



THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

March 6, 2023

Secretary Raquel Buenrostro
Secretariat of Economy
Calle Pachuca 189, piso 23
Col. Condesa, C.P. 06140, Cuauhtémoc
Mexico City, Mexico

Dear Secretary Buenrostro:

Article 9.19.2 of the *United States-Mexico-Canada Agreement* (USMCA) provides that “[a] Party (requesting Party) may initiate technical consultations with another Party (responding Party) to discuss any matter arising under this Chapter [*i.e.*, Chapter 9 – Sanitary and Phytosanitary Measures] that may adversely affect its trade by delivering a written request to the Contact Point of the responding Party.” Pursuant to Article 9.19.2, the United States requests technical consultations with Mexico with regard to Mexico’s measures concerning genetically engineered (GE) corn and certain other GE products. These measures may adversely affect U.S. trade with Mexico and appear to be inconsistent with Mexico’s commitments under the Sanitary and Phytosanitary (SPS) Measures chapter of the USMCA.

Article 9.19.1 provides that “[a] Party may have recourse to technical consultations set out in paragraph 2 at any time it considers that the use of the relevant administrative procedures, the relevant technical working group, or other mechanisms would not resolve the matter.” The United States has engaged extensively with Mexico for over three years, at all levels, bilaterally and in the fora provided by the USMCA (Free Trade Commission (Articles 30.1 and 30.2), Committee on SPS Measures (Article 9.17), and Working Group for Cooperation on Agricultural Biotechnology (Article 3.16)). On January 30, 2023, the United States sent to Mexico a letter under Article 9.6.14 of the USMCA requesting an explanation of Mexico’s measures concerning GE products and relevant information concerning the measures. Mexico’s response did not allay U.S. concerns with Mexico’s measures concerning GE corn and certain other GE products. Therefore, the United States does not consider that further use of other mechanisms would resolve the matter.

1. Event Authorization Rejections and Resultant Product Bans

Since August 2021, Mexico has rejected certain authorization applications covering corn, canola, cotton, and soybean 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 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 import and sale of GE products other than for cultivation.² The United States is concerned that these measures appear to be inconsistent with Mexico's obligations to:

- a. base its SPS 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 (Article 9.6.3);
- b. ensure its SPS measures are applied only to the extent necessary to protect human, animal, or plant life or health (Article 9.6.6(a));
- c. ensure its SPS measures are based on relevant scientific principles, taking into account relevant factors (Article 9.6.6(b));
- d. ensure its SPS measures are not maintained if there is no longer a scientific basis (Article 9.6.6(c));
- e. ensure its SPS measures are not applied in a manner that constitutes a disguised restriction on trade between the Parties (Article 9.6.6(e));
- f. ensure 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 (Article 9.6.8); and
- g. select an SPS measure not more trade restrictive than required to achieve the level of protection that the Party has determined to be appropriate (Article 9.6.10).

2. Mexico's Decision to Ban GE Corn for Nixtamalization or Flour Production

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 decision to ban

¹ These letters include: COFEPRIS, Official Letter No. 183300913X005/2021, Aug. 23, 2021; COFEPRIS, Official Letter No. 193300913X0002/2022, Jan. 13, 2022; COFEPRIS, Official Letter No. 193300913X0004-2022, Jan. 26, 2022; COFEPRIS, Official Letter No. 183300CTI60001-2022, Jan. 27, 2022; COFEPRIS, Official Letter No. 193300913X0001-2022, Jan. 27, 2022; COFEPRIS, Official Letter No. 193300913X0006-2022, Jan. 27, 2022; COFEPRIS, Official Letter No. 193300913X0003/2022, Jan. 13, 2022; COFEPRIS, Official Letter, No. 213300913X0006-2022, Feb. 3, 2022; COFEPRIS, Official Letter, No. 213300913X0008-2022, Feb. 3, 2022; COFEPRIS, Official Letter, No. 213300913X0004-2022, Feb. 3, 2022; COFEPRIS, Official Letter No. 193300913X0005-2022, Jan. 26, 2022; COFEPRIS, Official Letter No. 1833000913X0510-2022, Jan. 26, 2022; COFEPRIS, Official Letter No. 213300913X0001-2022, Feb. 3, 2022; COFEPRIS, Official Letter No. 213300913X0010-2022, Feb. 18, 2022. The events in the last four rejections appear to have been subsequently approved: COFEPRIS, Official Letter No. 223300913X00090OGM2023, Feb. 13, 2023; COFEPRIS, Official Letter No. 183300913X0510OGM2023, Jan. 11, 2023; COFEPRIS, Official Letter No. 223300913X0010OGM2023, Feb. 13, 2023; COFEPRIS, Official Letter No. 223300913X0011OGM2023, Jan. 2, 2023).

