



# **Canada's Steadfast Support for Big Agriculture's Assault on Mexican Biodiversity**

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by

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# Canada's Steadfast Support for Big Agriculture's Assault on Mexican Biodiversity

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From Toronto, ON

Although Mexico has maintained a ban on genetically modified (GM) corn since the 1990s, the move by Mexican President Andres Manuel Luiz Obrador (AMLO) in 2020 to eventually ban the import of GM corn in order to promote domestic cultivation of native varieties has threatened to spark a trade war with the United States. But in recent months, an interesting wrinkle developed, as it became evident that the Canadian government was actively involving itself in the dispute by backing the U.S. opposition to the Mexican law. Canadian officials agreed with Washington's claim that the ban lacked scientific merit, and that it also threatened provisions concerning market access guaranteed by the North American Free Trade Agreement (NAFTA). This dispute is part of a wider trend within relations between Mexico and its North American partners since the progressive Obrador won the Presidency in 2018. Obrador framed his Presidency as a rejection of neoliberal dogma which has dominated Mexico since the late 1970s, a highly symbolic gesture that has unsettled ostensibly centre-left governments in both Canada and the United States, and introduced a level of discord within the NAFTA relationship that is unprecedented since the agreement came into force 30 years ago.

Corn is native to Mexico and there is a long history of cultivation and consumption dating back to at least the Aztec period. Today corn is widely consumed in the form of tortillas, a staple food for millions of Mexican households. However, since NAFTA came into force in 1994 Mexico's corn consumption has become increasingly dependent on imports from abroad – chiefly from the US. But an equally important development was growing fears about cross-pollination of transgenic corn with native varieties in Mexico, following the introduction of GM crops in the US in 1995. The threat this trend posed to food security and rural agrarian economies – and by extension to biodiversity and Indigenous lifeways – saw Mexico bar the domestic cultivation of GM crops in 1998.<sup>1</sup> Foreign biotech firms have waged a decades-long legal campaign<sup>2</sup> against that ban, which Obrador now seeks to extend to the growing percentage of corn that is sourced from outside of the country.

Despite objections from Canada and the US, there is reason to be concerned about the ecological and health impacts of GM crops and the industrial practices (like using carcinogenic chemical glyphosate) associated with their use.<sup>3</sup> Additionally, Mexico has long maintained a database documenting public health concerns related to GM foods showing links to elevated risk of cancer and obesity.<sup>4</sup>

### **A Fight Decades in the Making**

NAFTA, a free trade agreement signed by Canada, Mexico, and the US in 1992, is now being used to coerce Mexico to abandon its initiative on banning GM corn, and to submit to the whims of the U.S.'s heavily subsidized corn industry, for which Mexico is a leading export destination. Despite the fact that Canada does not export corn to Mexico, it is not surprising that Canada has gotten involved in Mexican efforts to protect and control its corn production and consumption. Canadian officials, including Minister of Trade Mary Ng, have explicitly said that they fear such a move might threaten the market access of Canadian biotechnology firms in other Mexican sectors, and more importantly, potentially undermine the appeal of GM products on the whole.<sup>6</sup> This move, they suggest, would directly threaten the operations of Canadian firms globally. Canada is now using NAFTA as the mechanism to threaten agricultural reforms in Mexico, and in general the trade agreement itself has loomed large over Mexican politics for three decades now.

When NAFTA went into effect in 1994, it was argued by some that the deal would actually be a catalyst for positive social development by promoting liberal democratic governance and converging regulatory standards across North America – similar to the 1994 North American Agreement on Labor Cooperation. This assumption stemmed from 20th century development theory, which posited that integration of poor countries into an “open” global market (by opening up their economies to foreign investors) would eventually see convergence of incomes with rich countries. But as Sachs & Warner argued, there was no empirical evidence of this trend forthcoming, even after decades of globalization-led development, and indeed Mexico would not prove to be an exception.<sup>7</sup> The one-sided elimination of agricultural subsidies would see Mexican agricultural output devastated and its market captured by US-based exporters, driving up prices and causing significant rural unemployment and displacement in Mexico.<sup>8</sup>

Thus, even as manufacturing jobs moved to Mexico, economic migration to the United States and Canada from Mexico intensified, swelling urban populations and ensuring wages stayed relatively low within North America, even as trade volumes between the NAFTA countries exploded. In the wake of accelerating inequality in all three countries, and stubbornly high poverty levels in Mexico throughout the 2000s, the 2020 renegotiation of NAFTA — now rebranded as the United States-Mexico-Canada Agreement (USMCA) — claimed to address these concerns by emphasizing balanced trade and greater attention to social impact.<sup>9</sup>

