

**Summary of the Environmental Cooperation Agreement (ECA) and Relevant Provisions of the USMCA  
JPAC Public Forum  
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**The USMCA includes a stand-alone chapter on the environment ([Chapter 24](#)), and included in that chapter are certain provisions which deal with the work of the Commission for Environmental Cooperation (CEC):**

- Article 24.25(3) provides that the Parties are committed to undertaking cooperative environmental activities pursuant to the [Environmental Cooperation Agreement](#) (ECA).
  - Environmental cooperation activities will be coordinated by the CEC as provided for in the ECA.
  - The chapter also recognizes that the CEC was created by the North American Agreement on Environmental Cooperation ([NAAEC](#)).
- Articles 24.27 and 24.28 now govern the **SEM process**. For the most part, the provisions are similar to the NAAEC, except that the only environmental laws which can be invoked in a submission are federal laws. Some timeframes are shorter.

**All three Parties have completed their ratification processes for the new trade agreement, and it will enter into force on July 1, 2020.**

**The ECA in general and its relationship to the NAAEC**

- The ECA references the NAAEC a number of times. In the preamble, the Parties affirm the long history of cooperation under the NAAEC (as well as the importance of the CEC) and, in Article 2.1, the Parties commit to participating in the CEC “originally established under the NAAEC.”
- The ECA states that it will become effective when the USMCA becomes effective, at which time the ECA replaces the NAAEC (Article 17.1).
- The ECA also states that a Party can withdraw with six months notice (Article 17.2), and that it will remain effective for the other Parties. Finally, the Parties may invite by consensus “another State” to join the ECA (Article 17.4).

**Status and Continuity of the CEC**

- The ECA states that the CEC will continue to operate under its rules, policies, guidelines, procedures and resolutions, to the extent they are consistent with the ECA (Article 2.3).
- This provision also recognizes that the Council can adjust these procedures, as necessary, to implement the ECA.

## **Secretariat Structure**

- Most of the ECA provisions regarding the structure of the Secretariat are very similar to the NAAEC provisions, with a few exceptions.
- ECA Article 5.1 continues to authorize the appointment of an ED for three years, but now makes no reference to nationality and allows renewal for multiple periods, rather than only “for an additional three-year term” per the NAAEC.
- The ECA adds the words “gender balance” as a factor to consider in the Secretariat’s hiring of staff (Article 5.2(b)).

## **Annual Report of the ED**

- Article 8 requires the ED to prepare an annual report in accordance with Council instructions.
- The report is to include outcomes of cooperative activities, Commission expenses, outcomes of JPAC activities, and any other matter the Council instructs the Secretariat to include.
- Not included in the list of topics covered, which were included in the NAAEC, are information about Party obligations, including enforcement activities, submissions data, and recommendations on any other matter included within the scope of the agreement.
- The report is to be made public.
- The Secretariat may develop a State of the Environment report if instructed by the Council (Article 4.3).
- Other NAAEC provisions which are not carried forward into the ECA: Transboundary Environmental Impact Assessment and Article 13 Secretariat reports.
- NAAEC Part Five Dispute Resolution is gone, although the USMCA includes an elaborate multi-level consultation and dispute resolution process (Articles 24.29-.32) which could be applicable.

## **Funding of the CEC**

- In Article 12, the ECA reiterates the NAAEC’s annual equal contributions from each Party, but it also provides that the annual budget may be supplemented by funds or in-kind contributions from the Parties. Additionally, Article 12 provides that the Commission may receive funds or in-kind contributions from external sources that exceed the annual budget.

## **Council Oversight**

- The ECA continues the Council’s oversight of the Secretariat. Under the language of the ECA, the Council “oversees” the Secretariat as well as “directs and approves” its activities (Article 4.1(c)).
- The Council defines the cooperative work program and develops and approves it.

## **JPAC**

- Down from 15 to 9 members and there is a term limit to four years (Article 6.1).
- There is new language ensuring diversity of candidates (Article 6.2).
- JPAC may hold meetings through electronic means (ECA, Article 6.3).
- The ECA provides that JPAC may advise the Council on any matter within the scope of the ECA, meets annually during the Council session and at any other time as decided by the Council or the JPAC chairperson, coordinate with the Secretariat to promote and improve public

participation, and, in consultation with the Council, develop an annual plan of activities (Article 6.3-6).

### **Cooperative Agenda**

- The ECA strengthens the CEC's cooperative mission by listing alternatives to the traditional cooperative activities of developing programs, projects, and activities. Specifically, the ECA states that cooperation can also include such activities as the exchange of delegations, professionals, technicians and specialists from the academic, private, governmental and NGO sectors, the organization of conferences and seminars, the facilitation of associations, and the compilation, publication, and exchange of environmental information (Article 9(a)-(f)).
- The ECA expands on the cooperative activities listed in the USMCA and includes a comprehensive list of 27 “work program” subjects (Article 10) (see attached).
- The ECA also states that in developing and submitting cooperative activities for Council approval, the Secretariat should develop and include appropriate performance measures and indicators.
- Cooperative Agenda (Article 10): Five major areas with 27 specific topics (proposed 2020-2025 Strategic Plan link in parentheses):
  - Supporting green growth and sustainable development (i.e., Circular Economy and Sustainable Materials Management)
  - Reducing pollution and supporting strong, low emissions, resilient economies (i.e., Clean Air, Land, and Water; Resilient Communities; and Preventing and Reducing Marine Litter)
  - Conserving and protecting biodiversity and habitats (i.e., Shared Ecosystems and Species)
  - Promoting the sustainable management and use of natural resources (e.g., Shared Ecosystems and Species)
  - Strengthening environmental governance (i.e., Enforcement)

### **SEM**

- The definitions in USMCA chapters 2 and 24 apply to the SEM, as do Articles 24.27 and 24.28.
- The ECA acknowledges that the Secretariat implements the SEM (Article 5.5), as the USMCA provides (Article 24.27(1)).
- Active submissions on the date the ECA enters into force will be processed under the NAAEC (Article 2.1).
- The ECA maintains submitter confidentiality (Article 16(1)(a)) and the requirement for the Parties to cooperate with the Secretariat provide information relevant to the production of a factual record (Article 14).
- The ECA reiterates the USMCA's text stating that issues raised in a factual record may be appropriate for cooperation (the ECA provides this authority to the Council while the USMC attributes it to the Environment Committee, which can provide such recommendations to the Council (ECA, Article 4.1(m); USMCA, Article 24.28(7)).