

# SEM Process under CUSMA/USMCA





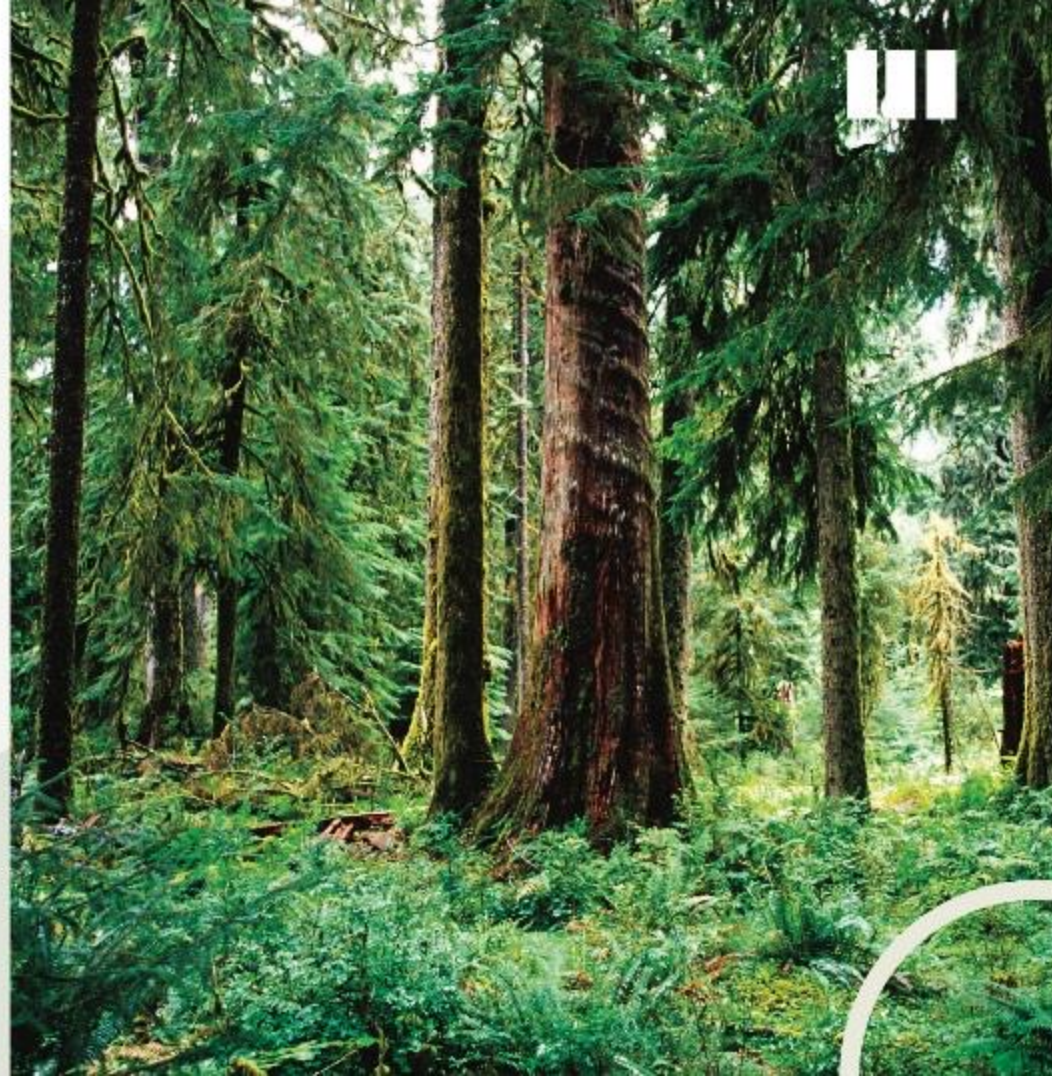
## A renewed trilateral commitment under the CUSMA and ECA

- **1994:** Established under the North American Agreement on Environmental Cooperation (NAAEC)
- **2020:** Renewed commitment under the Agreement on Environmental Cooperation and CUSMA/USMCA



## Mission

- Facilitate cooperation and community participation for the conservation, protection and enhancement of the North American environment
- Support sustainable development in benefit of present and future generations





# The CEC

EXPERTS



COUNCIL



TEKEG



SECRETARIAT



JPAC

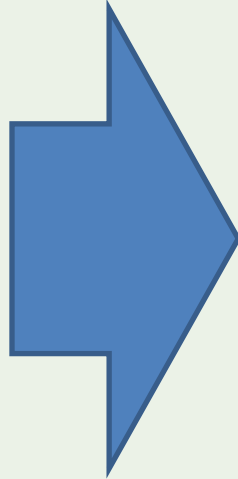


Environment  
Committee  
*CUSMA/USMCA*  
Chapter 24



## NAFTA and NAAEC

- NAFTA was silent on environmental issues
- NAAEC made a commitment to effectively enforce environmental laws
- NAAEC creates the Commission for Environmental Cooperation
- CEC implements the SEM Process



