 (Sixth).

[113] *See* Recommendation, *BC Hydro*, footnote 9, at: <https://bit.ly/3GkdZfg>.

[114] Response, §§ 4, 189 and 190, at: <https://bit.ly/4s1oBpZ>.

[115] *See* USMCA/CUSMA, Article 24.27(3)(c), at: <https://bit.ly/420Lb6x> and <https://bit.ly/4itON6R>.

[116] Guidelines, at 2, at: <https://bit.ly/4yVGNmx>.

[117] Id.

[118] Response, § 190, at: <https://bit.ly/4s1oBpZ> ("… the SEM process is an instrument of last instance, not of first.") [translation].

[119] Guidelines, at 2.

[120] Id.

[121] Response, § 380, at: <https://bit.ly/4s1oBpZ>.

Secretariat has stated, with respect to submitters —including the SEM-26-002 Submitter—, that they may not add documents after a submission has been filed—as they have attempted to do on various occasions—since that would alter the process and would not allow the review to respect each phase of the process.[122] In this regard, the Secretariat would like to emphasize that the response is analyzed solely on the basis of the documents filed by Mexico on 9 September 2026.

52. Likewise, it is important to recall that the Party is a member of the Council and thus a participant in its deliberations. Objecting to the Council's decisions, as it proposes to do, would mean objecting to resolutions in which Mexico has taken part.

(iii) The SEM process does not examine investment and trade matters between the Parties

53. The Party maintains in its response that submission SEM-26-002 is inadmissible because it does not establish the nexus between the alleged failure to effectively enforce environmental law and trade or investment between the Parties, a requirement that it considers structural to the application of the provisions of USMCA/CUSMA Chapter 24.[123] Relying on Article 24.4(1) and *footnote 4*, the Party argues that the nexus required by the Agreement can arise only in two situations: i) where persons or industries involved in trade are concerned, or ii) investment or cross-border economic competition, neither of which is identified in the submission.[124] The Party further invokes *footnote 5* to Article 24.4(1) and the distinction between the SEM process and dispute settlement before a panel. The Party maintains that, whereas before a panel the trade nexus is presumed, in the SEM process it must be established by the submitter. Finally, the Party links this requirement to Article 24.27(3)(b) (*the submission advances the goals of the Agreement*), arguing that, by failing to demonstrate a trade nexus, the submission also fails to establish that it advances the goals of Chapter 24.[125]

54. The Secretariat has already analyzed this point raised by Mexico.[126] Without seeking to repeat that analysis, a synopsis of the arguments previously presented is set out below, and the new arguments made in the response are addressed.

55. After three decades of operation of the SEM process, Mexico's stated position in this particular response is that SEM must now take the trade dimension into account—although this was

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[122] CEC SEM Unit, *Re: Determinación artículo 24.27(2) y (3)-petición SEM-26-004 (Humedales en Chalacatepec)* (email, 28 September 2026), stating that "…el Secretariado no tiene la facultad de tomar en consideración información adicional presentada con posterioridad"; CEC SEM Unit, *Re: Soumission d´informations complémentaires –SEM-26-003* (email, 14 September 2026), stating: "*Le Secrétariat n´est plus habilité à prendre en considération des éléments d´information complémentaires soumis par la suite*."; CEC SEM Unit, *Re: se anexan observaciones* (email, 29 September 2023), stating that "no existen parámetros dentro del proceso SEM establecido conforme al capítulo 24 del T-MEC para considerarla en esta etapa del mecanismo".

[123] Response, §§ 160-169, at: <https://bit.ly/4s1oBpZ>.

[124] Id.

[125] Id.

[126] *See* SEM-25-001 (*Nazas River Lower Basin*), Determination under USMCA/CUSMA Article 24.28(1) (10 April 2026), §§ 16-36, at: <https://bit.ly/4iIdVIi> [Determination, *Nazas River Lower Basin*].

analyzed and set aside years ago.[127] The Party now advances the idea that, being regulated in the USMCA/CUSMA, the admissibility review must necessarily include an assessment of the link to trade and foreign investment.[128] Without offering precise parameters for assessing this new admissibility criterion, the Party cites USMCA/CUSMA Article 24.4(1) and insists that trade matters are exhaustive in that they fall within the SEM admissibility requirements. In this respect, it must be noted that the textual quotations of the instruments invoked by the Party were found inaccurate or incomplete.

56. The Secretariat has insisted that trade or investment matters are not relevant to promoting the effective enforcement of environmental law through the SEM process, and that the settlement of trade or foreign investment disputes does not fall within its functions, since there are other avenues—these indeed enforceable between the Parties—within the Agreement, which it is not for the Secretariat to hear and decide.[129] The Secretariat recalls that the admissibility requirements are precise and are explicitly listed in USMCA/CUSMA Article 24.27. A simple reading of them confirms that the requirements the Party seeks to add are not identified in the text of the Agreement.[130] The Secretariat further recalls that there are tiered mechanisms for the settlement of disputes between the Parties—that is, between the States Parties—namely: Article 24.29 (*Environmental Consultations*), Article 24.30 (*Senior Representative Consultations*), Article 24.31 (*Ministerial Consultations*) and Article 24.32 (*Dispute Resolution*), whose corollary is found in Article 31.6 (*Establishment of a Panel*).[131]

57. Raising the existence of a trade or investment dimension as an admissibility criterion belongs in State-to-State forums, in which enforceable rulings between the Parties—of the kind the Government of Mexico could avail itself of—may be obtained.[132] As has already been made clear: the CEC Secretariat is not an arbitrator and SEM is not a forum, and it should therefore not arrogate to itself the use of such criteria, which belong to dispute settlement mechanisms.

58. The Party further insists that there was an express modification[133] in the transition from the NAAEC to the USMCA/CUSMA. However, the Party does not identify what the change in the text of the new instrument was. The admissibility requirements of NAAEC Articles 14(1) and 14(2) and those of USMCA/CUSMA Articles 24.27(2) and (3) are—substantially—the same,

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[127] Id. § 22.

[128] Response, §§ 160-169.

[129] *See* Determination, *Nazas River Lower Basin*, at 2; SEM-21-002 (*Vaquita Porpoise*), Notification under USMCA/CUSMA Article 24.28(1) (1 April 2022), footnote 79, at 12, at: <https://bit.ly/4enZjN0>. ("The Parties' commitment to implement the SEM process in NAAEC Articles 14 and 15 —and now under USMCA/CUSMA— is different from the obligation to effectively enforce environmental law in NAAEC Article 5(1). This obligation was replicated in USMCA/CUSMA Article 24.4(1). Compliance with NAAEC Article 5(1) and USMCA/CUSMA Article 24.4(1) obligations are enforceable among the Parties d through compliance mechanisms set out in the relevant sections of each agreement. For NAAEC, this is Part Five, 'Consultation and Resolution of Disputes;' of the USMCA/CUSMA, it is Article 24.29: 'Environment Consultations' (*et seq.*)").

[130] *See* USMCA/CUSMA, Article 24.27, at: <https://bit.ly/420Lb6x> and <https://bit.ly/4itON6R>.

[131] Id. Articles 24.29, 24.30, 24.31, 24.32 and 31.6; SEM-23-006 (*Illegal Logging in Jalisco*), Notification under USMCA/CUSMA Article 24.28(1) (16 October 2023), § 28, at: <https://bit.ly/4Ap3Ebw>.

[132] *See* Determination, *Nazas River Lower Basin*, § 28, at: <https://bit.ly/4iIdVIi>.

