

In March 2023, the United States requested and held technical consultations with Mexico under Article 9.19 of the *United States-Mexico-Canada Agreement* (“USMCA”), with regard to certain Mexican measures concerning genetically engineered (“GE”) corn and other GE products. Unfortunately, the technical consultations failed to resolve the matter.

Pursuant to Article 9.19 of the USMCA, a Party may cease technical consultations and have recourse to dispute settlement under Chapter 31 following the technical consultations meeting. Accordingly, on June 2, 2023, the United States requested dispute settlement consultations with Mexico pursuant to Articles 31.2 and 31.4 of the USMCA. The United States and Mexico held consultations, but these consultations did not resolve the matter.

Pursuant to Article 31.6.1 of the USMCA, the United States is now providing written notice to Mexico of the U.S. request to establish a panel to examine Mexico’s biotechnology measures concerning GE corn, as outlined below.¹ Pursuant to Article 31.6.4 of the USMCA, on delivery of this request, the panel is established.

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

1. On February 13, 2023, Mexico issued the *Decree Establishing Various Actions Regarding Glyphosate and Genetically Modified Corn* (“2023 Corn Decree” or “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 Decree² in conjunction with Mexico’s legal regime governing the importation and sale of GE products other than for cultivation.³ This set of measures (the “Tortilla Corn Ban”)⁴ is inconsistent with the following provisions of the USMCA:⁵

¹ In the U.S. request for technical consultations and in the U.S. request for dispute settlement consultations concerning Mexico’s biotechnology measures, the United States included certain measures concerning Mexico’s rejections of GE event authorization applications and the resultant bans on products including those events. The United States is not including this set of measures in the present request to establish a panel but will continue to evaluate and reserves the right to request a panel on this set of measures in the future.

² See, e.g., 2023 Corn Decree, arts. 2-3, 6 (requiring “biosafety authorities” to “revoke and refrain from issuing 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 processing, which is what is the one carried out in the sector known as the dough and tortilla”), 7 (“being the responsibility of whoever uses it in Mexico that it does not have the destination foreseen in section III of the second article of this ordinance”), 10 (“Non-compliance with the provisions of this Decree by the agencies and entities of the Federal Public Administration shall give rise to the corresponding administrative liabilities in terms of the General Law of Administrative Responsibilities.”).

³ 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.

⁴ This request encompasses any instruments that implement or maintain the Tortilla Corn Ban.

⁵ 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.

- 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 a sanitary and phytosanitary (“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 World Trade Organization (“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.

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

2. 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 animal feed and for other human consumption is reflected in the 2023 Corn Decree⁶ in conjunction with Mexico’s legal regime governing the importation and sale of GE products other than for cultivation.⁷ This set of

⁶ See, e.g., 2023 Corn Decree, arts. 2-3, 7 (“The agencies and entities of the Federal Public Administration will carry out the appropriate actions in order to conduct the gradual substitution of genetically modified corn for animal feed and industrial use for human consumption,” which the Decree defines, respectively, as corn “intended for the livestock and aquaculture sector, for animal feed” and as corn “for human consumption, before industrialization other than that indicated in the preceding section”), 10 (“Non-compliance with the provisions of this Decree by the agencies and entities of the Federal Public Administration shall give rise to the corresponding administrative liabilities in terms of the General Law of Administrative Responsibilities.”).

⁷ 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.

measures (the “Substitution Instruction”)⁸ is 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.

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Accordingly, pursuant to Article 31.6.1 of the USMCA, the United States is providing written notice of its request to establish a panel to examine this matter, with the terms of reference as set out in Article 31.7 of the USMCA. The United States proposes that, pursuant to Article 31.9.1(a) of the USMCA, the panel be comprised of three members.

⁸ This request encompasses any instruments that implement or maintain the Substitution Instruction.

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.