## ECA and CUSMA/USMCA Chapter 24

- ECA negotiated in parallel with CUSMA
- Both agreements entered into force simultaneously
- ECA replaces the NAAEC
- Continuity of the CEC as originally established in NAAEC
- The SEM process integrated into **CUSMA Chapter 24**



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## CUSMA Chapter 24

- Creates the Environment Committee
- CEC operational provisions are now in the ECA
- All SEM-related provisions are now in CUSMA Chapter 24
- Active submissions at the time of the entry into force of CUSMA are being processed according to NAAEC

# Submissions on Enforcement Matters process

**Article 24.27(1)** Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws.

*Note: “environmental law” is defined in Article 24.1 and there are specific definitions for each country*

**Articles 24.27(2) and (3)** contain requirements for submissions and criteria for the Secretariat’s review process

**Article 24.27(4)** describes the government response





**A SUBMISSION IS FILED**



**GOVERNMENT RESPONDS**

60 DAYS MAXIMUM

If the issues in the submission are part of an ongoing proceeding, the submission process may end here.

**WHAT HAPPENS WHEN A SUBMISSION ON ENFORCEMENT MATTERS IS FILED?**

The Secretariat may determine that the submission needs to be revised to go forward. The submitter would have 60 days to make changes and submit a revised version.

**SECRETARIAT REVIEWS SUBMISSION & ISSUES DETERMINATION**

30 DAYS MAXIMUM



**SECRETARIAT MAY RECOMMEND A FACTUAL RECORD**

60 DAYS MAXIMUM

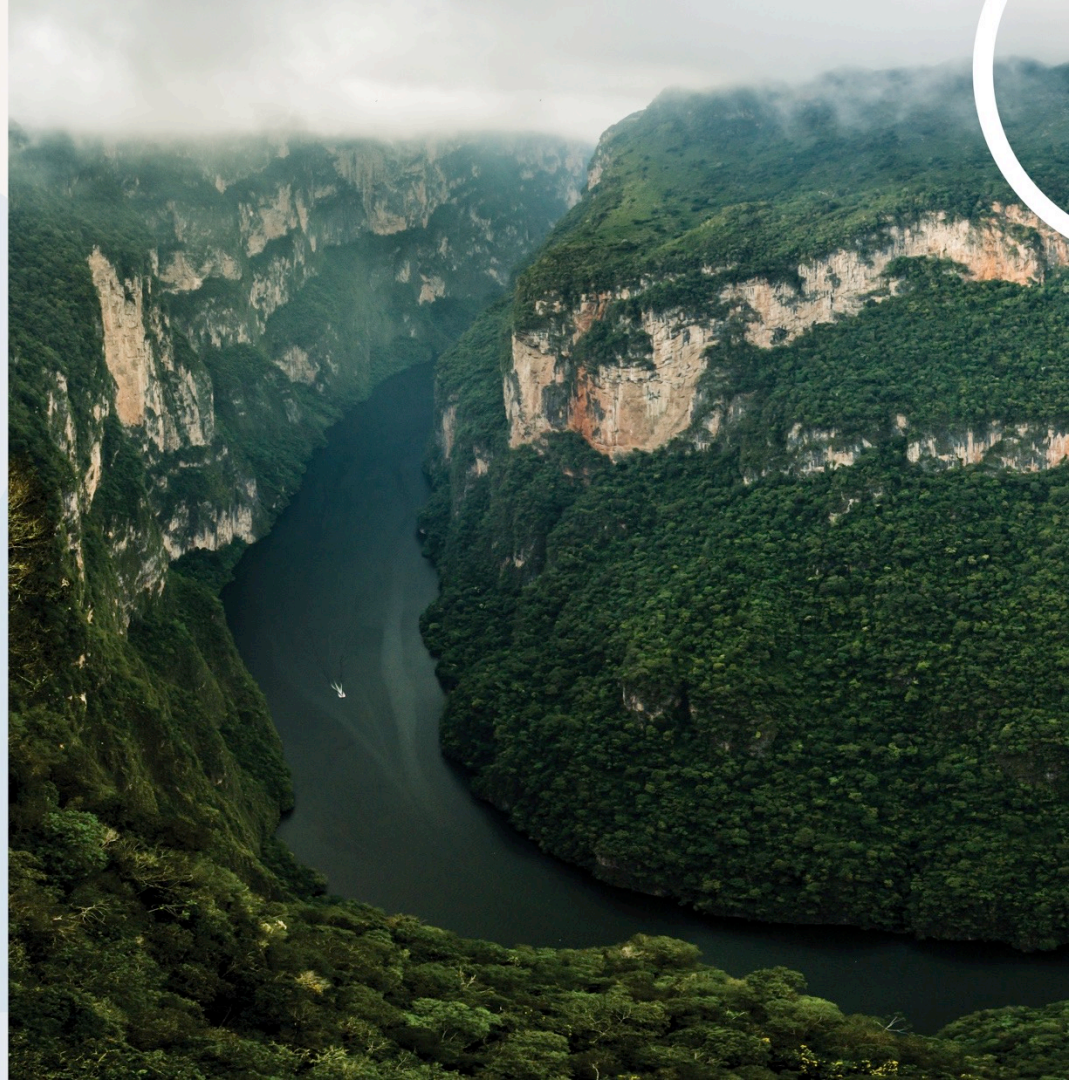




## Article 24.28 Factual Record

Following the Party response, the Secretariat determines whether to recommend preparation of a factual record