[133] Response, § 207.

for there is conceptual and interpretive continuity between the two regimes, and neither identifies the trade or foreign investment element as an admissibility requirement or criterion. It is reasonable to think that, if "the USMCA/CUSMA expressly modified the analogous provisions,"[134] the Parties would have inserted the clause of Article 24.4(1) directly into Article 24.27.

(iv) Acquiescence

59. As has been noted,[135] from 1994 to date (9 November 2026) the Parties have filed a total of 79 responses, 15 of them since the entry into force of the USMCA/CUSMA. The "silence" as to the new rule Mexico now seeks to adopt ran from 1994 to February 2026, across 48 of Mexico's 49 responses and 36 Council resolutions negotiated with the Party's direct involvement. The Secretariat has a record of the Party adopting its new interpretive position in a response to a submission on 9 February 2026.[136] Until then, its inaction in the face of a legal situation amounted to implied consent where there was a reasonable expectation of express objection.[137] Mexico's prolonged silence evidences acceptance of an existing practice and international order.

60. Additionally, the Party has had numerous opportunities to signal a change in its position on the new interpretive standard, [redacted] for example:

[redacted]

61. The Party denies that acquiescence operates but then invokes Article 31(3) of the Vienna Convention as the pertinent mechanism.[140] In this regard, it should be noted that it is precisely in that article which preserves the interpretive effect of subsequent agreement and subsequent practice. The Party also states that acquiescence "requires *opinio juris*" by means of an instrument expressing disagreement or objection, and then states, on the contrary that *opinio juris* is "the conviction that the abstention is legally obligatory."[141] An institution constituted by the absence of objection cannot require an objection as one of its elements.

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[134] Id. § 207 (Third).

[135] Id. § 29.

[136] *See* SEM-25-001 (*Nazas River Lower Basin*), Response of Mexico under USMCA/CUSMA Article 24.27(4) (9 February 2026), §§ 10-29, at: <https://bit.ly/3XdBkdv>.

[137] N. S. Marques Antunes (2006), "Acquiescence", Oxford Public International Law, at: <https://bit.ly/4b3oMJb>.

[redacted]

[139] *See* Determination, *Nazas River Lower Basin*, § 34, at: <https://bit.ly/4iIdVIi>.

[140] Response, § 207.

[141] Id. § 207 (first).

62. The response also maintains that acquiescence operates only between States and is not relevant before an international body; that, in any event, the Secretariat's interpretations have not been adopted by the Parties; that the determinations are not binding precedent; and that "the margin of appreciation [of the Secretariat] in assessing the factors in Article 24.27(3)" cannot redefine the framework for applying Article 24.4(1), which "sets the threshold of the trade nexus."[142] Here the response mistakes the subject, for it is the acts of the Parties, and not the actions of the Secretariat, that have given rise to acquiescence. Acceptance of the existing international order comes not from the Secretariat but from the Parties, through their conduct. That is why the determinations record the Parties' responses and the Council resolutions issued since 1996—*Cozumel* under the NAAEC—and since 2021—*Loggerhead Turtle* under the USMCA/CUSMA.

63. The Party is further convinced that acquiescence requires *opinio juris* in order to be effective,[143] but that element belongs to international custom and not to acquiescence.[144] Acquiescence is silence where action was called for, not a demonstrated legal conviction that acceptance may operate.[145]

64. The Party also notes that the USMCA/CUSMA provides for interpretations by the Free Trade Commission under Article 31(3)**(b)** of the Vienna Convention and that the Parties did not activate them; it maintains that had the Parties wished to enshrine the broad reading, they would have used that avenue.

65. Here it is noted first that there is an error as to the provision, since Article 31(3)(**b**) concerns **subsequent practice**.[146] In any event, **subsequent agreement** between the parties regarding interpretation—which is what an interpretation by the Free Trade Commission would produce going forward—is in fact found in Article 31(3)(**a**) of the Vienna Convention. The response thus attributes to subparagraph (b) the content of subparagraph (a), which gives rise to a further logical failure: the misquoted subparagraph supports **subsequent practice**, borne out by a total of 32 years of operation of the SEM process and at least 5 years since the USMCA/CUSMA entered into force. In this instance the response invokes against the Secretariat the very rule that supports the Secretariat.

66. The response does not address the central element: what is the subsequent practice in the implementation of the Treaty which establishes the agreement of the Parties regarding its interpretation under **Article 31(3)(b)** of the Vienna Convention? The sudden application of this

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[142] Id. § 207.

[143] A landmark case relying on *opinio juris* is the case concerning military and paramilitary activities in Nicaragua v. United States in 1986, whose judgment set an important precedent by showing how *opinio juris* may be used to identify binding humanitarian norms, even where in practice a State alleges violations or contradictions; *See* E. A. Santos (n.d.), "Nicaragua v United States (1986): ICJ Case Summary," Diplomacy and Law, at: <https://bit.ly/4iiqb2f>. ("The Court did not require absolute conformity between actual State conduct and the asserted customary rule. Practice inconsistent with a rule may sometimes be treated by States as a breach of the rule rather than as evidence that the rule has ceased to exist.").

[144] UN (n.d.), "Article 38(1)(b)," Chapter II—Competence of the Court, Statute of the International Court of Justice," United Nations, at: <https://bit.ly/4Aonkw8>.

[145] ICJ (2026), "Temple of Preah Vihear (Cambodia v. Thailand)," International Court of Justice, at: <https://www.icj-cij.org/case/45>

[146] *See* Vienna Convention, Article 31(3)(b), at: <https://bit.ly/4zf99bD>.

approach, in the absence of interpretive measures agreed between the Parties, would disturb the order and predictability of the operation of SEM.

(v) Is the trade nexus a structural condition of the whole of Chapter 24?

67. The Party maintains that the trade nexus is the "structural condition that delimits the field of application of the whole of Chapter 24,"[147] since Article 24.4(1) establishes noncompliance in the enforcement of environmental laws through the phrase "in a manner affecting trade or investment."[148] The Party states that *footnote 4* requires that there be a person or an industry that the submission does not identify,[149] while *footnote 5* presumes the nexus "for purposes of dispute settlement" and notes that outside that sphere the presumption does not operate.[150] It follows, the Party concludes, that for SEM the trade nexus must be established and is not subject to a presumption.[151] The Secretariat analyzes this argument and addresses it point by point below.

68. First, an error is noted in the quotation of the text of *footnote 4* to Article 24.4(1), since the version in the response—whose source is unknown—introduces exhaustive elements, such as a requirement of harm, and moreover converts the definition of a course of conduct into a requirement for identifying an entity affected by a Party's course of action or inaction.[152]

69. *Footnote 5* governs proof of the trade nexus only where that nexus operates, and that is why it names i) the procedure (dispute settlement) and ii) a body (the arbitration panel). Neither a reading of *footnote 5* nor any part of the USMCA/CUSMA confers on SEM the status of a dispute settlement mechanism, nor is the Secretariat conceived of as an arbitration panel.

70. Moreover, if the trade nexus were "the structural condition that delimits the field of application of the whole of Chapter 24," *footnote 5* would be rendered inoperative. Establishing that requirement would entail defining who bears the burden of proof, what standard applies and which body assesses it. *Footnote 5* specifies these three elements, but only for dispute settlement. If the nexus were required throughout Chapter 24, the Agreement would have provided how it is to be established in the various procedures; yet it regulates this only for the one in which it must indeed be proven. The SEM process contains no stages for the offering, taking, rebuttal or assessment of evidence, and applying the nexus to the submissions process would require establishing an evidentiary regime that the Agreement does not entrust to the Secretariat.

