

REVISTA DE DIREITO INTERNACIONAL
BRAZILIAN JOURNAL OF INTERNATIONAL LAW

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O Direito das comunidades camponesas e indígenas à soberania alimentar no direito econômico internacional: reflexões sobre a disputa entre os EUA e o México sobre o milho geneticamente modificado

Virginia Petrova Georgieva

VOLUME 21 • N. 3 • 2024
INTERNATIONAL FOOD LAW

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Peasant and indigenous communities right to food sovereignty under international economic law: reflections on the US- Mexico genetically modified corn dispute*

O Direito das comunidades camponesas e indígenas à soberania alimentar no direito econômico internacional: reflexões sobre a disputa entre os EUA e o México sobre o milho geneticamente modificado

Virginia Petrova Georgieva**

Abstract

The recent recognition of peasant and indigenous communities' right to food sovereignty in Mexican domestic laws and regulations on the protection of native corn have been surrounded by controversies, as some Mexican domestic measures aimed at the enhancement of this right were declared contrary to Mexico's commitments under international economic law in the US- Mexico GM corn dispute brought before a USMCA panel. Is it possible to reconcile the right of peasant and indigenous communities to healthy and adequate food produced through ecologically sound and sustainable methods that respect their cultures with the "free trade disciplines" imposed on states agri-food systems under international economic law? The Mexican experience in protecting native corn brings a negative answer to this question and outlines the necessity to reform international economic law and achieve a new international system of trade in agri-food products which is not only free for multinational companies from developed states, but also fair for developing countries' peasants and indigenous peoples. To arrive at this conclusion, the article uses an empirical quantitative method of analyzing treaties, domestic laws and regulations, and relevant state practice.

Keywords: free trade agreements; sanitary and phytosanitary measures; peasant and indigenous rights; food sovereignty; human right to food.

Resumo

O recente reconhecimento do direito das comunidades camponesas e indígenas à soberania alimentar nas leis e regulamentações domésticas mexicanas sobre a proteção do milho nativo foi cercado de controvérsias, já que algumas medidas domésticas mexicanas destinadas a aprimorar esse direito foram declaradas contrárias aos compromissos do México de acordo com o direito econômico internacional na disputa entre os EUA e o México sobre o milho transgênico apresentada a um painel do USMCA. É possível concii-

* Recebido em: 19/09/2024
Aprovado em: 05/02/2025

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liar o direito das comunidades camponesas e indígenas a alimentos saudáveis e adequados, produzidos por meio de métodos ecologicamente corretos e sustentáveis que respeitem suas culturas, com as “disciplinas de livre comércio” impostas aos sistemas agroalimentares dos Estados de acordo com o direito econômico internacional? A experiência mexicana na proteção do milho nativo traz uma resposta negativa a essa pergunta e destaca a necessidade de reformar o direito econômico internacional e alcançar um novo sistema internacional de comércio de produtos agroalimentares que não seja apenas livre para as empresas multinacionais dos países desenvolvidos, mas também justo para os camponeses e povos indígenas dos países em desenvolvimento. Para chegar a essa conclusão, o artigo utiliza um método empírico quantitativo de análise de tratados, leis e regulamentações nacionais e práticas estatais relevantes.

Palavras-chave: acordos de livre comércio; medidas sanitárias e fitossanitárias; direitos dos camponeses e dos povos indígenas; soberania alimentar; direito humano à alimentação.

1 Introduction

We live in an unprecedented global food crisis, which is developing in the context of progressive “deglobalization” of the world order. Indeed, since 2010, experts began to talk about “slowbalisation” and, in 2020, after this phenomenon intensified due to the outbreak of the new coronavirus COVID-19, the term “deglobalization” was coined.¹ If globalization led to the expansion of economic and financial activities beyond the borders of the nation-state, deglobalization implies the reduction of global exchanges and the (re)establishment of state control over trade, investment, finance, and social affairs. In other words, if globalization meant the dismantling of the economic and financial borders between states, deglobalization points towards their reconstruction in certain areas.²

Deglobalization is transforming the way the global agri-food system works.