The Council votes on whether to authorize the Secretariat to develop a factual record





## Follow up to Factual Records

Within the framework of CUSMA:

- Environment Committee can recommend that the CEC Council develop cooperative activities
- The Parties will provide updates to the Council and Environment Committee on closed Factual Records

In the United States: Review process under the USMCA Implementing Legislation

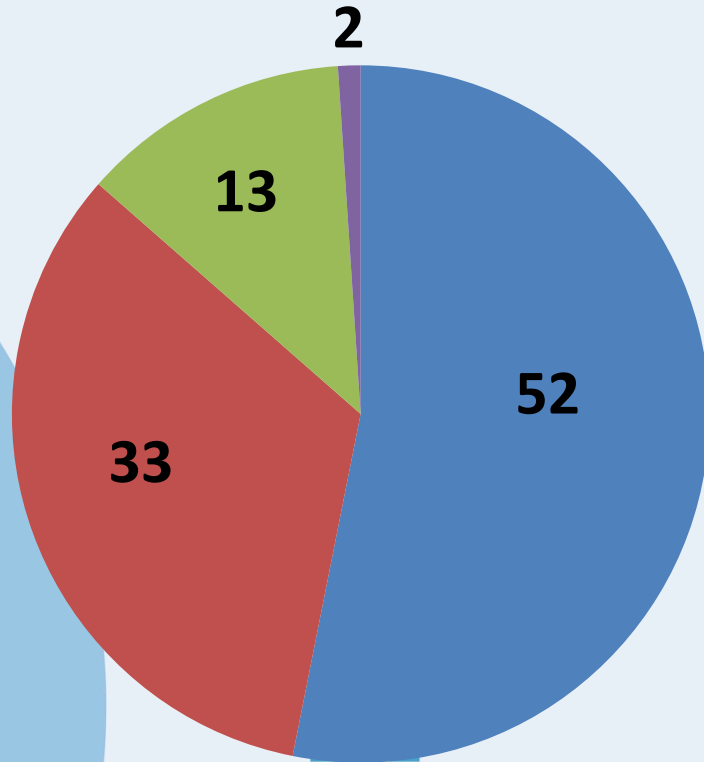
110TH CONGRESS  
1ST SESSION

**H. R. 5430**

To implement the Agreement between the United States of America, the United Mexican States, and Canada attached as an Annex to the Protocol Replacing the North American Free Trade Agreement.

IN THE HOUSE OF REPRESENTATIVES

# Number of submissions



■ Mexico

■ Canada

■ United States

■ US/Canada

**Total: 100**

24 Factual Records:  
MEX (14), CAN (8), US (2)

# Active Submissions

- **Metrobús Reforma** Factual Record in preparation
- **City Park Project** Council vote pending
- **Hydraulic Fracturing in Nuevo León** Council vote pending
- **Loggerhead Turtle** Awaiting Mexico's response
- **Fairview Terminal** Awaiting Canada's response



# Who may file a submission?

- Under CUSMA Article 24.27(1), “Any **person of a Party** may file a submission asserting that a Party is failing to effectively enforce its environmental laws.”
- CUSMA Article 1.5: a “person of a Party means **a national of a Party or an enterprise of a Party;**”



# What is a “environmental law” under the CUSMA?

- Article 24.1: “**environmental law** means a **statute or regulation** of a Party, or provision thereof...the **primary purpose** of which is the **protection of the environment...**”
  - There are definitions of “statute or regulation” for each country.
  - For example: “(a) for Canada, an Act of the Parliament of Canada or regulation made under an Act of the Parliament of Canada that is enforceable by action of the central level of government”



# How much information should a submission include?

- One of requirements for submissions in Article 24.27(2) is:  
“(b) provides **sufficient information to allow for the review of the submission**, including any **documentary evidence** on which the submission may be based and **identification of the environmental law** of which the failure to enforce is asserted”



# Have the relevant authorities been notified?

- Another requirement in Article 24.27(2) is:  
“(e) indicates whether the matter has been **communicated in writing to the relevant authorities of the Party** and the **Party’s response, if any**”.





# Has a private remedy been tried?

- Article 24.27(3) provides four criteria to guide the Secretariat's review process, including: **“(c) private remedies available under the Party's law have been pursued”**.
- This can be met by filing a complaint or referencing a complaint filed by another person, organization, or entity.
  - This criterion is evaluated according to a standard of reasonableness, keeping in mind that in some cases barriers exist to pursuing such remedies.





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