71. In sum, Article 24.4(1) and its *footnotes 3, 4* and *5* constitute a single provision, and *footnote 5* expressly designates the **procedure** and the **body** that apply it: "for purposes of **dispute settlement**, a **panel** shall presume…" The response's argument rests on a presumption that operates in a procedure for settling State-to-State differences, however the Party extracts it and extends it not only to SEM process but to the whole of Chapter 24.

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[147] Response, § 160, at: <https://bit.ly/4s1oBpZ>.

[148] Id. §§ 161-162.

[149] Id. §§ 163 and 165.

[150] Id. §§ 166-167.

[151] Id. §§ 166-167.

[152] Id. § 163.

72. The reading proposed by the Party would result in presuming the existence of a nexus in a State-to-State dispute while placing the burden of proof on a submitter in a non-binding process, thereby imposing a rigorous burden of proof in the transparency procedure and an exemption from proof in the binding one. The asymmetry this reading produces is a change of a magnitude that the Secretariat cannot adopt.

73. For the foregoing reasons, the Party would need, in any case, to present its arguments for adopting the criteria and requirements it proposes in its response, before the members of the CEC Council or, alternatively, within the framework of the negotiations of the Treaty.

D. The assertions in submission SEM-26-002 in light of the response

74. The Secretariat considers whether, in light of the Party response, the preparation of a factual record is warranted with respect to the alleged absence of effective environmental law enforcement actions in relation to the following assertions in the submission:

i. Wastewater discharges allegedly exceeding the maximum permissible limits;

ii. The alleged failure to inspect and monitor;

iii. The alleged failure to apply safety measures and sanctions;

iv. The alleged failure to revoke or cancel discharge permits;

v. The alleged failure to intervene and assume operation of the system;

vi. The alleged failure to impose monetary penalties;

vii. The alleged failure to require repair, remediation and restoration;

viii. The alleged failure to give notice of and report spills and chronic flows;

ix. The alleged failure to refer the matter to the public prosecutor and to bring criminal proceedings;

x. The alleged failure to give effect to the constitutional guarantee of a healthy environment;

75. In general terms, the Secretariat found that the record contains no supporting documentation accompanying the response in respect of the enforcement actions said to be under way. In other instances, the Submitter's assertions are not answered, or partial or one-sided information is given on matters of enforcement. In accordance with USMCA/CUSMA Article 24.28(1), a detailed analysis is set out below of the Submitter's assertions, the environmental law at issue, the Party response and the Secretariat's recommendation in respect of each assertion. It is noted that the Party's designation of information and the absence of documentation in the response not only complicated the Secretariat's analysis but runs counter to the transparency aims of the SEM process, which the Parties have recognized.[153]

76. The Secretariat notes that the public version of the response redacts categories of information that are or should be made public, including: (i) CESPT's wastewater discharge titles and permits, registered in the Public Registry of Water Rights (*Registro Público de Derechos de*

[153] Guidelines, Introduction, at 2-3, at: <https://bit.ly/4yVGNmx> (the SEM process "was established to promote transparency and public participation… to promote information-sharing," and is a mechanism that " supports governmental transparency").

Agua, REPDA) and open to public consultation;[154] (ii) a program under NOM-001, whose existence, scope and progress have been publicly referred to by third parties in the applicable guidelines;[155] (iii) the amounts invested by the Party and the interinstitutional coordination instruments;[156] and (iv) information on Profepa's enforcement actions, including so-called "assisted compliance," which the Party itself invokes as the basis for its conduct. The Secretariat nevertheless takes no position on the lawfulness of each designation under Mexican domestic law. It observes that, when a Party asserts that it has effectively enforced its environmental law, the Party should provide documentary information.

77. As a preliminary matter, and given that this is a central argument in the response, the Secretariat addresses the Party's characterization of its principal law enforcement mechanism for the matter raised in the submission: [redacted] which has been designated as "confidential" but identifiable in publicly available documents.[157]

[Confidential section]

[redacted]

[154] Conagua (2026), "Consulta a la base de datos del Registro Público de Derechos del Agua (REPDA)", filtros: aprovechamiento "Descargas Residuales", Baja California, municipio de Tijuana, Comisión Nacional del Agua, at: <https://bit.ly/4AGp7wL>.

[155] Guidelines NOM-001, Articles 10, 14, 16, 17, 18(III), 20 and 21, at: https://bit.ly/4BIrOz7>; NADBank (2026), *Mejoras al Sistema de Alcantarillado Sanitario en el Área del río Tijuana, en Tijuana, Baja California*, Propuesta de certificación a través del programa de inversión en agua, North American Development Bank, at: <https://bit.ly/4iFrHLR> [NadBank Project].

[156] Profepa-Conagua (2015), "Profepa y Conagua firman bases de colaboración para la vigilancia de las descargas de aguas residuales," Procuraduría Federal de Protección al Ambiente–Comisión Nacional del Agua, 7 July 2015, at: <https://bit.ly/4iMSWnP>.

[157] NadBank Project, at: <https://bit.ly/4iFrHLR>.

[158] Response, §§ 88, 228-229, 258, and 297-299, at: <https://bit.ly/4s1oBpZ>

[159] Response § 227.



[End of confidential section]

(i) Wastewater discharges allegedly exceeding the maximum permissible limits

81. The Submitter asserts that the daily leaks, spills and discharges of untreated wastewater, as well as the intentional diversion of between 83 and 121 million liters per day directly to Punta Bandera beach, constitute failures to enforce the environmental law at issue cited in the submission.[162] The Submitter also asserts that since the existing infrastructure was completed around 1997, the population of the metropolitan area has grown from about 1 million to almost 2.3 million inhabitants, which has greatly increased the pressure on an already deteriorated system.[163] It emphasizes that WWTP SAB was entirely out of operation from 2020 to April 2025 and that during those years all of the wastewater reaching that plant was discharged directly into the ocean, untreated.[164] Another instance is that of the Insurgentes-Oriente Collector, which had suffered a serious failure in 2017 and collapsed again on 15 January 2026. It maintains that, as a result, some 43.5 million liters of wastewater were discharged into the Tijuana River.[165] The Submitter adds that, even once all of the projects contemplated in the International Boundary Water Commission (IBWC) Minutes 328 and 333 have been completed, Tijuana will continue discharging between 38 and 76 million liters per day of untreated wastewater at Punta Bandera beach.[166]

82. Articles 117, paragraphs I to IV; 121; 122, paragraph I; 123; 124; 129, and 130 of the LGEEPA prohibit the discharge or infiltration of wastewater into national water bodies without prior treatment or in concentrations exceeding the maximum permissible limits. LAN Articles 86, paragraphs IV and V; 88 (first paragraph); 88 *bis*, paragraphs I, II, IX and X, and 89 (third paragraph) require that discharges have a prior permit, that they be treated before discharge, that the conditions of the permit be observed and that the NOMs be complied with. Sections 1

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160 NOM-001, artículos cuarto y quinto transitorios at: <https://bit.ly/4jmnTBk>.

161 This is a paradox analyzed by Ricardo Guarinoni in "La Autorreferencia Normativa y la Validez Jurídica." Which arises when a normative statement changes its validity status to avoid internal contradiction. Under this self-referential system, NOM-001 changes its validity status according to the role it plays in the response: first, by asserting that the NOM lacks regulatory status in order to evade its enforceability and then maintaining, in the same act, that the standard demonstrates due compliance with the legal framework. *See* Véase: R. V. Guarinoni (2008), La autorreferencia normativa y la validez jurídica, Fontamara, México.

