

United States-Mexico GE Corn Trade Dispute Moves to Next Stage

August 25, 2023

The Government of Mexico, in a December 2020 decree, required relevant regulatory authorities to (1) “revoke and refrain from granting permits” for the release of “genetically modified corn seeds” into the environment; and (2) “revoke and refrain from granting authorizations” for the use of “genetically modified corn grain in the diet of Mexican women and men,” with a deadline for full elimination of genetically engineered corn in human diets by January 31, 2024. The United States expressed serious concern over this measure, particularly as it related to Mexico’s United-States-Mexico-Canada Agreement (USMCA) commitments. In February of this year, Mexico amended the 2020 decree, providing for the gradual (rather than full) substitution of genetically engineered (GE) corn used for certain human consumption and animal feed (2023 Decree), which did not address U.S. concerns. As we discussed in our recent podcast, this resulted in consultations between the United States, Canada, and Mexico under the USMCA on the basis that the Mexican Government’s 2023 Decree is inconsistent with Mexico’s commitments under the USMCA.

On August 17, 2023, United States Trade Representative Katherine Tai announced that the United States is establishing a dispute settlement panel under the USMCA to address the Mexican GE corn measures. Canada may join the dispute within a limited time but had not done so as of the time of this publication. At bottom, the United States asserts that Mexico’s restrictive trade measures are not based on valid scientific, health, or safety concerns and are thus inconsistent with its USMCA commitments.

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Once a dispute settlement panel is established, it will generally have 150 days to issue an initial report, which is required to include findings on whether Mexico's trade restrictive measures are inconsistent with its obligations and commitments under the USMCA. If the panel finds that Mexico is acting inconsistently with its USMCA commitments and the United States and Mexico are not able to find a mutually agreed solution, the United States could impose countermeasures on Mexico. U.S. officials speculate that the dispute will conclude by mid-2024, based on prior USMCA dispute settlement panel proceedings

Background

The United States' August 17, 2023 panel request comes after the parties held USMCA dispute settlement consultations earlier this summer, which failed to resolve the United States' and Canada's concerns. Prior to the formal USMCA dispute settlement consultations, the United States also engaged with Mexico for over three years on the issue, which was initially prompted over concerns with Mexico's 2020 Corn Decree. The U.S. efforts involved both the Office of the U.S. Trade Representative (USTR) and the U.S. Department of Agriculture (USDA).

Panel Request and Next Steps

As detailed in the USTR's dispute settlement panel request, the United States identifies two measures that it claims are inconsistent with certain provisions in USMCA Chapter 9 (Sanitary and Phytosanitary) and USMCA Chapter 2 (National Treatment and Market Access for Goods): (1) Mexico's immediate ban on GE corn for nixtamalization or flour production (tortillas) as provided for in the 2023 Corn Decree; and (2) the instruction in the 2023 Corn Decree to gradually substitute GE corn used for other human consumption and for animal feed.

The United States has requested a three-person panel, which the parties will now work to select. Following panel selection, the parties will enter a briefing phase where there is also an opportunity for a hearing. Following the briefing phase and any hearing, and within 150 days after the appointment of the last panelist, the panel will issue an initial report, and then a final report 30 days thereafter.

The USTR's decision to establish a panel under the USMCA is strongly supported by members of Congress and U.S. agriculture organizations. In addition, USTR continues to be supported by Agriculture Secretary Tom Vilsack. In a statement made by Mexico's Minister of Economy, Raquel Buenrostro, Mexico maintains that it will not make any modifications to the decree on genetically modified corn ahead of the dispute. Notwithstanding, Mexican President Andres Manuel Lopez Obrador indicated that he would accept the decision of the panel.

Public Participation

Of paramount importance to the agricultural community is the fact that during the dispute settlement process, there will be the opportunity for public participation from certain interested entities, including trade and industry associations. Specifically, these entities may apply to submit written submissions to the panel for consideration during the panel's deliberations. This opportunity and instructions on how to apply to submit a written submission will be published within 14 days of the formal establishment of the panel and identification of panel members.

We will continue to follow these matters and provide relevant details as this dispute proceeds. Once the panel has been established and the procedures for public participation are announced, we, along with Chris Wozniak, will discuss in depth on the Talking Ag Biotech podcast the USMCA dispute settlement process, opportunities for public participation in this dispute, and the potential impact of Mexico's measures on U.S. farmers, trade relations, and climate change.

Wiley has unparalleled experience in ag biotech and USMCA trade dispute matters. Should you have any questions regarding the USMCA Mexico biotech dispute, mechanisms for taking advantage of the public participation opportunities, or any other ag biotech matters, please do not hesitate to contact the authors of this alert.