



Why Mexico's 2023 ban on GM corn is the right move

Preamble - a disturbing decision to un-invite us

The Trade Justice Group of the Northumberland Chapter Council of Canadians (TJG) was granted leave on December 15, 2023 to submit a paper to the trade dispute panel opposing claims made by the United States (with 3rd Party intervener status support from Canada) challenging Mexico's 2023 Corn Law. However, on Jan 8, 2024, just four days before the deadline to submit the TJG document, we received a notification that the trade dispute panel had un-invited our participation. The explanation we got was that the United States, subsequently backed by Canada, had applied to the dispute panel to have our leave to submit, reversed. The other contributing Canadian organization, Canadian Biotechnology Action Network (CBAN), was similarly un-invited.

Introduction - we will not be silenced

The U.S. in its Complaint that led to the establishment of a dispute resolution panel (Panel) under the Canada, United States, Mexico free trade Agreement (CUSMA), disputes measures outlined in Mexico's Presidential Decree published in February, 2023 (Decree). This Decree includes an outright ban on the use of genetically modified corn in tortillas and dough, and a gradual substitution as pertaining to the use of GM corn in all products destined for human consumption, as well as for animal feed. The Decree also reiterates a ban on the use of glyphosate on Mexican farmlands, and on the introduction of GM corn seed.

Our TJG group has decided to proceed in gathering scientifically-backed argumentation that will challenge the Canadian and US assertions that Mexico's Decree does not have 'science' on its side. Since we have been effectively muzzled by our own government (in lock step with the U.S.), we plan to make a reader-friendly wider sweep of relevant studies and articles to this GM corn dispute than the wording of the US Complaint plans to allow for (i.e. the glyphosate and GM corn seed bans brought by Mexico are not being challenged in the U.S. Complaint - nevertheless we will argue that glyphosate as well as GM

corn seed are vital components allowing the overall GM corn technological package to proceed with insufficient regulatory oversight by Mexico's two northern 'amigos').

Issues we plan to address in this document:

- A. On what grounds is Canada challenging Mexico's 2023 ban on GM corn?
- B. Why did Canada get involved in this dispute anyway?
- C. In this dispute - which Party has 'science' on its side?
- D. Is GM corn a danger to Mexican's health given their tortilla consumption?
- E. What other dangers for Mexico from GMOs are needing attention?

A. On what grounds is Canada challenging Mexico's 2023 GM corn ban?

The stated Canadian argument is, "Canada shares the concerns of the United States that Mexico is not compliant with the science and risk analysis obligations under CUSMA's Sanitary and Phytosanitary Measures Chapter. Canada believes that the measures taken by Mexico are not scientifically supported and have the potential to unnecessarily disrupt trade in the North American market."¹ In this Statement Canada cites the trade agreement's Sanitary and Phytosanitary (SPS) Measures Chapter as its argument for joining the U.S. Complaint.

However, in the SPS Chapter Canada cites it states that "This Chapter does not prevent a Party from: ...establishing the level of protection it determines to be appropriate." Canada could have done well to investigate references from other CUSMA Chapter sections that also back Mexico's sovereign right to pass laws in order to protect the health of its citizens. For example, Article 3.14.2 of the CUSMA Chapter on Agriculture states that, "This Section does not require a Party to mandate an authorization for a product of agricultural biotechnology to be on the market."

Sharon Treat, Senior Attorney for the Institute for Agriculture and Trade Policy (IATP), points to other important provisions to be found in the trade agreement's text that Canada would have wanted to consider, "Mexico retains authority to adopt and implement policies to protect the environment and public health, preserve and enhance biodiversity, and respect Indigenous communities and lifestyles. For example, Article 24.3.1 of T-MEC's (CUSMA's) Environment Chapter recognizes 'the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to

¹Canada issues statement on Mexico's ban of use of genetically engineered corn in tortillas and dough:Statement - August 25, 2023 - Ottawa, Ontario - Global Affairs Canada
<https://www.canada.ca/en/global-affairs/news/2023/08/canada-issues-statement-on-mexicos-ban-of-use-of-genetically-engineered-corn-in-tortillas-and-dough.html>

establish, adopt, or modify its environmental laws and policies accordingly.’ Article 24.15 on Trade and Biodiversity mandates that each Party ‘shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.’”²