162 Submission, Statement of facts, at 10-11, at:<https://bit.ly/3UaY3WQ>.

163 Id. at 3.

164 Id. at 3.

165 Id. at 3.

166 Id. at 11.

and 10 of NOM-001 set the limits with which wastewater discharges must comply and entrust oversight of their application to Conagua and Profepa.

83. As previously noted, the Party designates as confidential a public instrument: the [redacted]

84. The Party states that, under the regulatory framework applicable to [redacted]

85. Without providing any particular rationale on confidentiality, Mexico maintains that it fully meets its obligations regarding the effective enforcement of environmental law in respect of wastewater, for the following reasons:

    i. That the authority competent in matters of national waters has powers to grant discharge permits, to set their conditions and to oversee compliance with them. [redacted][169]

    ii. That the competent authority has granted and kept in force the discharge permits for the Tijuana sewerage system, setting the quality, monitoring and reporting parameters in accordance with NOM-001. [redacted][170]

    iii. [redacted][171]

    iv. That Conagua fully exercised the power under LAN Article 88; it maintains that CESPT's permits are in force and that they were updated in accordance with NOM-001, which sets parameters, flow rates, discharge points and monitoring obligations;[172]

    v. That NOM-001 is fully applied through the permit system[173] [redacted] meets several primary and secondary parameters;[174]

[167] Response, §§ 227-228, at: <https://bit.ly/4s1oBpZ>.

[168] Id. §§ 106, 197, 227-229, 258-259, 297 and 314-316.

[169] Id. §§ 223-225, 229, 256-259 and 294-295.

[170] Id. §§ 89-91, 226, 229 and 295.

[171] Id. §§ 227-229 and 258-259.

[172] Id. §§ 294-295.

[173] Id. §§ 313-315.

[174] Id. §§ 351-353.

vi. [redacted][175] and

vii. That, so long as the operator remains within the parameters [redacted][176]

86. In analyzing the Party response, the Secretariat found no documentation or list of wastewater discharge permits. Likewise, there is no information on the conditions attached to them, the authorized flow rates, the applicable parameters, or the discharge points the permits cover. This is inconsistent with the Party's assertion that a "documentary record of the relevant authority" exists.[177] Although it is stated that this documentation is held by Conagua, the documentation is not attached to the response.[178]

87. While the Party carries out an exhaustive blocking (*testado*) of "confidential" information, although no official communication or document is referred to in the response. Nor does the response identify which parameters are met and which are not, how often, or with what results, and it omits information on the conduct of water quality monitoring campaigns. The response is limited to asserting that the wastewater discharges are compliant and are covered [redacted]; there is, however, no documentation to support this.

88. Although the response refers to [redacted], it includes no reference to non-point-source discharges asserted in the submission, such as leaks arising from collector collapse events, flows down hillsides and canyons, contributions from human settlements not connected to the sewer system, and the volume that bypasses the collection system that would otherwise be directed to WWTP SAB.

89. The Secretariat considers that there are central open questions regarding this aspect of the submission and that a factual record could make transparent the governmental information on the authorization regime under which the Tijuana sewerage and treatment system operates. In particular, information could be gathered on the discharge permits in force, the discharge points covered, the authorized flow rates, the particular discharge conditions, and the content and scope of their updating.

90. A factual record could likewise make transparent the [redacted]

91. It could equally present the results of wastewater discharge monitoring, disaggregated by discharge point and by parameter, indicating the frequency and the laboratory, as well as the relationship between the effective treatment capacity attained following the completion of Phase 1 of WWTP SAB and the flow actually received by the system.

92. Lastly, a factual record could make transparent how the wastewater treatment regime is implemented in respect of non-point-source discharges—those arising from the collapse of

[175] Id. § 138.

[176] Id. §§ 105, 247 and 316.

[177] Id. § 135.

[178] Id. § 295.

conveyance infrastructure, flows down canyons and hillsides, and contributions from settlements not connected to the system—as well as the volume and quality of the effluent discharged at Punta Bandera.

(ii) The alleged failure to inspect and monitor

93. The Submitter asserts that, despite the authorities' full awareness of the systemic failures of the wastewater treatment system, there is little or no information documenting inspection and monitoring actions by the competent authorities.[179] The Submitter specifies that the failure is inferred from the context, since there is a persistence of the harm, repeated governmental acknowledgment and an absence of the results that effective enforcement would be expected to produce.[180] The Submitter maintains that both Conagua and Profepa are entrusted with powers to carry out inspections, investigate violations and apply the instruments for enforcing the law.[181]

94. Article 161 of the LGEEPA confers on the environmental authorities powers to ensure compliance and prevent environmental damage, while Article 133 of that Act establishes the duty to carry out systematic and continuous monitoring of water quality. For their part, LAN Articles 95; 119, paragraphs I, XV and XVII; 120 (first paragraph), and 123 *bis* 1 empower Conagua to carry out inspection and monitoring actions.

95. The Party maintains that the authority responsible for enforcing environmental law in Mexico has exercised its inspection and monitoring powers in accordance with the applicable legislation. Without providing a summary of the confidential information for public disclosure, Mexico states:



[179] Submission, Statement of facts, at 9, at: <https://bit.ly/4dohcuF>.

[180] Id. at 9.

[181] Id. at 8-9.

[182] Response, "Antecedentes y contexto fáctico," section D(ii), at 52 and §§ 95 and 303, at: <https://bit.ly/4s1oBpZ>.

[183] Id. §§ 231 and 374.

[184] Id. §§ 232 and 305.

[185] Id. § 96.

[186] Id. § 304.

[redacted]

96. The Secretariat notes that no inspection record, date, number or result is on file. The information in the response [redacted], without further precision. [redacted] The only identifiers of inspection actions in the record of SEM-26-002 are those provided by the Submitter,[188] and the twenty-two Conagua inspection records[189] were likewise supplied by the Submitter, not by the Party. As to the monitoring required by Article 133 of the LGEEPA, the response describes monitoring obligations borne by the regulated entity, not monitoring actions by the authority.

97. The Party maintains that, in doing so, Profepa opted for [redacted] On the other hand, the Party adds that the "assisted compliance" is provided in LAN article 88 *bis*,[192] however, this explanation is not supported by the procedures established in the LGEEPA or is provided in LAN provisions.

98. In this regard, Articles 161 to 166 of the LGEEPA govern the inspection and monitoring procedure, which begins with an inspection visit and the preparation of a detailed record to verify compliance with legal provisions. If irregularities are detected, corrective or urgent measures may be imposed and administrative sanctioning proceedings may be initiated under Articles 167 and 168 and establish, under Article 169, the sanctioning proceedings and compliance terms. For its part, Article 170 provides for safety measures, such as closures, the precautionary seizure of materials and waste, and neutralization or similar actions to prevent the spread of harmful effects. The sanctioning procedure provides for the sanctions established in Article 171, corrective measures to remedy the deficiencies, violations or irregularities detected, and the corresponding compliance deadlines. The Secretariat notes that the response does not set out the procedural sequence under the applicable law, since a "[redacted]"[193] is not provided for in the LGEEPA nor is it equivalent to a corrective measure.

99. Consequently, a more transparent account of the facts could indicate, for example, how an entity was sanctioned for failing to meet its obligations and subsequently corrected the irregularities identified, which could lead to the revocation of the sanction.

