

Pursuant to Articles 31.2 and 31.4 of the *United States-Mexico-Canada Agreement* (“USMCA”), the United States requests consultations with Mexico with regard to certain Mexican measures concerning genetically engineered (“GE”) corn and other GE products. These measures appear to be inconsistent with several provisions of the USMCA, including under Chapter 9 (Sanitary and Phytosanitary Measures) and Chapter 2 (National Treatment and Market Access for Goods).

On March 30, 2023, the United States held technical consultations with Mexico under USMCA Chapter 9, but the technical consultations failed to resolve the matter. Article 9.19 of the USMCA provides that a Party may cease technical consultations and have recourse to dispute settlement under Chapter 31 following the technical consultations meeting.

I. Event Authorization Rejections and Resultant Product Bans

1. Since August 2021, Mexico has rejected certain authorization applications covering corn, canola, cotton, and soybean GE events. In the context of Mexico’s regime governing GE products, this means it is illegal to import and sell in Mexico products that include the rejected events. The event authorization rejections and the resultant product bans are reflected in official letters from the Federal Commission for the Protection against Sanitary Risks (“COFEPRIS”)¹ and in Mexico’s legal regime governing the importation and sale of GE products other than for cultivation.² Each of these event authorization rejections and the resultant product bans appears to be inconsistent with the following provisions of the USMCA:³

¹ These rejection letters include: COFEPRIS, Official Letter No. 183300913X005/2021 (Aug. 23, 2021) (corn); COFEPRIS, Official Letter No. 193300913X0002/2022 (Jan. 13, 2022) (corn); COFEPRIS, Official Letter No. 193300913X0004-2022 (Jan. 26, 2022) (cotton); COFEPRIS, Official Letter No. 183300CTI60001-2022 (Jan. 27, 2022) (soybean); COFEPRIS, Official Letter No. 193300913X0001-2022 (Jan. 27, 2022) (corn); COFEPRIS, Official Letter No. 193300913X0006-2022 (Jan. 27, 2022) (corn); COFEPRIS, Official Letter No. 193300913X0003/2022 (Jan. 13, 2022) (corn); COFEPRIS, Official Letter, No. 213300913X0006-2022 (Feb. 3, 2022) (cotton); COFEPRIS, Official Letter, No. 213300913X0008-2022 (Feb. 3, 2022) (canola); COFEPRIS, Official Letter, No. 213300913X0004-2022 (Feb. 3, 2022) (cotton); COFEPRIS, Official Letter No. 193300913X0005-2022 (Jan. 26, 2022) (corn); COFEPRIS, Official Letter No. 1833000913X0510-2022 (Jan. 26, 2022) (cotton); COFEPRIS, Official Letter No. 213300913X0001-2022 (Feb. 3, 2022) (corn); COFEPRIS, Official Letter No. 213300913X0010-2022 (Feb. 18, 2022) (cotton). COFEPRIS has issued the following approvals, for which the United States seeks further information: COFEPRIS, Official Letter No. 223300913X0011OGM2023 (Jan. 2, 2023) (cotton); COFEPRIS, Official Letter No. 183300913X0510OGM2023 (Jan. 11, 2023) (cotton); COFEPRIS, Official Letter No. 223300913X0009OGM2023 (Feb. 13, 2023) (corn); COFEPRIS, Official Letter No. 223300913X0010OGM2023 (Feb. 13, 2023) (corn); COFEPRIS, Official Letter No. 213300913X0008OGM2023 (Feb. 17, 2023) (canola); COFEPRIS, Official Letter No. 213300913X0006OGM2023 (Feb. 17, 2023) (cotton); COFEPRIS, Official Letter No. 213300913X0004OGM2023 (Feb. 17, 2023) (cotton).

² This legal regime is reflected in the Biosafety Law of 2005, including Articles 1-8, 91-98, and 119-122, and in the Regulations to the Genetically Modified Organisms Biosafety Law of 2008, including Articles 1-4 and 23-32.

³ Alternatively, pursuant to USMCA Article 31.2(c), the United States asserts that it had a reasonable expectation at the time the USMCA was concluded that Mexico would not reject such events under the attendant circumstances.

- a. Article 9.6.3 because Mexico does not base its measures on relevant international standards, guidelines, or recommendations or on an assessment, as appropriate to the circumstances, of the risk to human, animal, or plant life or health;
- b. Article 9.6.6(a) because Mexico does not ensure its measures are applied only to the extent necessary to protect human, animal, or plant life or health;
- c. Article 9.6.6(b) because Mexico does not ensure its measures are based on relevant scientific principles, taking into account relevant factors;
- d. To the extent Mexico has conducted risk assessments, Article 9.6.8 because Mexico has not ensured that each risk assessment it conducts is appropriate to the circumstances and takes into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations;
- e. Article 9.6.10 because Mexico did not select an SPS measure not more trade restrictive than required to achieve the level of protection that the Party has determined to be appropriate; and
- f. Article 2.11 because Mexico adopts or maintains a prohibition or restriction on the importation of a good of another Party.

II. Mexico’s Ban on GE Corn for Nixtamalization or Flour Production (Tortilla Corn Ban)

2. On February 13, 2023, Mexico issued the *Decree Establishing Various Actions Regarding Glyphosate and Genetically Modified Corn* (“2023 Corn Decree”). The decree provides for an immediate ban on GE corn for nixtamalization or flour production. This ban on GE corn for nixtamalization or flour production is reflected in the 2023 Corn Decree⁴ and in Mexico’s legal regime governing the importation and sale of GE products other than for

Accordingly, the United States considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 or Chapter 9 of the USMCA is being nullified or impaired as a result of the application of these measures.