B. Why did Canada get involved in this trade dispute anyway?

A reasonable question to ask since Canada doesn’t export corn to Mexico! Besides the usual contention that Canada needs to keep in tight with its U.S. neighbour, there would appear to be other considerations at play. Neither the U.S. nor Canada wishes to allow a nation’s safety-first minded Mexican government to get away with putting up obstacles to the trans-border sale of their products. As it turns out, Canada does export GM canola oil to Mexico and there is fear that if Mexico were to win the GM corn dispute as harmful to human health, GM-based canola oil exports could be next. A bigger concern for Canada lies with the fact that it has by far the biggest mining presence in Mexico. The current Mexican government has been looking at ways and means (legislation) to reign in some of the worst excesses of Canadian mining companies operating on Mexican soil. For Canada defeating Mexico in this GM corn dispute could serve to temper future ‘nationalistic’ measures that Mexico might wish to consider in dealing with the many Canadian-based mining companies on its soil.

C. In this dispute which Party (government) has ‘science’ on its side?

1. Canada?

Canada has alleged that Mexico has no ‘science’ to back up its corn-related policy intentions. However, at various stages in this submission we would argue that the CUSMA trade dispute panel should look closely at the ‘scientific’ validity of the evidence that Canada (and the U.S.) are putting forward to argue its case. Just how much of the ‘scientific’ evidence Canada is relying on comes directly from industry sources? Have the relevant government departments in Canada the ability to independently review industry sponsored findings on, for example, risks posed to human health and to the environment given the risk of unregulated propagation of GMOs?

As Canada challenges Mexico to stop its planned phase-out of GM corn for human consumption, a too-close collaboration between our federal government departments and the biotechnology industry has just been exposed. Recent media investigations have unearthed an email trail showing that the biotechnology and pesticide industry lobby group, CropLife Canada, was

²Understanding the Agricultural Biotechnology Provisions in the U.S.-Mexico-Canada Agreement: Sharon Anglin Treat - Senior Attorney at the Institute for Agriculture and Trade Policy - Mar 2, 2022 <https://www.iatp.org/sites/default/files/2023-11/7.%20FOTE%20Leave%20Application%20-%20timestamped%20%286-nov-2023%29.pdf>

instrumental in Canada's new decision to remove regulation from many coming gene-edited GMOs (genetically modified organisms).

Documents received via Access to Information show that Canadian federal government departments worked directly with CropLife Canada to design new regulatory guidance on genetically engineered foods and crops in a committee called the "Tiger Team". The new guidance removes government safety assessments from many new gene-edited GMOs and allows companies to put these unregulated GMOs on the market without notifying the government.

Corporate interventions in this sphere of public policy making in Canada is wider ranging than is commonly known, *"The behind-the-scenes strategies deployed by the agrochemical industry have eroded research, regulation, public health, and the environment, as well as democratic processes, while generating immense profits for the companies. These industrial strategies and influences have percolated into governmental, scientific, public and information structure in such fundamental ways, that they prevent even the possibility of being aware of these manipulations and their implications. Resorting to legal actions, although an arduous and costly process, currently seems to be one of the only ways to expose these captures and challenge the present governmental framework and practices"*.³

Canadian regulatory decision-making that allows for the sale of unknown and unregulated GMOs amounts to a biotech corporate take-over of the Canadian food system with companies controlling all of the science and information about new GMOs. But the biotechnology industry also wants to force its products onto the markets in other countries – and the Canadian government is in fighting form on the side of these corporate interests. Canada, whose regulatory agencies do not regulate leaving the country lacking its own 'sound science', is demanding a 'scientific' risk assessment of GM corn from Mexico, really?!

2/ The U.S.?

Since this document's focus is primarily on Canada's entry into this trade dispute as a third Party, we will defer to the U.S. NGO's to comment on U.S. regulatory practices in their submissions to the CUSMA Panel. Suffice it to point out that the regulatory system in the U.S. for monitoring the impact of GM corn and of its accompanying technological package may be being adversely affected by significant Bio-corporate lobbying, and by the 'revolving door' employment shuttle between government and chemical and seed industries. Friends of the

³Poisoning Regulation, Research, Health, and the Environment: The Glyphosate-Based Herbicides Case in Canada: varios authors, MDPI - Issue 11, Issue 2, published 26 January, 2023. <https://www.mdpi.com/2305-6304/11/2/121>

Environment in an initial brief seeking leave to submit a paper to the Panel, explains the regulatory situation this way,

*“In the US, government agencies do not carry out independent safety assessments of GM transgenic events, and instead have primarily relied upon assurances from technology developers that the food harvested from a GMO crop is “safe” and “substantially equivalent” to not-engineered varieties”.*⁴

3/ Mexico?

