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*Before the Panel established pursuant to Chapter 31 (Dispute Settlement) of the Agreement
between the United States of America, the United Mexican States and Canada (USMCA)*

Mexico – Measures Concerning Genetically Engineered Corn
(MEX-USA-2023-31-01)



Initial Written Submission of the United Mexican States

January 15, 2024

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I. INTRODUCTION

1. Pursuant to the Mechanism of Chapter 31 of the Agreement between the United Mexican States, the United States of America, , and Canada (USMCA), the procedural schedule established on November 13, 2023 by the Panel, and the agreement reached by the Parties regarding a modification to the procedural schedule submitted to the Panel, Mexico presents this Initial Written Submission within the proceedings of the Case *Mexico – Measures Concerning Genetically Engineered Corn* (MEX-USA-2023-31-01).

2. In general terms, the dispute initiated by the United States focuses on an alleged incompatibility between 2023 Decree and Chapter 9 (Sanitary and Phytosanitary Measures) of the USMCA, as well as an alleged prohibition incompatible with Chapter 2 (National Treatment and Market Access for Goods) of the Treaty. As will be explained in this Initial Written Submission, there is no such incompatibility, and the import figures demonstrate that there is no effect on trade . On the contrary, due to various factors (*e.g.* commercial, industrial, weather, among others) corn imports from the United States have increased, and this trend is expected to continue.

3. Indeed, one of the measures claimed by the United States could be considered as Sanitary and Phytosanitary Measures (SPS) contained in 2023 Decree, since one of its objectives is to protect human health and native corn from the risks associated with GM corn grain. However, these SPS objectives are not the only objectives of 2023 Decree and the measures claimed. This instrument also deals with an herbicide of major concern in Mexico –and other trading partners–, due to its serious effects on human health and the environment, *i.e.* glyphosate. 2023 Decree also aims to protect the environment, biodiversity, and establishes the protection of Mexico's cultural heritage, as well as the identity of Mexico's indigenous and peasant communities. In addition, the purpose of 2023 Decree considers the scientific evidence on the potential and proven risks to health, animals and plants, and instructs the competent authorities to carry out appropriate scientific studies on the consumption of GM corn in products for industrial use in human food and animal feed. The foregoing, in accordance with the existing conditions in Mexico, which is the country with the highest consumption of corn in the world, and at the same time a Center of Origin and constant Diversification of corn.

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4. According to the United States, the 2023 Decree gives rise to two measures. On the one hand, something they have wrongly called the “Tortilla Corn Ban”, and, on the other, what they have called the “Substitution Instruction”. However, the arguments submitted by the United States are incorrect. 2023 Decree does not contain a ban, but only an end-use limitation, which means that GM corn will not be used for the production of dough and tortillas, as it is the main food of Mexicans. Gradual substitution is simply an executive order that calls on “the agencies and entities of the Federal Public Administration” to “carry out the appropriate actions” at some point in the future. These actions do not exist yet. They have not been designed, proposed, adopted or implemented, let alone applied. It cannot be said at this stage whether these actions will be designed or applied inconsistently with Mexico's obligations under the USMCA. In relation to this measure, the US claim is, at best, premature.

5. The Mexican government has promoted measures to improve the diet of Mexicans in response of a series of diseases in the population that are directly linked to food and the serious health effects caused by various factors, including the quality of food and the use of highly dangerous pesticides. In this sense, risk assessment methodologies have been developed based on scientific information gathered over the years.

6. The United States alleges that the challenged measures are not based on science, but seeks to prove its arguments with publications without the minimum scientific rigor, outdated, or, if applicable, with an evident conflict of interest.

7. The United States Initial Written Submission ignores the fact that corn is the backbone of food and agricultural production in Mexico. The various cultures settled in Mexican territory considered themselves as “women and men of corn”, an expression that, without fear of exaggeration, continues to be a cultural and identity characteristic throughout Mexico.

8. Clearly, in Mexico, corn cannot only be seen as a *commodity* as in other markets, but its trade needs to be approached with the particularities of being the genetic reservoir of the world's most important food crop, which preserves genetic diversity capable of coping with complex climatic conditions and offering alternative forms of production such as the “milpa”, which is an ancestral system and of indigenous tradition recognized as an agro-ecological innovation. Moreover, domestic corn production not only has the potential to feed the Mexican population,

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but is the basis of traditional Mexican food, which is recognized as Heritage of Humanity by UNCESCO.

9. Mexico has legitimate concerns about the safety and innocuousness of genetically modified corn (“GM corn”), and its indissoluble relationship with its technological package that includes glyphosate. Again, this is not an issue limited to health aspects; there are also environmental, cultural and social aspects that 2023 Decree addresses. Accordingly, Mexico's Initial Written Submission is divided into four sections.

10. *First*, Mexico describes the procedural background to this claim.

