

January 18, 2023

Administrator Michael S. Regan
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW, Washington, DC 20460

Secretary María Luisa Albores González
Secretary of Environment and Natural Resources
Av. Ejército Nacional 223, Anáhuac I Secc, Miguel Hidalgo, 11320 Ciudad de Mexico, Mexico

The Honorable Steven Guilbeault
Minister of Environment and Climate Change Canada
Place Vincent Massey Building 351 Saint-Joseph Boulevard Gatineau QC K1A 0H3

CC: Ambassador Katherine Tai, U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street NW, Washington, DC 20508

SENT VIA EMAIL

Dear Administrator Regan, Secretary Albores González, and Minister Steven Guilbeault:

I am writing on behalf of my organization, Climate Rights International, to urge you to support the preparation of a factual record for the pending submission to the Commission for Environmental Cooperation (CEC) concerning avocado production in the state of Michoacán, Mexico.¹ The submission alleges that Mexico is failing to effectively enforce its environmental laws to protect forests and water from the adverse impacts of expanding avocado production in Michoacán. These allegations are strongly corroborated by an in-depth report that Climate Rights International released in November 2023,² which was featured in a *New York Times* exposé.³

¹ “Avocado Production in Michoacán,” Submission ID: SEM-23-002, available at <http://www.cec.org/submissions/registry-of-submissions/avocado-production-in-michoacan/>.

² Climate Rights International, *Unholy Guacamole: Deforestation, Water Capture, and Violence Behind Mexico’s Avocado Exports to the U.S. and Other Major Markets*, November 2023, available at <https://cri.org/reports/unholy-guacamole/>.

³ Simon Romero and Emiliano Rodríguez Mega, “Americans Love Avocados. It’s Killing Mexico’s Forests,” *New York Times*, November 28, 2023, available at <https://www.nytimes.com/2023/11/28/us/mexico-avocado-deforestation.html>.

As you are aware, Article 24.4 of the United States-Mexico-Canada Agreement (USMCA) requires each party “to effectively enforce its environmental laws” (USMCA, Article 24.4). “Any person” from the three countries may file a submission with the Secretariat of the CEC alleging a failure to comply with this requirement (USMCA, Article 24.27). In February 2023, an anonymous Mexican citizen filed such a submission regarding avocado production in Michoacán. In September, after reviewing a response from Mexico, the Secretariat of the CEC determined that “central open questions” remained, and recommended preparing a factual record regarding whether Mexico is effectively enforcing its environmental laws relating to: “i) change of land use on forest land, and ii) sustainable utilization of water, in relation to avocado cultivation in Michoacán.”⁴ As you are aware, the Secretariat of the CEC can only follow through on its recommendation to prepare a factual record if at least two of the three of you—the members of the Council of the CEC—authorize it to do so (USMCA, Article 24.28.2).

Below I would like to highlight some of the key findings of the Climate Rights International report that specifically pertain to the submission before the CEC. The report is based on extensive field research across 18 municipalities of Michoacán and Jalisco, interviews with nearly 200 people, and a review of voluminous previously unpublished U.S. and Mexican government records, including maps of the more than 50,000 avocado orchards certified to export to the United States.

Avocado expansion in Michoacán has fueled widespread deforestation there. Reviewing time-sequenced satellite imagery and government maps of avocado orchards, our report identified U.S.-export certified avocado orchards containing land deforested since 2014 in 41 of the 46 Michoacán municipalities that export to the United States. In the words of Michoacán’s Secretary of Environment, the state’s “most sensitive, serious environmental issue is the indiscriminate change of land use for avocado crops ... [which] puts at increasing risk our biodiversity, the provision of water, and the forests in this state.”

The report shows, based on government records, that all the deforestation for avocado production in Michoacán over the past two decades has been illegal—in violation of federal and state criminal laws and federal administrative laws. Senior environmental officials recognize that impunity is the norm for these environmental law violations. For example, a federal environmental official told Climate Rights International that there has been “total impunity” for land-use change in Michoacán. The head of the state forest commission said that the violators “laugh at our impotence.”

One reason for the impunity is that officials fear being targets of threats and violence if they try to rein in illegal deforestation and water theft. Another reason appears to be corruption. Climate Rights International received testimony from federal and state officials, and residents, pointing to a corruption problem within the main prosecutor’s office dedicated to the criminal investigation of deforestation for avocado production in Michoacán. The office is called the Specialized

⁴ Secretariat of the Commission for Environmental Cooperation, *Notification of the Secretariat in accordance with Article 24.28 of the United States-Mexico-Canada Agreement*, September 25, 2023, available at http://www.cec.org/wp-content/uploads/wpallimport/files/23-2-adv_en.pdf.

Prosecutor’s Office in Combatting Crimes against the Environment and Fauna (“Environment Unit”) and is part of Michoacán’s State Prosecutor’s Office. The recent *New York Times* article also reported credible allegations of corruption within the Environment Unit.