The brewing fight over genetically modified corn reveals how NAFTA's commitment to equalization of regulatory regimes remains one-sided, imbued with colonial logic that continues to perceive Mexico as a permanent laggard in the realm of sustainability and human rights, with no scope for its internal democratic processes to stake leadership on these issues by contradicting the neoliberal orthodoxies promulgated by both Ottawa and Washington. Mexico's position has consistently been informed by the precautionary principle, an emerging doctrine within environmental law which permits states to restrict new innovations with the potential for harm, even in the absence of scientific consensus.<sup>10</sup> This approach has been largely rejected by the United States, as it steadfastly refuses to ratify the Convention on Biological Diversity, which "endorses a precautionary approach to risk assessment."<sup>11</sup> Even though Canada has ratified that agreement, its insistence that Mexico's claims lack scientific merit belies its ostensible acceptance of the precautionary principle.

And so while this self-serving form of equivalency is broadly applied throughout trade agreements between Canada and Mexico such as NAFTA, there is reason to believe there are ulterior motivations for seeking stronger labour standards or ecological protection in Mexico. Rather, they were critical in allaying concerns that the agreement would unduly undermine Canadian standards of living. By requiring that Mexico work toward improving its labour, environmental, and other such social standards until they were deemed "equivalent" to those of its NAFTA partners, Canada and the US could credibly claim to be eroding the comparative advantage of lower-cost Mexican labour which threatened Canadian manufacturing jobs.<sup>12</sup> Progressively higher standards would improve quality of life for Mexicans, to the point where firms relocating production to Mexico could not count on winning North American market share merely by "cutting corners" on labour rights and environmental standards. The flipside of this convergence would see Canadian and American workers accept stagnant wage growth in largely non-unionized workplaces, as well as social benefits strangled by years of austerity.<sup>13</sup>

NAFTA also allowed Canada and the U.S. to influence the direction of neoliberal reforms in Mexico, privileging paradigms like consumer choice, voluntary action, and limited state intervention. One such example of dangling regulatory equivalency as a precondition for the elimination of trade barriers is the Canada-Mexico Organic Equivalency Arrangement which came into effect earlier this year.<sup>14</sup> However, that agreement, which seeks to give Canadian consumers "more choices that meet Canada's high organic requirements" is characteristic of this attitude implicit in the concept of equivalency that Mexico had no capacity to improve living standards and quality of life independently of the parameters outlined and pursued by its NAFTA partners. While consumer choice as the solution to growing demand for safer and healthier foods might be acceptable in wealthy Canada, the choice to purchase higher cost "organics" is simply not a

credible solution in Mexico, where household incomes are far lower.<sup>15</sup> That is partly why the Mexican government has instead resorted to raising minimum standards, through more stringent regulations concerning the production of corn intended for human consumption.

Further, these trade agreements were pursued by all three NAFTA countries because it allowed Mexican big business to enlist Canada and the U.S. as leading stakeholders in Mexico's legislative process. Following NAFTA's implementation in 1994 they would collectively manage reform in Mexico over the following two decades, guiding it according to the whims of the continental system that they presided over – even when their neoliberal reform agenda contradicted the wishes of campesinos (landless farmers), Indigenous communities, and workers.<sup>16</sup> The Mexican government even attempted to remove the ban on GM corn cultivation in 2009, before a Supreme Court ruling restored it in 2013.<sup>17</sup> Now when there is a progressive government in power in Mexico which takes a much more critical view toward both neoliberal economics and the commercial agreements which undergird it, Canada's willingness to join this U.S.-Mexico dispute speaks to the neocolonial asymmetries which Canada seeks to preserve in its relations with Mexico.

Canada claims there is "no scientific basis"<sup>18</sup> for Mexico's claim that imports of GM corn present health and ecological risks, deploying tactics which one expert in Mexico likened to those once used by the tobacco industry.<sup>19</sup> Meanwhile, in pursuing the ban Mexico seeks to improve its food security, preserve its biodiversity, and ensure livelihoods for rural and Indigenous communities by promoting the cultivation of its extensive endowment of native corn varieties. In doing so, it is drawing upon cutting-edge frameworks and epistemologies like the precautionary principle, something that Canada should welcome if it is genuinely concerned about Mexican biodiversity. But even as it is confronted with compelling evidence of the risks posed by GM corn, Canada insists on using mechanisms established by NAFTA in order to halt the initiative. Canada alleges that Mexico's policy would introduce "asymmetry in North American regulatory conditions," even though the relationship is already asymmetrical – which is what both Canada and the US are seeking to maintain; while purporting that there exists equivalencies on health, safety and the environment.<sup>20</sup>

