

Alert | Environmental/International Trade



December 2018

Environmental Aspects of the United States-Mexico-Canada Commercial Agreement (USMCA)

The recent United States-Mexico-Canada Agreement (USMCA), which replaces the North American Free Trade Agreement (NAFTA), claims to modernize and reinforce obligations regarding environmental matters that were previously covered in NAFTA and by the Commission for Environmental Cooperation (CEC).

This GT Alert summarizes some of the most important environmental aspects established by **Chapter 24 of the USMCA** and explains the scope of the new agreement's binding obligations, which include conflict resolution through consultation and cooperation.

The USMCA will become enforceable as soon as it is ratified by all legislative bodies of the participating countries and will be effective for 16 years, with reviews every six years.

Environmental Matters Under the USMCA

When NAFTA came into effect in 1994, it linked trade and the environment through the CEC. In this sense, Chapter 24 of the USMCA renews and reinforces agreements related to environmental matters, including, among others, the following obligations and commitments:

- **Procedural matters**
 - Obligates member states to ensure that interested persons can seek appropriate redress, including sanctions for violations of environmental legislation within their respective jurisdictions.
- **Protection of the Ozone Layer**
 - Determines the obligation of member states to implement measures concerning protection of the ozone layer through specific programs.
- **Protection of the marine environment and prevention of pollution caused by boats**
 - Establishes areas of cooperation among the participating states, such as the establishment of measures regarding pollution emitted by vessels and the adequacy of waste management at ports.
- **Air quality**
 - Seeks to reduce pollution emissions through mechanisms of cooperation that may include the monitoring and measurement of air pollution.
- **Marine waste**
 - Promotes the establishment of infrastructure to implement waste management, with the goal of reducing and combating marine litter through cooperative actions.
- **Corporate social responsibility**
 - Promotes best practices in environmental protection in accordance with international standards.
- **Trade and biodiversity**
 - Promotes and motivates conservation and sustainable biologic diversity.
- **Invasive exotic species**
 - Promotes the prevention, detection, control, and eradication of invasive species.
- **Marine life conservation and sustainable management of fisheries**
 - Recognizes the importance of promoting and facilitating sustainable, legal fishing trade, ensuring that there are no unnecessary or unjustifiable barriers to trade.
 - Seeks to create a fisheries management system to regulate the capture of marine life; at the same time, prevents overfishing and unnecessary fishing of certain species, and promotes recovery of overexploited populations.
 - Encourages the member states to adopt measures that prevent the use of poisons or explosives in commercial fishing, and prohibits the practice of shark hunting, to promote the long-term conservation of sharks, sea turtles, marine birds, and marine mammals through the effective implementation and application of conservation and management measures, which shall include impact studies in relation to the operation of commercial fishing on species that are not the main target.
 - Prohibits the hunting of whales for commercial purposes, unless authorized by a multilateral treaty of which one of the USMCA countries is a member.
- **Elimination of subsidies for *Illegal, Unreported, and Unregulated Fishing (IUU)* vessels and operators**
 - Eliminates IUU subsidies by any member state, by a subsidized party, by a regional fishery management organization, or by an agreement reached in accordance with international laws.

Subsidies granted for this purpose, which may have been in effect prior to the signing of the USMCA, should not stand for more than three years after the signing.

- **Action Against IUU**

- Implements measures to combat IUU, including actions under the Agreement on Port State Measures to prevent, deter, and eliminate IUU (Rome Declaration of 2003 on IUU).
- Encourages member countries to support monitoring, control, surveillance, compliance, and regulatory schemes by adopting, maintaining, and reviewing measures to discourage fishing and co-national vessels from conducting IUU.
- Mandates that member countries address the trans-shipment by sea of fish caught by IUU or products derived from it; and maintain a ship documentation method and promote the use of International Maritime Organization numbers or the equivalent.

- **Conservation of flora and fauna in harmony with trade**

- Mandates that member countries adopt, maintain, and implement laws, regulations, and other measures to comply with the obligations stipulated in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In this sense and according to USMCA, the parties should share information and experience on matters of mutual interest related to the fight against capture and illegal trade of flora and fauna, including illegal logging. They should also take measures to improve the effectiveness of inspections of vessels containing flora and fauna, including parts and products thereof, and establish wildlife trafficking as a serious felony.

- **Sustainable forest management in communion with trade**

- Commits countries to maintaining and/or strengthening the governmental capacity and institutional action items to promote sustainable forest management and the legal trade of forest products, including sharing information and cooperating with initiatives.

- **Environmental goods and services**

- Facilitates and promotes trade and investment in environmental goods and services, committing the parties to identify any potential barriers to trade.

Compliance with Chapter 24 obligations will be monitored by an environmental committee established under the USMCA.

Dispute Resolution

If the parties fail to resolve a matter through dialogue, consultation, or exchange of information, they must resort to the provisions of Chapter 31 of the USMCA for dispute settlement.

Author

This GT Alert was prepared by **Erick Hernández Gallego***. Questions about this information can be directed to:

- [Erick Hernández Gallego](mailto:ehernandez@gtlaw.com) | +52 55.5029.0060 | ehernandez@gtlaw.com
- Or your [Greenberg Traurig attorney](#)

**Special thanks to Rubén Alejandro Ortiz Cervera ~ for his assistance with this Alert.*

~ Not admitted to practice law.

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. [~]Houston. Las Vegas. London. ^{*}Los Angeles. Mexico City. ⁺Miami. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul. [∞]Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. [^]Tokyo. ^²Warsaw. ⁻Washington, D.C.. West Palm Beach. Westchester County.

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. [~]Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ^{}Operates as a separate UK registered legal entity. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ^²Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁻Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2018 Greenberg Traurig, LLP. All rights reserved.*