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.

GE corn for nixtamalization or flour production is reflected in the 2023 Corn Decree³ and in Mexico's legal regime governing the import and sale of GE products other than for cultivation.⁴ The United States is concerned that this measure appears to be inconsistent with Mexico's obligations to:

- a. base SPS measures on relevant international standards, guidelines, or recommendations or on an appropriate risk assessment (Article 9.6.3);
- b. ensure its SPS measures are applied only to the extent necessary to protect human, animal, or plant life or health (Article 9.6.6(a));
- c. ensure its SPS measures are based on relevant scientific principles, taking into account relevant factors (Article 9.6.6(b));
- d. ensure its SPS measures are not maintained if there is no longer a scientific basis (Article 9.6.6(c));
- e. ensure its SPS measures are not applied in a manner that constitutes a disguised restriction on trade between the Parties (Article 9.6.6(e));
- f. 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 (Article 9.6.7);
- g. ensure 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 (Article 9.6.8); and
- h. select an SPS measure not more trade restrictive than required to achieve the level of protection that the Party has determined to be appropriate (Article 9.6.10).

3. Mexico's Decision to Gradually Substitute GE Corn Used for Other Human Consumption and for Animal Feed

The 2023 Corn Decree also provides for Mexican authorities to gradually substitute GE corn used for animal feed and for human consumption other than in dough or tortillas. This decision to gradually substitute GE corn used for other human consumption and for animal feed

³ 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.").

⁴ 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.

is reflected in the 2023 Corn Decree⁵ and in Mexico’s legal regime governing the import and sale of GE products other than for cultivation.⁶ The United States is concerned that this measure appears to be inconsistent with Mexico’s obligations to:

- a. base SPS measures on relevant international standards, guidelines, or recommendations or on an appropriate risk assessment (Article 9.6.3);
- b. ensure its SPS measures are applied only to the extent necessary to protect human, animal, or plant life or health (Article 9.6.6(a));
- c. ensure its SPS measures are based on relevant scientific principles, taking into account relevant factors (Article 9.6.6(b));
- d. ensure its SPS measures are not maintained if there is no longer a scientific basis (Article 9.6.6(c));
- e. ensure its SPS measures are not applied in a manner that constitutes a disguised restriction on trade between the Parties (Article 9.6.6(e));
- f. 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 (Article 9.6.7);
- g. ensure 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 (Article 9.6.8); and
- h. select an SPS measure not more trade restrictive than required to achieve the level of protection that the Party has determined to be appropriate (Article 9.6.10).

* * *

Article 9.19.3 provides that “[t]he requesting and responding Parties shall meet within 30 days of the responding Party’s receipt of the request,” and Article 9.19.4 provides that the Parties “shall ensure the appropriate involvement of relevant trade representatives and competent authorities in meetings held pursuant to this Article.” We look forward to fixing a mutually convenient date to hold the technical consultations with the appropriate Mexican representatives

⁵ *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”), 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.”).

⁶ 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.

and authorities within 30 days of Mexico's receipt of this request, with the aim of resolving the matter cooperatively if possible.

Sincerely,

A handwritten signature in blue ink, appearing to be 'K. Tai', written in a cursive style.

Ambassador Katherine Tai
United States Trade Representative