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187 Id. § 296.

188 Namely: file no. PFPA/3.2/2C.27.1/0070-23, PFPA/3.2/2C.27.1/0072-23 and PFPA/3.2/2C.27.1/0095-22, referred to in the revised submission. *See* Profepa, file no. PFPA/1.3/12C.6/0283/2026 (10 February 2026), annex, Procuraduría Federal de Protección al Ambiente; Revised Submission, annex 7 and at 8-9, at: <https://bit.ly/4C0JohY>.

189 File Conagua, response to request for information no. 340009400052126; Revised Submission, annex 9 and at 10-11, at: <https://bit.ly/4C0JohY>.

190 Response, § 97, at: <https://bit.ly/4s1oBpZ>.

191 Id.

192 Id. §105

193 Id. §97.

100. The Secretariat considers that there are central open questions regarding this aspect of the submission and that a factual record could present the full set of inspection, verification and monitoring actions in respect of the wastewater management infrastructure in Tijuana.

101. A factual record could make transparent the governmental information on the content of Conagua's inspection actions and of file PFPA/3.2/2C.27.1/0070-23 referred to in the submission, as well as the status of the citizen complaint filed with Profepa in 2025. It could equally specify which of the facilities identified in the submission—the San Antonio de los Buenos wastewater treatment plant, the La Morita wastewater treatment plant, the Lomas de Agua integrated control pumping point, the Insurgentes-Oriente Collector, and the pumping stations of the Matadero and Los Laureles canyons—were visited and which were not.

102. Lastly, a factual record could document the water quality monitoring actions carried out by the authority under Article 133 of the LGEEPA and specify the location of the monitoring points and the frequency with which monitoring is performed.

(iii) The alleged failure to apply safety measures and sanctions

103. The Submitter asserts that the Party is incurring systemic failures by not issuing suspension or closure orders despite continuing violations and impacts, and that it has failed to order the closure or suspension of activities in the face of violations occurring systematically.[194] The Submitter maintains that the federal authorities fail to implement LAN and LGEEPA fundamental mandates and states that the regulatory framework has been disregarded owing to the systemic inaction of the Government of Mexico, and that such inaction perpetuates the transboundary wastewater crisis.[195]

104. LAN Article 92 empowers Conagua to order the suspension of activities giving rise to discharges that fail to comply with the applicable Mexican Official Standards. Likewise, LAN Article 122, paragraph I provides for the temporary or definitive closure of the polluting source where the entity subject to suspension fails to comply with the order. For its part, Article 170, paragraphs I and II and final paragraph, of the LGEEPA directs Profepa to impose safety measures and to order closure or suspension where there is an imminent risk of serious environmental damage or danger to public health.

105. The Party cites Articles 170 to 172 of the LGEEPA as the source of the inspection power[196] and explains that, where Profepa opted for a [redacted][197] The Party further invokes USMCA/CUSMA Article 24.4(2) to protect its choice of enforcement instrument.[198] The response makes no citation of or reference to LAN Articles 92 and 122, nor does it set out any actions directed at their enforcement.

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194 Submission, Statement of facts, at 10-11, at: <https://bit.ly/4dohcuF>.

195 Id.

196 Response, §§ 95 and 97, at: <https://bit.ly/4s1oBpZ>.

197 Id. § 97.

198 Id. § 302.

106. [redacted][199] The response presents no documentary information on the enforcement actions, their date, the facility concerned, or the actions taken to verify compliance; nor does it explain why such elements were not provided in the response. Moreover, the Party does not establish why, when WWTP SAB was out of operation between 2020 and April 2025, as documented in the submission,[200] and continuous untreated discharges were allegedly taking place, the imminent-risk provision of Articles 170 to 172 of the LGEEPA was not triggered.

107. While USMCA/CUSMA Article 24.4(2) does indeed afford the Party a choice among enforcement instruments, no explanation is given, nor is it established, that any of them was in fact used. In sum, beyond a generic assertion that the environmental law at issue is being enforced, the response provides no documentary evidence capable of making the enforcement actions transparent.

108. The Secretariat considers that the response leaves central open questions regarding this aspect of the submission and that a factual record could present factual information on the exercise, during the period, of the powers to impose safety measures, suspend activities and order closure in this period (2020 and April 2025). A factual record could document whether any safety measure was ordered under Article 170 of the LGEEPA and, if so, the records of compliance with it; whether the water authority at any time assessed the suspension-of-activities provision, as well as the possible attribution of civil, criminal or administrative liability provided for in LAN Article 92; and whether the temporary or definitive closure provision under Article 122, paragraph I, of that Act was ever triggered. Likewise, a factual record could make transparent the public governmental information relating to the warnings and corrective measures to which the response refers in generic terms. Given that the information available to the Secretariat records that the WWTP SAB remained out of operation between 2020 and April 2025,[201] a factual record could document the actions of the federal authorities in respect of that facility during that period.

(iv) The alleged failure to revoke or cancel discharge permits

109. The Submitter asserts that, among the failures to enforce the environmental law at issue, is the failure to cancel or revoke permits in the face of serious and repeated violations.[202] The Submitter maintains that the federal authorities have failed to apply LAN and LGEEPA fundamental mandates, and that the systemic inaction of the Government of Mexico has left that regulatory framework unenforced, which has an effect on the transboundary wastewater crisis.[203]

110. LAN Article 93 requires the federal authorities to cancel or revoke discharge permits in cases of serious and repeated violations; LAN Article 88 *bis*, paragraphs IX and X, and Article 89

[199] Id. § 96.

[200] Submission, Statement of facts, at 3.

[201] Id.

[202] Id., Form, at 4, and Statement of facts, at 11.

[203] Submission, Statement of facts, at 10-11.

(third paragraph) define the obligations whose repeated breach triggers the revocation or cancellation of discharge permits.

111. In its response the Party makes no reference to LAN Article 93 and simply states that [redacted]

112. As has been noted, the Party designated the enforcement actions relating to the environmental law at issue as confidential which, while it allows the Secretariat to conduct its analysis, does not meet the transparency goals of the SEM process. In any event, the response does not indicate whether Conagua ever assessed the provision in Article 93, on what conditions or terms or with what result, or whether any such consideration is documented, [redacted]

113. The Secretariat considers that there are central open questions regarding this aspect of the submission and that a factual record could render transparent factual governmental information on how the water authority dealt, during the period, with the revocation provision set out in LAN Article 93.

114. A factual record could document whether Conagua at any time assessed the existence of that situation with respect to publicly accessible discharge permits for the treatment system of the city of Tijuana, on what terms and with what result, and whether that assessment was recorded in any document. It could likewise present the compliance history that would feed into that assessment, the conditions breached, their repetition and their seriousness, in the terms of LAN Article 88 *bis*, paragraphs IX and X, and Article 89 (third paragraph).

115. [redacted]

(v) The alleged failure to intervene and assume operation of the system

116. The Submitter asserts that the intervention and takeover of the wastewater treatment system provided for in the legal framework cited in the submission has not been implemented.[207]

117. LAN Article 94 requires Conagua to intervene and assume control of the operation of a treatment system where its deficient functioning may cause serious damage to public health or to the environment.

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[204] Response, §§ 90 and 295, at: <https://bit.ly/4s1oBpZ>.

[205] Id. § 302.

[206] Id. § 138.

[207] Submission, Statement of facts, at 10-11.

