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# Corn wars: Mexico's ban on genetically modified corn for health reasons is dubious

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- > [Introduction](#)
- > [Background](#)
- > [December 2020 decree](#)
- > [February 2022 decree](#)
- > [Comment](#)

## Introduction

Mexico's current administration has imposed a formidable number of restrictions on the import and marketing of goods bound for human consumption. These restrictions include:

- an express prohibition on importing and marketing vaping devices;
- limits on labelling and publicising food and beverages; and
- limits on importing and marketing chemical products for industrial use that are subject to potential illegal uses.

Further, the legal provisions regulating cannabis – which were ordered more than a year ago by the Mexican Supreme Court – have stalled. It appears that the Mexican president has failed to implement his own slogan, "forbidden to forbid". On the contrary, prohibitions have increased significantly, at least in the food and beverage sector.

The latest such restriction in this industry is a new limit on importing, marketing and using genetically modified corn (GMC). This limit will affect the import of corn from, among other places, Mexico's main trading partner: the United States. It will likely have important international implications.

## Background

This topic has been on the political agenda for a while. Over the past 20 years, various non-governmental organisations (NGOs) have advocated for limits on the use of GMC in Mexico, despite its advantages and economic viability. In their arguments, the NGOs cite the alleged risks of GMC to humans, animals and plants, as well as the loss of cultural heritage regarding the maize plants themselves and traditional ways of growing food. From a geopolitical and economic perspective, however, these are clearly not particularly efficient.

Some NGOs reference alleged research and investigation but seldom include the protocols followed or the specific bodies or institutions in charge of such research. The NGOs' most prevalent arguments include:

- adverse repercussion for farmers and indigenous groups in Mexico;
- risks to the agricultural varieties of Mexican corn, which can be considered the central origin of almost 59 corn varieties;
- risks regarding feeding sovereignty and food self-sufficiency; and
- risks to traditional and cultural heritage relating to food and agricultural products.

## December 2020 decree

On 31 December 2020, the Mexican government published a decree to prohibit the use of glyphosate, an agricultural product, due to the risks that its use represents for human health. The decree also established that GMC represents a risk to the Mexican population and cultural heritage, and confirmed that its use would be restricted in the coming years.

The decree defined "GMC" as maize or corn that has acquired a novel genetic mix through the specific use of biotechnology. This definition is not congruous with the general concept of a genetically modified organism, nor with the applicable Mexican legal provisions or Mexico's international commitments. The decree was allegedly based on the Mexico's commitments as part of:

- the Rio Conference of Earth Summit 1992;
- the Cartagena Protocol on Biotechnology Safety; and
- various criteria set out by the Latin American Human Rights Court.

The decree includes various political statements regarding food self-production and non-dependency, and the importance of respect and preservation of Mexico's cultural and biological heritage. However, these statements contain no legal grounds or basis. The decree states that it is based on alleged results of scientific investigations that have indicated the existence of health risks for humans and some animals. None of these investigations, however, are clearly or specifically quoted. The reasons for the prohibition of GMC are mixed with those for the prohibition of glyphosate; therefore, it is unclear which reasons are applicable to which product.

The decree establishes that the following bodies must implement, by the first quarter of 2023, the applicable amendments to the necessary legal provisions to avoid the use of GMC:

- the Ministry of Natural Resources and Environment;
- the Ministry of Health;
- the Ministry of Rural Development and Agriculture; and
- the National Counsel for Science and Technology.

Article 6 of the decree states that in order to contribute to food safety and sovereignty – and as a special measure of protection for native maize, maize plantations, bicultural heritage, peasant communities and gastronomic heritage – the Mexican authorities in charge of biosafety matters must revoke permits and authorisations granted and refrain from granting or issuing any new permits relating to the potential liberation of GMC in the environment. In essence, the decree establishes that:

- the Mexican government must disregard any legally granted permits and authorisations and avoid granting new ones, irrespective of due compliance with the applicable legal provisions; and
- the competent authorities must revoke and cease the grant of any kind of authorisations regarding GMC bound for human consumption before 31 January 2024.

Although the decree established certain obligations for certain authorities to take the necessary steps to avoid the use and import of GMC, it did not restrict the import or use of this product when bound for human consumption; nor did it restrict its use in industrial activities or animal feeding.

#### **February 2022 decree**

On 13 February 2022, the Mexican government published a new decree that imposed additional restrictions on GMC, many of which went far beyond the original concepts included in the December 2020 decree.

The February 2022 decree established that Mexican government offices or authorities may not acquire or use any kind of GMC in any official programme or activity. It is not specified whether GMC itself is restricted, or whether the prohibition includes any product that uses GMC as an ingredient.

The decree also establishes that no permits or authorisations may be granted for the import and/or use of GMC when bound for human feeding purposes. Currently, this restriction is not applicable to GMC for industrial uses or animal feeding.

It appears to be difficult to monitor the use of such products further to their import into Mexico. Importers and manufacturers of food products are not subject to any legal obligations to impose such controls.

As in the case of the December 2020 decree, the February 2022 establishes no scientific background to sustain such prohibition. The references to scientific data, studies and other potential grounds are applicable only to glyphosate, which is restricted and referred to in both decrees.

#### **Comment**

The current administration has taken various other measures regarding corn and maize in connection with the possible use of GMC for food production in Mexico. In January 2023, the Mexican government established an export duty to white corn, or non-GMC, at a 50% rate upon the value of the product. Similarly, in October 2022, the Mexican government implemented a programme bound for the elimination of diverse import duties applicable to food products bound for human consumption.

The restrictions imposed by the Mexican administration violate various international agreements – not least the United States, Mexico and Canada Free Trade Agreement, which establishes that the parties thereto may not implement restrictions on the import of products originating therefrom. Some exceptions apply, such as in the case of possible health risks associated with a determined product, provided that there exists a clear scientific and technical basis. In the case of GMC, such evidence does not exist.

Due to this situation, the United States government has initiated various legal actions that will likely result in a complex situation for the food industry and lead to a "corn war" between Mexico and the United States.

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