While most of the major biotechnology corporations coming up with new GM varieties for corn etc. are headquartered in the U.S., with some affiliates found in Canada, the companies' lab work leading to new GMO options are usually hidden behind a veil of secrecy that the governments' regulators either can't or won't go behind. That Canada and the U.S. in this dispute are attempting to call out Mexico for not basing their 2023 Corn Law on 'sound science' when those two countries know little about what is going on in any biotech company's labs on their own soil, shows the moral low-road they are occupying in this dispute.

The Mexican government's approach to GM corn legislation embraces the 'precautionary principle' given that the jury is still out on just how safe GMOs are. Scientists world-wide are far from settling the matter, particularly when the research is done and reported on by independent professionals not in the pay of the agribusiness giants. The Mexican government can and is drawing upon 9,000 years of genetic field (milpa) experimentation that has led to the generation of over 55 varieties of robust and marketable maize.⁵

Mexico finds itself in this strong position because it is the world's origin and cradle of maize production where indigenous and campesino farming communities have bred and shared a wide diversity of varieties (landraces) for millennia (as compared to a history of barely three decades for GM corn development, mostly carried out in labs). And it can also draw on many recent scientific studies/reports that raise concerning questions about not only the residue to be found on GM corn kernels destined for foods such as tortillas, but

⁴Friends of the Earth submission to the CUSMA dispute panel - Nov. 6, 2023

⁵The precise details of how maize was domesticated from its wild ancestor remain a bit of a mystery. Archeological and genetic analysis reveals that corn was likely first domesticated about 9,000 years ago from the ancestral wild grass teosinte, *Zea mays* ssp. *parviglumis*. “Teosinte” is an indigenous Nahautl word meaning “sacred ear of corn.” - Corn Tastes Better on the Honour System - Robin Wall Kimmerer - 2023 <https://emergencemagazine.org/feature/corn-tastes-better/>

also about the wider impact of the accompanying herbicides such as glyphosate on other forms of life, the environment, and on a way of life.⁶

D. Is GM corn a danger to Mexican people's health given their level of tortilla consumption?

In this trade dispute both Canada and the U.S. are trying to keep the dispute Panel focused on the single issue of whether GM corn consumption presents a danger to human health. The two countries argue there is no 'scientific' proof that corn genetically modified in a corporate lab is dangerous to human wellbeing. Recent studies however indicate that there is a cause for concern. For example: in the lead-in to the article covering the study, Transgenic corn on Mexican tables - A Study of transgenics in food in Mexico, the article's author explains:

*"When Elena Álvarez-Buylla and her collaborators had finished analyzing the results of their investigation on the presence of transgenics in food, they were stunned. Some researchers had already reported the presence of gene manipulation in Mexican food stuffs, but to find that 90.4 per cent of the 209 tortilla samples they examined had traces of GM corn and that one third of these samples were also positive for the herbicide glyphosate, was more than we had expected to find, or that we would have wished to have found"*⁷

Alejandro Calvillo, Director of the Mexican organization Consumer's Power turns around the often posed question in the Mexican media of whether a ban of GM corn use in Mexico is warranted, by suggesting that the more fundamental line of enquiry is whether transgenic corn and glyphosate should have been introduced into Mexico in the first place. Mr. Calvillo underscores his point by drawing on the example of the importance of bread to the European diet (analogous to tortilla consumption in the Mexican diet) and the fact that GM wheat can not be imported into the European market for use in bread-making.⁸

The American Academy of Pediatrics (AAP) in its January 2024 issue of Pediatrics issued a clinical report entitled the Use of Genetically Modified Organism (GMO)-Containing Food Products in Children. In this report the authors point out that GMO technology could be used to up the micronutrient