When Climate Rights International requested information under Mexico’s transparency law about the results of the Environmental Unit’s investigations, the unit provided self-contradictory responses that appeared to be fabricated to exaggerate the unit’s success.

Mexico’s enforcement of its federal administrative laws prohibiting illegal land-use change in Michoacán has also been ineffective. We identified Michoacán orchards that Mexican and U.S. authorities had certified for U.S. export as of January 2023, despite having been administratively sanctioned for illegal land-use change between 2015 and 2022.

In addition to illegal deforestation, we also found extensive evidence suggesting widespread illegal water use by many avocado growers in Michoacán. An official working in Michoacán for Mexico’s federal water agency, CONAGUA, said that the illegal use of water for avocado crops is a “very serious problem.” Another senior official in Michoacán said he believed that many of the water storage pools for avocado production are sourced illegally from wells and rivers. In a 2020 interview, the then-head of Michoacán’s State Commission for Water and Watershed Management estimated that 50 percent of all wells in the state are unauthorized.

Local residents in different avocado-growing areas of Michoacán also told Climate Rights International that avocado orchards are using surface and groundwater without required licenses. We found evidence in multiple communities in Michoacán and Jalisco that avocado production has significantly undermined residents’ access to water.

Impunity is also the norm for unlicensed water use. CONAGUA reported receiving 896 complaints of unlicensed water use in Michoacán between 2017 and January 2023, and an additional 106 complaints of the unlicensed installation of wells or other mechanisms for extracting underground water. But it reported imposing sanctions in only 24 cases from that period—fines, closures, and in four cases, seizures of machinery.

An official from CONAGUA’s Michoacán office said it has only one inspector for the entire state. They said that the office orders the “closure” of the illegal extraction, but that it is the central CONAGUA office in Mexico City that implements the closure process to ensure that the extracting infrastructure is disassembled. They said that the last time officials from Mexico City visited for that purpose was in 2018.

There is no question that the impunity for the illegal deforestation and water theft is occurring “in a manner affecting trade” between USMCA parties—a requirement for triggering the obligation to effectively enforce environmental laws (USMCA, Article 24.4). Between January 2019 and April 2023, Mexico exported US\$11 billion worth of avocados to the United States, and US\$932 million to Canada, according to Mexican customs data compiled by the company Treid.

Indeed, there is a particularly close connection between the environmental destruction wrought by avocados in Michoacán and the United States’ market for avocados, corporations, and government policy.

The growing U.S. market for avocados is the driving force behind avocado expansion in Michoacán, which is in turn fueling the deforestation and water theft. Four out of five avocados consumed in the United States are from Mexico—and a large majority of those are from Michoacán. According to Mexican government statistics, 85 percent of the area of avocado production in the state is certified to export to the United States.

The U.S. Department of Agriculture (USDA) closely regulates and facilitates Mexican avocado exports to the United States through its pest-control certification and tracing program. It also promotes them through the Haas Avocado Board, a federal government instrumentality overseen by the USDA, whose purpose is “to increase consumption and demand for domestic and imported Hass avocados in the U.S. market.”⁵

As for U.S. corporations, our report shows how orchards containing illegally deforested land in Mexico are among those that have supplied avocados to the U.S.-based Calavo Growers, Fresh Del Monte Produce, Mission Produce, and West Pak Avocado. These companies have, in turn, supplied Mexico-sourced avocados to major U.S. supermarkets like Walmart, Whole Foods, Kroger, Costco, and Trader Joe’s.

The United States, Mexico, and Canada have a shared commitment under the Paris Agreement to reduce deforestation as part of their broader commitment to reducing the greenhouse gas emissions causing climate change.⁶ All three countries also signed the Glasgow Leaders’ Declaration on Forests and Land Use, in which they committed to promote trade policies “that do not drive deforestation,”⁷ and the New York Declaration on Forests, in which they committed to help meet the “private sector goal of eliminating deforestation from the production of agricultural commodities.”⁸

In this case, the U.S., Mexican, and Canadian governments should uphold these commitments by supporting the preparation of a factual record, because—as documented in our report and outlined above—Mexico is in fact failing to effectively enforce its laws prohibiting the illegal deforestation and water theft being driven by avocado production in Michoacán.

⁵ Haas Avocado Board, *2022 Annual Report*, available at <https://hassavocadoboard.com/wp-content/uploads/hass-avocado-board-financials-annual-report-2022.pdf>.

⁶ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, art. 5., available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

⁷ “Glasgow Leaders’ Declaration on Forests and Land Use,” November 2, 2021, available at <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>.

⁸ “New York Declaration on Forests,” Climate Action Summit 2014, https://forestdeclaration.org/wp-content/uploads/2021/08/NYDF_Declaration.pdf (accessed July 13, 2023).

Thank you for your attention to this matter. Please do not hesitate to reach out if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Adams', with a stylized flourish at the end.

Brad Adams,
Executive Director