### **Toward a New Paradigm of Equivalency**

Mexico certainly is not opposed to restoring a degree of equivalency. In fact, President Obrador has shown a willingness to compromise on the implementation window, as well as limiting the ban to yellow corn meant for human consumption (the majority of yellow corn is used for livestock feed and other industrial purposes). Even though this has been the case, instead of pressing for a middle ground which takes seriously the emerging facts and unique ecological heritage about which Mexico is concerned, Canada has followed the lead of the US by utilizing NAFTA to the advantage of Canada's corn and biotechnology sectors – the latter in which Canada maintains significant interests. Mexico has even offered to collaborate with Canada on GM research to no avail. As one Mexican politician supportive of the ban said, Mexico's neighbours have no right to "intervene in the decisions that the Mexican government is making to safeguard human rights related to this issue."<sup>21</sup>

Canada should take this point seriously. After all, it has its own history of conflict with the US over differential regulatory regimes and bouts of protectionism to preserve domestic jobs, price stability, and health standards – with disputes over dairy being but one recent example.<sup>22</sup> Instead, it would be wise for Canada to consider a wider range of social values like sustainability, employment, and Indigenous values that should override the principles of market access, or at least warrant additional scrutiny and higher standards. Mexico, like Canada, is a democracy, and it would be highly undemocratic if the popular mandate of an elected leader seeking to make good on promises to protect human and environmental rights were summarily overruled via dispute resolution mechanisms introduced by free trade agreements, where the plaintiffs are poised to enjoy strongly favourable odds.<sup>23</sup>

One alternative to these “Investor-State Dispute Settlement” mechanisms is greater recourse to domestic jurisdiction, where for example the imperative to protect national biodiversity through a GM corn ban was upheld by the Mexican Supreme Court in 2013, and again in 2021.<sup>24</sup> While valid concerns about corporations exercising “regulatory arbitrage” could be addressed through treaty-based mechanisms, establishing common rules around corruption and rule of law as part of trade agreement negotiations may allow domestic social forces room to exercise greater leverage over the terms of foreign investment, extract fairer benefits, and impose stronger conditions in exchange for market access.<sup>25</sup> This would also provide an incentive to NAFTA partners to consider a bidirectional concept of equivalency in their negotiations over market access, recognizing the unique development needs, goals and risks each country faces, rather than seeking to impose particular sustainability and development solutions which will ensure steady profits for the domestic industries of rich countries which sit at the top of global value chains.

Contrary to popular discourses around ‘globalization,’ the nation-state has hardly been displaced as the principal organizer of the international economy by corporations and multilateral institutions. While both certainly have come to the fore, they remain in large part manifestations of the structural power of western countries, and especially the US. As such, in many cases – including the corn dispute – the idea of investor-state disputes is really a myth. These are disputes between national economies, and thus they should be resolved bilaterally rather than through adherence to supposedly universal principles of sound economics which nearly always align with the national interests of the advanced capitalist countries. Equivalency under this model would become bilaterally negotiated, rather than about adherence to a universal – and decidedly neoliberal – concept of governance.

## **Conclusion**

As this dispute on Mexican corn winds its way through the mandated resolution process, it becomes increasingly clear that free trade agreements are not politically neutral instruments which seek to rationalize the international investment landscape and help all investors exploit competitive advantages wherever they might exist, free of unhelpful market distortions. Instead, they have been used by certain states to dominate foreign markets and exploit them as peripheral sources of low-cost inputs to their own national value chains. Reestablishing the bilateral state-to-state dimensions of trade and investment can thus help reassert the role of national politics in driving urgently required reform of the rules governing global capital and commercial flows. Furthermore,

this reconfigured approach to investment relations can help bring the imperatives of economic development into harmony with the necessity of protecting biodiversity, ensuring traditional livelihoods, and bolstering consumption in regions experiencing high rates of poverty, underdevelopment and mass migration, particularly in the Global South.

Currently, Canada has the opportunity to evolve the terms of free trade agreements in collaboration with a developing country partner with a radically different political valence from those Mexican administrations which have managed the expansion of Canada-Mexico relations post-NAFTA. The AMLO administration seeks to move away from the neoliberal policies which failed to deliver substantial poverty reduction, accelerated environmental degradation, and even contributed to the intensification of political violence. Mexico's progressive turn, as epitomized by its resolve to confront the creeping infiltration of GM crops into its agricultural system, mirrors wider exhaustion with the neoliberal project among large sections of Canadian society. Seizing upon this emerging consensus around ecological sustainability, safety, and nutrition in the North American food production system, Canada should work both bilaterally and multilaterally to champion Mexico's innovative approach to evaluating GM crop safety, and work constructively to phase out harmful practices by Canadian biotechnology firms.

In failing to take these steps and instead opting for an assault on Mexico's biodiversity, Canada's demand for the repeal of Mexico's GM corn import ban reveals the neocolonial designs harboured by the architects and defenders of NAFTA – and the hollowness of its expressed claim to improve the lives of Mexico's poorest and most marginalized.

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