118. In this regard, the Party response makes no mention of LAN Article 94 and states, in any event, that the only alternatives available to the water authority were confined to [redacted] The scenario put forward by the Party omits the instrument provided for in the LAN to correct deficient operation. Nor does it indicate whether Conagua considered that provision during the years in which WWTP SAB was out of operation, or why it ruled it out.

119. The Secretariat considers that there are central open questions regarding this aspect of the submission and that a factual record could present factual information on the intervention provision set out in LAN Article 94. In this regard, a factual record could document whether the water authority considered that provision during the periods in which the treatment infrastructure operated deficiently or remained out of operation; whether it carried out any technical opinion or assessment in that respect; and, if so, whether the reasons for not appointing a receiver were documented. A factual record could likewise present the regime under which that infrastructure operated during such periods. The information would make it possible to appreciate the full set of instruments actually available under the Mexican legal framework in the face of [redacted]

(vi) The alleged failure to impose monetary penalties

120. The Submitter asserts that the federal authorities have failed to comply with enforcement obligations, including that of imposing monetary penalties.[209] The Submitter adds that there is little or no information on the imposition of the penalties provided for in the environmental law at issue.[210]

121. Articles 15, paragraphs IV and XVII; 88, paragraphs I, II and IV; 89, paragraphs II, V and VI; 92; 93, and 161 of the LGEEPA underpin the instruments for imposing sanctions and give effect to the polluter-pays principle. For their part, LAN Articles 119, paragraphs I, XV and XVII; 120 (first paragraph); 118 *bis* 2, and 118 *bis* 3 provide for the sanctioning regime and its various modalities.

122. The Party maintains in its response that [redacted]

123. The Secretariat notes that the response provides no data, references or information whatsoever recording the number or date of the administrative resolution, or its outcome. The response contains no information on the imposition (or non-imposition) of a monetary penalty and in what amount, the grounds giving rise to it, or whether it was enforced. The Secretariat notes

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[208] Response, § 302.

[209] Submission, Statement of facts, at 11.

[210] Submission, Statement of facts, at 9. See also annex G concerning the information requests filed through the Plataforma Nacional de Transparencia.

[211] Response, § 97, at: <https://bit.ly/4s1oBpZ>.

[212] Id. §§ 232 and 305.

that the only date in the administrative file is the one supplied by the Submitter, namely an inspection carried out on 19 July 2023 and an administrative resolution issued 25 months later, on 29 August 2025. This does not assist in reconciling the Party's assertion regarding the [redacted]

124. The Secretariat considers that there are central open questions regarding this aspect of the submission and that a factual record could present the list of administrative sanctioning proceedings instituted during the period in connection with wastewater management in Tijuana, indicating, for each, the inspection that gave rise to it, the date it was initiated, its file number, the resolution that concluded it, the outcome of that resolution, the penalty imposed and its amount, the record of notification, and the enforcement and collection actions. Particularly, a factual record could make transparent the mechanism of "assisted compliance" that the Party outlines in its response[213] and the legal basis for its implementation.

125. It could document, in particular, the proceeding arising from the [redacted], including the twenty-five-month interval between the visit of 19 July 2023 and the resolution of 29 August 2025, as well as the causes of that interval. A factual record could make transparent the public governmental information on the number and content of the warnings and corrective measures adopted in lieu of a monetary penalty, with the follow-up each received, and specify whether any sanctioning proceeding was instituted during the period [redacted]

(vii) The alleged failure to require repair, remediation and restoration

126. The Submitter asserts that the federal authorities have failed to require comprehensive remediation and restoration measures for the affected ecosystems, and have not initiated proceedings to quantify the impacts and require the corresponding reparation.[214] The Submitter asserts that the LFRA expressly empowers Profepa to bring legal actions for liability for environmental damage.[215] It also asserts that the SCJN has repeatedly held that the constitutional right to a healthy environment requires the effective enforcement of environmental law, and states on that basis that Profepa's power to act on complaints, conduct proceedings and sue for environmental liability constitutes a mandatory and not a discretionary duty.[216] The Submitter maintains that:

> Profepa's continuous failure to use these LFRA mechanisms directly violates the law's requirements and undermines its purpose, effectively shielding polluters from legal and financial responsibility and ensuring public resources and ecosystems remain polluted.[217]

[213] Id. §105.

[214] Submission, Statement of facts, at 11-13.

[215] Id. Form, at 8 and Statement of facts, at 11-12.

[216] Id. Statement of facts, at. 12.

[217] Id. at 13.

127. While the Submitter did not identify which is the specific provision of the LFRA the Party is failing to enforce, it does cite Article 15, paragraph IV, of the LGEEPA, which enshrines the *polluter-pays principle*, requiring the responsible party to bear the costs of remediation; LGEEPA Articles 130 and 161 which underpin the requirement of corrective and restoration measures, and LAN Articles 96 *bis* and 96 *bis* 1 which govern reparation of damage and the restoration of water quality.

128. In its response, the Party states that [redacted] "if there is no environmental damage in the legal sense, there is no remediation obligation, no aggravated administrative prosecution obligation, and—*a fortiori*—no criminal prosecution obligation."[218]

129. The Party reproaches both the Submitter and the Secretariat for not citing LFRA Article 6.[219] In this regard, the Secretariat notes that LAN Articles 96 *bis* and 96 *bis* 1, which the Submitter cites, were not addressed by the Party. The Secretariat wishes to remind that it may not add or invoke provisions not expressly cited in the submission, as this would result in irregular handling of the submission.[220] The Secretariat further notes that, in any event, LFRA Article 6 excludes damage where the limits of the applicable NOMs are not exceeded. Outside LFRA's scope, and even taking into account the enforcement actions—designated confidential by the Party—this would not extinguish the legal duty to remediate and restore the environment under the LAN and LGEEPA regime invoked by the Submitter. In this respect, the response neither records nor refers to any action directed at quantifying impacts or requiring reparation.

130. The Secretariat considers that there are central open questions regarding this aspect of the submission and that a factual record could present relevant factual information on the actions undertaken by the water authority to secure damages reparation under LAN Articles 96 *bis* and 96 *bis* 1. In particular, a factual record could make transparent public governmental information on whether any assessment was carried out of the condition of the receiving bodies—the bed of the Tijuana River, the San Antonio de los Buenos creek and the marine area off Punta Bandera—with what methodology and with what results; whether any responsible party was identified and required to carry out restoration measures; and whether any proceeding was instituted to quantify the impacts.

(viii) The alleged failure to give notice of and report spills and recurrent flows

131. The Submitter asserts that the wastewater treatment operators have not reported spills and repeated wastewater flows in a timely manner and that the federal authorities have not required such reporting.[221] The Submitter emphasizes that "[t]he routine and pervasive infrastructure

[218] Response, §§ 103, 247 and 316, at: <https://bit.ly/4s1oBpZ>.

[219] Id. § 248.

[220] First Determination, § 55, at: <https://bit.ly/4iVkV5Y>. The Secretariat informed the Submitter that it "[…] cites an inexistent Article from the LFRA: **Article 76**." It also noted that this deficiency could be corrected in a revised submission.