⁶The intent of indigenous corn breeding was to promote genetic diversity, for in diversity lies stability and food security. Farmers worked with the plant, skillfully guiding it to meet the nature of the landscape and the needs of the people. - Corn tastes better on the Honour System - Robin Wall Kimmerer, 2023 <https://emergencemagazine.org/feature/corn-tastes-better/>

⁷Maíz transgénico en la mesa de los Mexicanos - *Estudio sobre transgénicos en los alimentos en Mexico* - CienciaMx Noticias - 2 de Mayo, 2018 <http://www.cienciamx.com/index.php/ciencia/ambiente/21382-unam-elena-alvarez-alimentos-transgenicos>

⁸Por que no al maíz transgenico - Sin Embargo, Nov 18, 2023 <https://www.sinembargo.mx/18-11-2023/4434576>

content of foods, but in the U.S. (the exporting nation) it isn't. There the GMO technology is primarily used to make crops resistant to chemical herbicides for weed and pest control. The report indicates that plant geneticists have also moved bacterial genes that synthesize *Bacillus thuringiensis* (Bt) into corn to increase insect resistance. The authors note that Bt toxins accumulate in the grain from GMO crops. In the report's summary and recommendations the authors stress that further research is required and should be undertaken into the possible long-term health effects of GMO-containing foods, including into carcinogenesis.⁹ The recommendations in this AAP clinical report run parallel to Mexico's desire to apply the 'precautionary principle' in addressing the many concerns and unknowns that exist with respect to GM corn finding its way into the Mexican diet.

The Canadian Biotechnology Action Network (CBAN) in responding to the question of whether GM foods are safe to eat, first tackles the issue of whether the impact of "gene editing" is totally predictable:

"Gene editing is often described as precise but enzymes used in gene editing can cut DNA in the wrong spots and create "off-target" mutations. Intended changes can also cause unintended effects in the edited organism because genes and their protein or RNA products act in networks and not in isolation... gene editing raises the same risk questions as earlier GM techniques, and the same environmental, social, economic and ethical concerns". And on the question of food safety CBAN points out that:

"We don't know what, if any, impacts GM food could have on our health. There are still many unanswered safety questions and there is no scientific consensus on the safety of GM foods.... There are very few long- term, independent tests on GM foods. Most of the safety data on GM foods is confidential because it is produced by companies and is not peer-reviewed by independent scientists".¹⁰

The studies and reports found in this section come from all three countries and demonstrate that there are significant concerns about possible 'off target' impacts of a GM technology coming out of the secretive experimentation in corporate labs. 'Off target' dangers to Mexican foods can come from 'residuals' to be found structurally incorporated inside modified corn grain, as well as other 'residuals' that get attached to the corn kernel from the process of (early/late) spraying of the crop with glyphosate.

⁹ Use of Genetically Modified Organism(GMO)-Containing Food Products in Children - Pediatrics Journal (AAP), Volume 153, Issue 1, January 2024 <https://publications.aap.org/pediatrics/article/153/1/e2023064774/196193/Use-of-Genetically-Modified-Organism-GMO?autologincheck=redirected>

¹⁰ CBAN's Quick Guide to Genetically Modified Foods - September 2023 <https://cban.ca/wp-content/uploads/gm-flyer-2023-col-4.pdf>

E/ What other dangers for Mexico from GMOs are needing attention?

Canadian and U.S. Complainants did not want the Panel to take up the question of the impact that glyphosate toxicity is having on people and on the planet. Nor were the Complainants prepared to defend their long-standing promotion of GM corn seed sales to foreign markets. Though the Complaint lodged by the U.S. is narrowly focused on the question of whether GM corn poses a danger to human health, that discussion, though important, is only a part of a wider and deeper discussion of the impact that genetic editing happening in corporate labs is having.

It is not the purpose of this document to delve deeply into this broader discussion at this time, but rather to point out that the Parties involved in this GM corn dispute ignore the bigger picture at their, and our, peril. To touch on just a few key elements of this larger discussion we need to start by dealing with a popular belief that GM crops like corn ought to be accorded a saint-like status because they are key to feeding a hungry world. Author, SUNY professor of Environmental Biology, and member of the Citizen Potawatomi Nation, Robin Wall Kimmerer speaks to this misconception:

“MOST CORN IS EATEN by no one. Less than 10 percent of the US corn crop ever finds its way to your table, and much of that is in the form of high fructose corn syrup in soda and processed foods... What happens to all that corn if it's not feeding people? About half of it fattens cattle, pigs, and chickens and fuels dairy production.... Since 2011, however, more corn has been used for ethanol production than for consumption by humans and livestock combined. At what cost?”¹¹

The U.S. government subsidizes its large-scale GM corn production with much of that production finding its way into a myriad of industrial uses (as mentioned above). However, there remains more than enough cheap surplus grain available for export to inundate a market like Mexico's to the detriment of the small 'milpa' farmers. It is also important to note that GM corn is a central component for many highly processed foods that are now ubiquitous and are driving up the obesity count in all three countries, but especially in Mexico. This phenomenon has been called by some researchers/authors, 'the neoliberal diet'. Gerardo Otero, drawing on extensive empirical data, clarifies in his writings the socioeconomic and political forces that created this diet, often at the expense of people's health. He has been able to show that government-level actions, particularly through subsidies benefiting agribusiness, have ensured the dominance of processed

¹¹ Corn Tastes Better on the Honor System - Robin Wall Kimmerer
<https://emergencemagazine.org/feature/corn-tastes-better/>

foods and made healthful fresh foods inaccessible to many.¹² The consumption of 'Comida Chatarra' (junk food) is encouraged by the likes of Walmart Mexico through powerful marketing strategies and the positioning of these products to be widely available, desirable, and cheap.

Twenty years ago the Commission for Environmental Cooperation (CEC) formed as part of the NAFTA signing in 1994, issued key findings and recommendations from the 2004 study Maize & Biodiversity: The Effects of Transgenic Maize in Mexico. The investigation that this enquiry was based on was triggered by a request to the CEC coming in the main from indigenous and peasant groups from Oaxaca. They noted that genetically modified corn had begun to spread among native maize landraces in the high valleys surrounding Oaxaca City. The CEC enquiry opened an early door on understanding the long-term impact of transgenic corn on agricultural and natural biodiversity, human health, Mexican traditional landraces and wild relatives of maize, social values and cultural identity, all virtual 'unknowns' at that time.¹³

The use of glyphosate has been lethal to insects, some of which act as predators to the very 'pests' being targeted for elimination by the farmers. Other insects like moths and butterflies are particularly susceptible to the Bt protein (toxin) expressed in GM corn's pollen. Pollen shedding (drift) can last for 3 weeks in a field, to 5 weeks over a region. A recent study has shown that a 'buffer zone' to contain the high expressions of Bt toxins in pollen drift may need to be 2,000 meters!¹⁴ Though the study being referred to here was carried out in Europe, the parallels for the three North American countries of these findings should be of major concern to the Parties to this GM corn dispute when, for example, it comes to Monarch butterfly migration in North America, with the overwintering occurring in Mexico.

It is illegal to grow genetically modified corn on Mexican soil today, and the country is transitioning to a total ban on the importation of glyphosate by March 31, 2024. Though there has been some progress since the two decades old CEC report was issued towards putting controls in place to protect small farmers from unwanted 'gene flow' from transgenics to native landraces, and to shield humans from harmful food sources, much remains to be done.

¹² The Neoliberal Diet - Healthy Profits, Unhealthy People - University of Texas Press, October 2018 <https://utpress.utexas.edu/9781477316986>

¹³Maize and Biodiversity - The effects of Transgenic Maize in Mexico - CEC report 2004 <http://www.cec.org/files/documents/publications/2152-maize-and-biodiversity-effects-transgenic-maize-in-mexico-key-findings-and-en.pdf>

¹⁴Pressure from insect-resistant maize on protected butterflies and moths - Conservation Biology, Nov. 22, 2023 <https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/cobi.14222?campaign=wolearlyview>

The U.S. and Canada through actions such as this trade Complaint opposing Mexico's 2023 Corn Law, are putting obstacles in the way of a transition to strengthening the small farmer 'milpa' system, allowing for it to become the eventual go-to source for most of Mexico's future dietary needs from native maize production.

This 'un-invited' Submission has been prepared by the Trade Justice Group of the Northumberland Chapter of the Council of Canadians. The Council of Canadians is a legally registered NGO in Canada with many thousands of members who donate in support of the Council's work. Neither the Trade Justice Group nor the national Council of Canadians have received any assistance in preparing this Brief from the Parties to this trade dispute.

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