⁴ See, e.g., 2023 Corn Decree, arts. II, VI (requiring “biosafety authorities” to “revoke and refrain from granting authorizations for the use of genetically modified corn grain for human consumption”, which it defines as corn “intended for human consumption through ‘nixtamalization’ or flour production, which is what is made in the sector known as dough and tortilla”), III, VII (“being the responsibility of whoever uses it in Mexico not [to have] the intended destination in section III of the second article of this ordinance”), X (“Failure to comply with the provisions of this Decree by the . . . entities of the Federal Public Administration will carry the corresponding administrative responsibilities in terms of the General Law of Administrative Responsibilities.”).

cultivation.⁵ This measure (the “Tortilla Corn Ban”) appears to be inconsistent with the following provisions of the USMCA:⁶

- a. Article 9.6.3 because Mexico does not base its measure on relevant international standards, guidelines, or recommendations or on an appropriate risk assessment;
- b. Article 9.6.6(a) because Mexico does not ensure its measure is applied only to the extent necessary to protect human, animal, or plant life or health;
- c. Article 9.6.6(b) because Mexico does not ensure its measure is based on relevant scientific principles, taking into account relevant factors;
- d. To the extent Mexico has conducted a risk assessment, Article 9.6.7 because Mexico did not conduct its risk assessment with respect to an SPS regulation in a manner that is documented and provides the other Parties an opportunity to comment;
- e. To the extent Mexico has conducted a risk assessment, Article 9.6.8 because Mexico has not ensured that each risk assessment it conducts is appropriate to the circumstances and takes into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations;
- f. Article 9.6.10 because Mexico did not select an SPS measure not more trade restrictive than required to achieve the level of protection that the Party has determined to be appropriate; and
- g. Article 2.11 because Mexico adopts or maintains a prohibition or restriction on the importation of a good of another Party.

III. Mexico’s Instruction to Gradually Substitute GE Corn Used for Other Human Consumption and for Animal Feed (Substitution Instruction)

3. The 2023 Corn Decree also instructs Mexican authorities to gradually substitute GE corn used for animal feed and for human consumption other than in nixtamalization or flour production. This instruction to gradually substitute GE corn used for other human consumption and for animal feed is reflected in the 2023 Corn Decree⁷ and in Mexico’s legal regime

⁵ This legal regime is reflected in the Biosafety Law of 2005, including Articles 1-8, 91-98, and 119-122, and in the Regulations to the Genetically Modified Organisms Biosafety Law of 2008, including Articles 1-4 and 23-32.

⁶ Alternatively, pursuant to USMCA Article 31.2(c), the United States asserts that it had a reasonable expectation at the time the USMCA was concluded that Mexico would not adopt the Tortilla Corn Ban. Accordingly, the United States considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 or Chapter 9 of the USMCA is being nullified or impaired as a result of the application of this measure.

⁷ *See, e.g.*, 2023 Corn Decree, arts. II, III, VII (“The agencies and entities of the Federal Public Administration will carry out the actions leading to the gradual substitution of genetically modified corn for animal feed and for industrial use for human food,” which it defines, respectively, as corn “intended for the livestock and aquaculture sectors, for animal feed” and as corn “for human consumption . . . other than as indicated in the previous section”),

governing the importation and sale of GE products other than for cultivation.⁸ This measure (the “Substitution Instruction”) appears to be inconsistent with the following provisions of the USMCA:⁹

- a. Article 9.6.3 because Mexico does not base its measure on relevant international standards, guidelines, or recommendations or on an appropriate risk assessment;
- b. Article 9.6.6(a) because Mexico does not ensure its measure is applied only to the extent necessary to protect human, animal, or plant life or health;
- c. Article 9.6.6(b) because Mexico does not ensure its measure is based on relevant scientific principles, taking into account relevant factors;
- d. To the extent Mexico has conducted a risk assessment, Article 9.6.7 because Mexico did not conduct its risk assessment with respect to an SPS regulation in a manner that is documented and provides the other Parties an opportunity to comment;
- e. To the extent Mexico has conducted a risk assessment, Article 9.6.8 because Mexico has not ensured that each risk assessment it conducts is appropriate to the circumstances and takes into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations;
- f. Article 9.6.10 because Mexico did not select an SPS measure not more trade restrictive than required to achieve the level of protection that the Party has determined to be appropriate; and
- g. Article 2.11 because Mexico adopts or maintains a prohibition or restriction on the importation of a good of another Party.

X (“Failure to comply with the provisions of this Decree by the . . . entities of the Federal Public Administration will carry the corresponding administrative responsibilities in terms of the General Law of Administrative Responsibilities.”).

⁸ This legal regime is reflected in the Biosafety Law of 2005, including Articles 1-8, 91-98, and 119-122, and in the Regulations to the Genetically Modified Organisms Biosafety Law of 2008, including Articles 1-4 and 23-32.

⁹ Alternatively, pursuant to USMCA Article 31.2(c), the United States asserts that it had a reasonable expectation at the time the USMCA was concluded that Mexico would not adopt the Substitution Instruction. Accordingly, the United States considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 or Chapter 9 of the USMCA is being nullified or impaired as a result of the application of this measure.