[221] Submission, Statement of facts, section III.D.2(a), at 10-11.

failures of the Tijuana wastewater collection system result in the leaks, spills, and intentionally discharges of millions of gallons of raw sewage each day."[222] The submission documents the alleged non-compliance, late notification and lack of transparency pattern with the collapse of the Insurgentes-Oriente collector in January 2017, notified to the US counterpart almost two months later, and with the further collapse of 15 January 2026.[223] The submission asserts:

> The USIBWC received multiple complaints of wastewater odors in the Tijuana River Valley beginning in early February 2017 and requested information from CILA several times regarding the source. On February 23, 2017, CILA finally formally notified USIBWC that the collector had collapsed and that approximately 143 million gallons of untreated sewage had been released into the Tijuana River, *nearly two months after the incident*. This catastrophic discharge event resulted in miles of coastline in south San Diego County to be polluted with sewage and high levels of fecal bacteria. This pattern of delayed notification and lack of transparency has continued to undermine binational efforts to address cross-border sewage contamination.[224]

132. LAN Article 91 *bis* 1 requires any person making discharges to give notice of accidental, negligent or intentional spills and—correlatively—requires the authority to demand such notice. LAN Article 88 *bis*, paragraphs IX and X, and Article 119 underpin the obligation to inform the water authority about wastewater discharge to water bodies as well as the penalty applicable where this does not occur.

133. Although the discharge notification obligation is to the Mexican water authority (and not an entity such as IBWC), The Party does not address notification mechanisms. There is no mention of the Insurgentes-Oriente Collector to which the submission refers; there is no reference to "spill" or "notice"; nor is there any mention of LAN Article 91 *bis* 1 —or any other notification procedure—; nor was any information identified capable of establishing that notices have been given (or being given) of accidental, negligent or intentional spills in the context of wastewater treatment in Tijuana.

134. The Secretariat finds that the response does not show whether Conagua received notices in respect of the documented events, or whether it required or penalized their absence. The Party's own annex points in the opposite direction: IBWC Minute 333, signed in December 2025, calls for the development of a new binational protocol for notifying spills in the Tijuana River, which suggests deficiencies in the notice regime provided for in the LAN.

135. The Secretariat considers that there are central open questions regarding this aspect of the submission and that a factual record could present the list of notices received by the water authority and by the Public Prosecutor under LAN Article 91 *bis* 1 during the period, indicating the event that gave rise to each, the date of the event, the date of the notice and the measures adopted on the basis of it. It could document, in particular, the treatment given to the events identified in the submission: the collapse of the Insurgentes-Oriente collector in January 2017 and the event of 15 January 2026. It could specify whether the authority required notice where none was given and whether it instituted administrative proceedings for that failure under LAN Article 119.

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[222] Id. at

[223] Id. at 3 and 13-14.

[224] Id. at 13. Emphasis in the original. Footnotes contained in the original text are omitted.

(ix) The alleged failure to refer the matter to the public prosecutor and to bring criminal proceedings

136. The Submitter asserts that, despite wide knowledge of the facts, the federal environmental and water authorities have failed to report the probable commission of offenses and to notify the Attorney General of the Republic (*Fiscalía General de la República*, FGR). The Submitter maintains that the serious pollution caused by the leaks, spills and discharges of millions of liters per day of untreated wastewater in Tijuana constitutes an offense under CPF Articles 416 and 421 (paragraphs I, II and V). The Submitter asserts that the FGR's annual reports for 2021 to 2024 record no investigation files for the unlawful discharge of untreated effluent in the Tijuana metropolitan area.[225] The Submitter emphasizes that the FGR has failed to exercise its powers to prosecute offenses and to carry out the necessary investigations, and maintains that the pollution goes uninvestigated, unprosecuted and unpunished. It maintains that this inaction has generated a state of impunity that, in practice, nullifies the application of CPF Article 416.[226]

137. The Submitter cites CPF Article 416, which criminalizes the unlawful discharge, deposit or infiltration of wastewater into water bodies under federal jurisdiction that causes or may cause damage. For its part, CPF Article 421, paragraphs I, II and V set out the range of criminal penalties. LGEEPA Article 182, for its part, imposes on Profepa the duty to file a complaint or criminal charge with the Public Prosecutor where it becomes aware of acts that may constitute an offense. Lastly, LAN Article 123 *bis* 1 provides that "[i]n cases where the existence of an offense is presumed, [Conagua] shall file the corresponding complaint with the relevant Public Prosecutor."

138. In its response, the Party maintains that the offense defined[227] in Article 416 requires the discharge to be "without a permit" (*sic*) and that, in any event, CESPT operates with a permit in force and under a [redacted], so that the conduct cannot be considered unlawful.[228] The Party also invokes the *ultima ratio principle* of the criminal system and states that criminal sanction has not been sought for that reason;[229] it maintains that, in any event, it is within the Public Prosecutor's discretion to do so[230] and refers to the existence of a coordination agreement concluded between Profepa and what is now the FGR in 2004, as well as to the existence of institutional coordination instruments —designated "confidential"—, as proof that the institutional system does in fact channel criminal matters.[231] It states that Profepa and the FGR correctly interpreted the provision in not bringing criminal charges.[232] The response is silent as to Conagua's duty to report.

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[225] Id. at 11-12.

[226] Id. at 12.

[227] The *definition of the offense* is the abstract legal description made by the legislature of prohibited conduct (an act or omission) treated as an offense in a statute, to which a specific sanction or penalty is assigned. *See* Diccionario Jurídico (2023), "Tipo penal," at: <https://bit.ly/4ivvUBY>.

[228] Response, §§ 104, 106, 141, 233 and 319-320, at: <https://bit.ly/4s1oBpZ>.

[229] Id. §§ 107-108 and 322.

[230] Id. § 325.

[231] Id. §§ 143, 323-324 and 356-359.

[232] Id. §§ 233 and 321.

139. The Secretariat notes that the text of CPF Article 416 currently in force does not say "without a permit," as the response repeatedly quotes it. The criminal text says "unlawfully." By substituting the definition of the offense and altering the statutory text, the response leaves out all wastewater discharges that do occur but not originated through a point authorized by permit—for example, the collapse of a collector, the flows recorded down hillsides and canyons, and the alleged diversion from WWTP SAB. Those situations—probable and unlawful—are not covered by any permit, at least on the basis of what the response offers. For its part, LGEEPA Article 182 imposes the legal duty to refer the matter to the public prosecutor. The response neither mentions it nor indicates whether any environmental authority filed a complaint or criminal charge at any time, with what result, or how the assertion that there is nothing to report is to be reconciled with the invocation of an agreement between Profepa and the FGR whose primary function is precisely to channel criminal complaints.

140. The Secretariat considers that there are central open questions regarding this aspect of the submission and that a factual record could present pertinent factual information on the exercise of the duty to report provided for in LGEEPA Article 182 and in LAN Article 123 *bis* 1. In this regard, a factual record could make transparent public governmental information on the actions of the environmental and water authorities directed at filing a complaint or criminal charge with the Federal Public Prosecutor in connection with wastewater management in Tijuana. A factual record could document, where applicable, the date, subject matter and status of the corresponding investigation file; and, where there is none, the records setting out the assessment that the facts did not meet the elements of a criminal offense.

141. Furthermore, a factual record could present the actions taken under the coordination agreement concluded between Profepa and the FGR in relation to this matter, as well as any technical or expert opinions issued at the request of the Public Prosecutor. The information that a factual record could present would be particularly pertinent in respect of discharge events that do not occur through an authorized point and thus fall outside the permit regime on which the response built its arguments.