11. *Second*, in the Factual Section, the Respondent sets out as context, an overview of agriculture in Mexico, the relevance of corn, the impacts of GM corn and its technology package including glyphosate, and the relevant trade aspects omitted in the United States Initial Written Submission.

12. *Third*, Mexico provides an objective explanation of the text, nature and purpose of 2023 Decree.

13. *Fourth*, in the Legal Section, Mexico refutes the United States' claims, in light of Articles 9.2, 9.6.3, 9.6.4, 9.6.5, 9.6.7, 9.6.8, 9.6.10 and 2.11 of the USMCA, and raises defenses and exceptions under Article XX of the GATT 1994 and Article 32.5 of the USMCA.

14. On this basis, the Panel may conclude that 2023 Decree is consistent with Mexico's obligations under the USMCA. For further context, Mexico's position is recapitulated below.

Facts

15. *First*, Mexico describes the importance of corn for agriculture and the preservation of the nation's biocultural wealth. In total, Mexico has 64 corn breeds, of which 59 are native. Each of these native varieties make up the country's genetic reservoir and form part of Mexico's cultural identity and gastronomic tradition, particularly that of the indigenous peoples. It is essential for the Panel to take into account that corn is the staple food in Mexico. The daily *per capita* consumption of corn is around 350 grams, and approximately 128 kg/year, through tortilla and derivatives from the nixtamalization process of corn grain.

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16. *Second*, Respondent provides the necessary context for a general understanding of the genetic manipulation techniques used in the main GM crops. It also refutes the arguments presented by the United States by demonstrating that GMOs have not increased crop yields, and far less decreased the amount of agrochemicals used in agriculture.

17. *Third*, Respondent explains that since the late 1980s, applications for GMO liberalization began to be filed; however, the scientific and peasant community in Mexico identified risks to the genetic wealth of corn and, consequently, led to the imposition of a *de facto* moratorium. Despite this, it was not possible to prevent GM corn transgenes from reaching native corn populations. In response to this situation, Mexico has implemented regulatory instruments to, *inter alia*, protect native corn varieties from GM corn.

18. In this regard, Mexico presents evidence on the impacts of GM corn and glyphosate, which demonstrates that the cultivation and consumption of GM corn have different negative effects on health, native corn and the environment. Furthermore, despite United States efforts not to mention glyphosate in its Initial Written Submission, Mexico explains the relationship between glyphosate and GM corn, as well as the risks to health, native varieties and the environment caused by this herbicide.

19. *Fourth*, for a better understanding of the Panel, Mexico describes and explains the international and national regulations that are part of the Mexican legal system, which regulate and protect Mexico's native corn varieties, the gastronomic tradition, the rights to health and the environment, as well as the protection of indigenous peoples, peasant communities and cultural heritage of Mexico. Furthermore, Respondent describes the most relevant domestic laws for this dispute: The Law of Biosafety of Genetically Modified Organisms (“Law of Biosafety”) and its regulations, as well as the Federal Law for the Promotion and Protection of Native Corn.

Fifth, Respondent emphasizes that there has been no commercial impact. The relevant corn trade between Mexico and the United States is related to yellow corn, being the United States the main exporting country to Mexico and, contrary to what the United States alleges, imports have not been affected as a result of the measures at issue in this dispute.

Measures claimed

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20. Mexico presents the objective and scope of 2023 Decree, since the measures identified by the United States, subject to this dispute, have been wrongly characterized. The purposes of the two measures in question can be divided into two categories. On the one hand, of a sanitary and phytosanitary nature. On the other hand, for non-sanitary and phytosanitary purposes that must be evaluated under the applicable provisions of other agreements. They are listed:

- The protection of human health, which includes *i*) direct exposure to glyphosate as an agricultural chemical product, and *ii*) the protection of human health from food safety risks arising from the consumption of genetically modified corn grain.
- The conservation and sustainable use of biological diversity with respect to Mexico's native corn varieties and corn *per se*;
- The conservation of the biodiversity and genetic integrity of Mexico's native corn varieties and corn *per se* as “exhaustible natural resources”; and
- The protection of the biocultural, agricultural (*e.g.*, milpa) and gastronomic wealth of Mexico's native corn varieties, including the protection of the agricultural traditions of mostly indigenous peasant communities.

21. With this in mind, it is false that 2023 Decree or any national legislation establishes a ban on the importation of corn into Mexico, or on its commercialization. The competent regulatory authorities must carry out or cease the granting of GMO permits and authorizations in accordance with the applicable regulations (Law of Biosafety), which existed long before the publication of 2023 Decree. In this sense, contrary to what the United States has indicated, there is no “Tortilla Corn Ban”, but the 2023 Decree only seeks to regulate the end use of corn for human food.

