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November 7, 2023

TMEC Secretariat, Mexican Section

Submitted electronically through email: ssmtlc@economia.gob.mx

Dear Secretariat,

On behalf of the Institute for Agriculture and Trade Policy (IATP), the Rural Coalition, and the Alianza Nacional de Campesinas, we formally request the opportunity to file written views to assist the United States-Mexico-Canada Agreement (“USMCA” or “TMEC”) dispute settlement panel regarding certain Mexican measures concerning genetically engineered (“GE”) corn. The United States is challenging measures set out in Mexico’s February 13, 2023 decree, *DECRETO por el que se establecen diversas acciones en materia de glifosato y maíz genéticamente modificado*,¹ specifically the ban on use of GE corn (maize) in tortillas or dough (nixtamalization), and the instruction to Mexican government agencies to gradually substitute non-GE corn for GE corn in all products for human consumption and for animal feed.²

The panel will be addressing issues of first impression; thus, it is especially important that the factual record is complete and legal issues fully explored. The USMCA’s General Exception for measures necessary to advance Indigenous rights is the first such provision in a trade agreement to which the United States is a Party. The relationship of this article to the Sanitary and Phytosanitary (SPS) Measures chapter, and trade claims made pursuant to that chapter, will determine whether the Article 32.5 General Exception is enforceable.

Our organizations are particularly well suited to assist the panel by providing relevant information not otherwise likely to be provided by the Parties. With deep expertise on agricultural trade policy, and experience and work on behalf of Indigenous and small-scale farmers in both the U.S. and Mexico over many decades, we will bring an important multijurisdictional perspective to the proceedings.

IATP is a nonprofit nongovernmental organization based in Minneapolis, Minnesota. Formed during the farm crisis of the 1980s to understand policies affecting family farmers, particularly in the U.S. Midwest, IATP also has strong connections to organizations in Mexico representing small-scale and Indigenous farmers. Since 1986, we have carried out in-depth research and analysis to educate about, and advocate for, international agreements that advance fair trade, sustainable agriculture, environmental protection and public health. We have written about the

¹ https://www.dof.gob.mx/nota_detalle.php?codigo=5679405&fecha=13/02/2023#gsc.tab=0

² <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>

liberalization of corn tariffs, subsequent U.S. agricultural export dumping, and NAFTA's impact on consumer health and Mexico's Indigenous and family farms.³ During and after USMCA negotiations, we have analyzed provisions on Agricultural Biotechnology and Sanitary and Phytosanitary (SPS) Measures and written about potential impacts on family and smaller-scale farms, food security and nutrition, biodiversity, and environmental protection.⁴

The Rural Coalition is a not-for-profit organization headquartered in Washington, D.C. For 45 years, the Rural Coalition has served as a voice of African-American, American Indian, Asian-American, Euro-American and Latino farmers, farmworkers and rural communities in the U.S., as well as Indigenous and campesino groups in Mexico and beyond. With our members, which include the Alianza Nacional de Campesinas, we engage in an integrated program of public policy monitoring, technical assistance and capacity-building, participatory collaborative research and education.

If our organizations are granted the opportunity to provide written views in this proceeding, we will address the following issues of fact and law:

- First, we will analyze the relationship between the SPS provisions of USMCA Chapter 9, which the U.S. relies on to advance its complaints, and the General Exception in USMCA Article 32.5 for measures deemed necessary to fulfill legal obligations to Indigenous peoples.
- Second, we will provide evidence of the historic and current centrality of native corn species cultivation and use in food, including tortillas, in Mexican culture generally and for Indigenous peoples in particular. While this evidence is central to the nixtamalization concerns, the contamination of Mexican maize landraces by GE corn imports also has serious implications for the continued production of biodiverse corn varieties in Mexico.
- Third, we will establish the relationship between the purposes articulated as the basis for Mexico's February 13, 2023 decree and Mexico's laws and judicial decisions protecting Indigenous and other human rights. We will establish that Mexico's Constitution guarantees the right to a clean environment, which includes protection of maize biodiversity, and that these protections are central to the Indigenous rights also specifically guaranteed in the Constitution, which further instructs that these human rights must be interpreted expansively and in accordance with international treaties on the subject.
- Fourth, we will analyze the General Exception in USMCA Article 32.5 in light of Mexico's laws and Constitution and the United Nations Declaration on the Rights of Indigenous Peoples and show how the protections of Article 32.5 are further articulated in several provisions of USMCA's Environment Chapter 24. Specifically, we will address Article 24.2

³ E.g., <https://www.iatp.org/documents/counting-costs-agricultural-dumping>;
<https://www.iatp.org/blog/201901/nafta-and-us-farmers-20-years-later>

⁴ E.g., <https://www.iatp.org/documents/comments-no-tpa-105-003-united-states-mexico-canada-agreement-likely-impact-us-economy>; <https://www.iatp.org/blog/201901/iatp-analysis-new-nafta>;
<https://www.iatp.org/food-sovereignty-trade-and-mexicos-gmo-corn-policies>

on the role of the environment in the economic, social and cultural well-being of Indigenous peoples and local communities; Article 24.15 on Trade and Biodiversity; and Article 24.8 on Multilateral Environmental Agreements and the U.N. Convention on Biodiversity, of which Mexico is a signatory.

- Finally, we will provide evidence that Mexico's measures advancing the rights of Indigenous peoples and protecting the country's cultural heritage and biodiversity are not a "disguised restriction on trade." Claims of potential economic damage lack evidentiary support, and there is insufficient impact on trade with the U.S. to be actionable.

We have received no financial or other assistance from a Party in preparing this application. Our organizations work closely with civil society groups in Mexico and the U.S. to advocate for fair and sustainable food, farm and trade policies. We have contacts in both governments, but we are independent civil society organizations. Each of our organizations receives some funding from the U.S. Department of Agriculture for work unrelated to this application.

In summary, we request the opportunity to participate in the dispute settlement proceedings by providing a written submission on behalf of our respective organizations.

Respectfully submitted,

Sharon Anglin Treat, Esq., Senior Advisor
Karen Hansen-Kuhn, Director, Trade and International Strategies
Institute for Agriculture and Trade Policy
www.iatp.org

Lorette Picciano, Executive Director
Rural Coalition
www.ruralco.org

Mily Treviño-Sauceda, Executive Director
Alianza Nacional de Campesinas, Inc.
www.Alianzanacionaldecampesinas.org