(x) The alleged failure to give effect to the human right to a healthy environment

142. The Submitter asserts that the systemic failures in Tijuana's wastewater treatment system result in tens of millions of liters of untreated sewage being discharged every day directly into streams, rivers and the ocean; it maintains that the local, state and federal governments have neither allocated sufficient resources nor adequately maintained the border city's sewerage and sanitation infrastructure, and that this has caused uncontrolled pollution and the degradation of natural resources and public goods, including the Tijuana River and its estuary, numerous beaches and marine ecosystems.[233] The Submitter states that this constitutes a violation of a fundamental guarantee recognized in Article 4 of the Constitution. The Submitter emphasizes:

> [M]illions of people are forced to effectively live, work, and/or recreate near or in an open sewer, thereby exposing local populations to raw sewage, toxic chemicals, and dangerous pathogens. As recent research has established, these

[233] Submission, Statement of facts, at 10.

> pollutants and pathogens are being continuously aerosolized, which significantly threatens human health.[234]

143. Article 4 (sixth and eighth paragraphs) of the CPEUM recognizes the right of every person to a healthy environment for their development and well-being, with responsibility on the State, and the right of access to, availability of and sanitation of water.

144. The response does not invoke Article 4 of the Constitution, nor does it elaborate on how the human right to a healthy environment is guaranteed by the Party in the case of wastewater in Tijuana. The Party builds its argument, for instance, around the investments made—all of these amounts classified as confidential by the Party—in the first phase of WWTP SAB, the contributions to the North American Development Bank, and the commitments under IBWC Minutes 328 and 333 and the 2025 Memorandum of Understanding between Mexico and the United States.[235]

145. The Secretariat considers that the concern raised by the Submitter does not relate to the sufficiency of a high-level political commitment, nor to the sufficiency of public policy. It is also essential to make clear that the Secretariat does not assess the level of protection that the Party, as a sovereign state, chooses. In any event, the question that remains open in light of the Party response is: did the federal authorities exercise, during the period, the instruments that their own legal order confers on them to give effect to that right to a healthy environment? It cannot be disregarded that the investment and the high-level political commitments establish public expenditure and binational interest, but they do not reveal the enforcement actions required by the constitutional provision.

146. The Secretariat considers that there are central open questions regarding this aspect of the submission and that a factual record could present, in consolidated form, the factual information referred to in the preceding sections, so that the public may appreciate as a whole the exercise of the instruments that the Mexican legal order confers on the federal authorities to give effect to the right to a healthy environment and the right of access to, availability of and sanitation of water. A factual record could document systematically and in an orderly manner the public governmental information that the authorities themselves have generated on water quality at the beaches in the municipalities of Tijuana and Playas de Rosarito, on the coverage of sanitation service in the neighborhoods that lack a connection to the sewer system, and on the measures adopted in relation to communities exposed to contaminated waters in Mexican territory with a view to guaranteeing the right to a healthy environment. The Secretariat must clarify that a factual record would contain no assessment whatsoever of the sufficiency of the level of protection chosen by the Party, a matter reserved to its discretion, but rather the record of the enforcement actions carried out during the period.

E. The Secretariat has explored similar questions in other factual records

147. The open questions raised by this submission are not novel in the practice of the SEM process. In this regard, the Council has instructed the preparation of factual records on the enforcement of LGEEPA Articles 133, 161 and 170 (*Lake Chapala II*), on the municipal wastewater discharge permit regime (*Magdalena River*) and on the exercise of the power to file a

[234] Id. at 10.

[235] Response, §§ 109-111, 239, 299, 307-310, 334 and 367-368, at: <https://bit.ly/4s1oBpZ>.

complaint with the Public Prosecutor under CPF Article 416 (*Ex Hacienda El Hospital II and III*).

148. In *Magdalena River* the factual record documented the catalogue of discharge permits; it incorporated annual reports and semi-annual measurements that the municipalities were not carrying out; and it gathered information on Conagua's enforcement in relation to the municipalities concerned and on the inspection and monitoring actions and safety measures imposed. In *Lake Chapala II* the Council specified that the factual record would describe the Party's actions without assessing their effectiveness—actions that coincide with the scope recommended in this notification: preservation of water quality and systematic and continuous monitoring, ecological restoration programs, inspection, monitoring and safety measures. In the case of *Ex Hacienda El Hospital II and III*, the Council authorized the Secretariat to gather information on the effective enforcement of criminal law provisions, documenting the preliminary investigations and the role of Profepa in reporting conduct to the Public Prosecutor and to the then Office of the Attorney General of the Republic.

III. NOTIFICATION

149. Having examined submission SEM-24-002 (*Tijuana Wastewater Management*) in light of the response of the United Mexican States, the Secretariat finds that central open questions exist in relation to the effective enforcement of environmental law with regards to the discharge permits granted for the Tijuana Sewerage System, which establish the quality, monitoring and reporting parameters in accordance with NOM-001; [redacted] and the documents relating to the [redacted], specifically with regard to the effective enforcement of the provisions listed below:

    a. Article 4 (sixth and eighth paragraphs) of the Political Constitution of the United Mexican States;

    b. LGEEPA Articles 15 (paragraphs IV and XVII), 88 (paragraphs I, II and IV), 89 (paragraphs II, V and VI), 92, 93, 117 (paragraphs I, II, III and IV), 118 (paragraph V), 121, 122 (paragraph I), 123, 124, 129, 130, 132, 133, 161, 170 (paragraphs I and II and final paragraph), 171, 172 and 182 of LGEEPA;

    c. LAN Articles 44 (third paragraph), 86 (paragraphs IV and V), 88 (first paragraph), 88 bis (paragraphs I, II, IX and X), 89 (third paragraph), 91 *bis*1, 92 (paragraphs I and II and its final two paragraphs), 93, 94, 95, 96 *bis*, 96 *bis* 1, 118 *bis* 2, 118 *bis* 3, 119 (paragraphs I, XV and XVII), 120 (first paragraph), 122 (paragraph I) and 123 *bis* 1;

    d. CPF Articles 416 and 421 (paragraphs I, II and V) and;

    e. NOM-001 Article 1 (first and second paragraphs) and 10.

150. In accordance with USMCA/CUSMA Article 24.28(1) , the Secretariat notifies the CEC Council and the Environment Committee of its determination that, with a view to advancing

the goals of Chapter 24 of the Treaty,[236] the preparation of a factual record in respect of submission SEM-26-002 (*Tijuana Wastewater Management*) is warranted.

151. In the interest of the transparency that inspires the SEM process, the Party is cordially invited to review the public version of its response, since that version redacts information that in many cases is already public or else constitutes information of public interest regarding the enforcement of environmental law.

152. In accordance with USMCA/CUSMA Article 24.28(4), in preparing the factual record the Secretariat would consider any information furnished by the Party and could consider relevant information of a technical, scientific or other nature that is publicly available, that is submitted by interested persons, that is submitted by the Joint Public Advisory Committee, that is developed by independent experts, or that is developed under the ECA.

153. In accordance with USMCA/CUSMA Article 24.28(2), the Secretariat "shall prepare the factual record if at least two Council members instruct it to do so."

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation

(*signed in the original*)

By: Nathalie Daoust
Acting Executive Director

cc: Camila Zepeda Lizama, Alternate Representative of Mexico
Michael Bonser, Alternate Representative of Canada
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Environment Committee contact points
Paolo Solano, Director of Legal Affairs and Head of the SEM Unit
Submitter

Annex 1: *Table of the provisions cited in the Party response*
Annex 2: *Environmental laws at issue*

[236] *See* USMCA/CUSMA, Article 24.2(2), at: <https://bit.ly/420Lb6x> and <https://bit.ly/4itON6R> . "The objectives of this Chapter are […] to promote high levels of environmental protection and effective enforcement of environmental laws […]".