

***** AS DELIVERED *****

MEXICO – MEASURES CONCERNING GENETICALLY ENGINEERED CORN

(MX-USA-2023-31-01)

**CLOSING STATEMENT
OF THE UNITED STATES OF AMERICA**

June 27, 2024

1. The questions and discussion during the hearing have been thorough and obviously it is important to be thorough in working through the legal aspects of each of the claims and defenses.
2. But as we come to the end of these two days, it is useful to zoom out a bit and take stock of what was supposed to have happened and what actually did.
3. The USMCA strikes a balance between the desire of the Parties to be able to regulate risks to humans and plants, but also the desire to ensure that it is only done on the basis of science, it is not done as pretext, and it is done with the minimum necessary impact on trade.
4. The USMCA achieves these objectives, in part, by requiring a science-based approach, and by building in required processes. These include conducting a risk assessment specific to a potential risk, relying on international standards, allowing other Parties the opportunity to comment on the risk assessment and risk management, basing any adopted measures on that risk assessment, and making sure that any adopted measures are not more trade restrictive than necessary to achieve the Party's appropriate level of protection.
5. If these prescriptions were followed, it wouldn't take iterative submissions and follow-on questions to continue to try to pin down what the risk assessment was, and what risks it identified. The Parties would have been clear about them before the measures were adopted. The Parties, and now the Panel, would be clear on exactly how the measures connect to the specific risk assessments that were conducted. And everyone would be clear about when the Parties were able to comment on the risk assessment and risk management. But this obviously is not what went on.
6. So now, Mexico is left pointing to what it can in trying to pull together these elements after the fact. And that's why, instead of an actual risk assessment, Mexico is pointing to cherry-picked papers with no contemporaneous assessment of how it interprets and weighs *all* of the evidence relevant to a *specific* risk. That is why, on opportunity to comment, Mexico is pointing to consultations on the 2020 Decree—as an opportunity to comment on both the 2020 Decree and the 2023 Decree. That is why Mexico is trying to *explain away* the international standards when they clearly are designed and appropriate to assess *exactly* the types of things Mexico raises—like consumption levels or gene stacking.
7. If Mexico had followed the requirements of the USMCA, this would all look a lot different. And the best efforts cannot, in the end, obscure the fundamental breaches of the USMCA when Mexico abandoned decades of a science-based approach and adopted the Tortilla Corn Ban and the Substitution Instruction.
8. We appreciate the Panel's insightful questions and look forward to continuing to support our establishment of these breaches in written responses to Panel questions.