22. In addition, the United States' statement that 2023 Decree mandates the Mexican regulatory authorities not to issue authorizations for the importation or commercialization of GM corn for industrial human food use is incorrect. This statement is incorrect. The “Gradual Substitution” has not been applied.

Legal Arguments

23. *First*, the United States has failed to demonstrate that the challenged measures fall within the scope of Chapter 9 of the USMCA, as they do not meet the criteria for the SPS Agreement to apply to them. However, in the event that the Panel finds that the challenged measures are covered by Chapter 9 of the USMCA, Mexico demonstrates that the measures are consistent with that Chapter and that the United States has not demonstrated any incompatibility.

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24. *Second*, contrary to what the United States might think, Mexico did determine an appropriate level of sanitary or phytosanitary protection, *i.e.*, *i*) to protect human health from risks arising from “contaminants” or “toxins” in the GM corn grain that is consumed directly in everyday food such as tortilla; and *ii*) to protect native corn from the risks arising from transgenic introgression of GM corn plant “pests” into the environment. Given the fundamental importance of corn as everyday staple food in Mexico, the population in Mexico is highly exposed and vulnerable to these risks due to the amount of corn grain consumed directly on a daily basis in the form of tortilla and other foods made with nixtamalized flour and dough.

25. *Third*, the measure described as “Gradual Substitution” has not been applied, so the claims of the United States related to this measure are, at best, premature, and, in any case, it would be a provisional measure covered by Articles 9.6.4 (c) and 9.6.5.

26. *Fourth*, the measures at issue are consistent with Article 9.6.6 (a) because they are applied only to the extent necessary to protect human and plant health of native corn.

27. *Fifth*, the measures (arising from Articles 6, 7 and 8 of 2023 Decree) comply with the provisions of Articles 9.6.3, 9.6.7 and 9.6.8, since Mexico did carry out a risk assessment for the issuance of 2023 Decree, which was documented in the report entitled *Scientific Record on Glyphosate and GM Crops*, which in turn derives from the scientific collection of the National Biosafety Information System by CIBIOGEM, a risk assessment that is still in the process of obtaining more information, which complies with the criteria of Annex A(4) of the WTO SPS Agreement, and took into consideration the relevant international standards, guidelines, and recommendations to determine the appropriate level of protection taking into account the special circumstances of corn consumption in Mexico.¹

¹ For more than four years, through the USMCA and in an open and respectful dialogue, Mexico has shared with the United States, Mexico's concerns regarding the lack of scientific consensus on the safety of consumption of GM crops, in particular GM corn, and on the safety of glyphosate. In various forums under the USMCA, Mexico has made available to the United States the compilations of scientific information on the biosafety of GMOs contained in the National Biosafety Information System on GMOs, under the responsibility of CIBIOGEM, activated since 2019, as well as the Scientific Record on Glyphosate and GM crops, published since August 2020.

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28. *Sixth*, the measures at issue are consistent with Article 9.6.10 because they do not restrict trade more than necessary to achieve the level of protection that Mexico has determined to be adequate.

29. *Seventh*, the challenged measures are not within the scope of Article 2.11 of the USMCA because they do not represent an import restriction, but even if they were, the arguments of the United States are without merit because the measures have not blocked or restricted the process of importation of GM corn.

30. *Eighth*, even if the Panel were to find that the measures are incompatible with Chapters 2 and 9 of the USMCA -which they are not-, the alleged “incompatibilities” would, in any case, be covered by the exceptions contained in Article 32.1, with reference to paragraphs (a) and (g) of Article XX of the GATT, since they are necessary to protect public morals and are aimed at the conservation of exhaustible natural resources; and in Article 32.5 of the USMCA, since the measures are necessary to comply with Mexico’s legal obligations to its indigenous peoples.

31. Based on the aforementioned *supra*, and as will be explained throughout this Initial Written Submission, it is clear that the claims of the United States lack factual and legal elements that can support their case.

II. PROCEDURAL BACKGROUND

32. On March 6 and 7, 2023, the governments of the United States and Canada requested consultations with Mexico under Chapter 9 (“Sanitary and Phytosanitary Measures”) of the USMCA, regarding the Decree establishing various actions regarding glyphosate and genetically modified corn published on February 13, 2023 in the DOF (“2023 Decree or Decree”).

33. On June 2, 2023, Mexico received a request for consultations, under Chapter 31 (“Dispute Settlement”) of the USMCA, from the United States. The request was related to 2023 Decree, specifically regarding *i*) certain requests and refusals of authorizations for marketing and imports of genetically modified organisms (“relevant events”), *ii*) the alleged immediate ban established by on GE corn for nixtamalization or flour production (“*Tortilla Corn Ban*”) and *iii*) the alleged instruction to gradually substitute GM corn used for other human consumption and for animal feed (“*Substitution Instruction*”). Subsequently, on August 25, 2023, Canada submitted a request to join as a third party to these consultations.