The forces of globalization shaped the organization of this system inequitably. The progressive liberalization of trade in agri-food products through the World Trade Organization (WTO) and regional free trade agreements facilitated the supply and distribution of food, bringing access to a much wider range of types of food. In addition, the suppression of the tariff and non-tariff barriers to access to domestic agricultural markets reduced the cost of food and promoted the economic growth of food-exporting developed countries.³ These important achievements led to the establishment of a global agri-food system in which food was seen as a simple commodity, subject to the “disciplines” of free trade.⁴

However, the liberalization of international food trade also led to food overproduction, price control mechanisms for agri-food products and the domination of food production and distribution processes by large multinational agri-food companies from developed economies.⁵ The lack of transparency and competition for food markets generated labor problems that are related to the large-scale exploitation of workers in the agricultural sectors of developing countries in terms of low wages and massive violations of labor rights. The overproduction of food provoked environmental problems, such as the loss of biodiversity and climate change. In fact, the overproduction of agricultural products, fostered by the liberalization of international food trade, was based on the promotion of large-scale monocultures and the development of genetically modified (GM) agricultural products, that harm biodiversity.⁶

Consequently, free trade as the foundation of the global agri-food system began to be questioned by populist and nationalist movements that won elections in many parts of the world. Several member states of the international community are questioning the value of deep international cooperation in agri-food matters and advocate in favor of a “fair trade” in food and the

³ RAY, Ipsita; SHUKLA, Anshuman., *Fragile Pillars of Food Security: Exploring the Challenges of Availability, Accessibility, and Quality for Global Food Regime*. *Brazilian Journal of International Law*, v. 27, n. 2. p. 114-128, 2024.

⁴ SMITH, Fiona. *Agriculture and the WTO: Towards a New Theory of International Agricultural Trade Regulation*. New York: Elgar International Economic Law series, 2009.

⁵ UNCTAD. *Impact of the COVID-19 Pandemic on Trade and Development: Lessons learned*. UN: Geneva, 2022. Available at: https://unctad.org/system/files/official-document/osg2022d1_en.pdf.

⁶ FAO. *GMOs and the environment*. 2024. Available at: <https://www.fao.org/3/x9602e/x9602e07.htm/>. Accessed at: 1 jan. 2025.

¹ TITIEVSKAYA, Jana *et al.* *Slowing Down or Changing Track? Understanding the Dynamics of “Slowbalisation”*, In-Depth Analysis, European Parliamentary Research Service. Cecilia: UN, 2020. p. 5

² PETROVA GEORGIEVA, Virdzhiniya. *Desglobalización y derecho internacional económico*. Spain: Tirant lo Blanch, 2024. p. 8.

need to achieve “strategic food autonomy and self-sufficiency”. Protectionism returned to states’ international trade policies regarding food and a new concept of food sovereignty emerged, as an expression of the need to recover states’ control over their internal agri-food affairs, which, in the era of globalization, were mostly in the hands of non-State actors (multinational agri-food companies and international institutions).

Food sovereignty is a multifaceted concept which promotes policies to ensure rights to healthy and culturally appropriate food, produced through ecologically sustainable methods.⁷ According to *The Six Pillars of Food Sovereignty*, developed at Nyéléni in 2007, food sovereignty: “1. Focuses on food for the people: a) It puts people’s need for food at the center of policies. b) Insists that food is more than a commodity. 2. Values food suppliers: a) Supports sustainable lifestyles. b) Respect the work of all food suppliers. 3. Localize food systems: a) Reduce the distance between food suppliers and consumers. b) Rejects dumping and inappropriate food assistance. c) Resist dependence on remote and irresponsible corporations. 4. Place control at the local level: a) Places of control are in the hands of local food suppliers. b) Recognizes the need to inhabit and share territories. c) Rejects the privatization of natural resources. 5. Promotes knowledge and skills: a) Is based on traditional knowledge. b) Use research to support and transmit this knowledge to future generations. c) Reject technologies that threaten local food systems. 6. It is compatible with nature: a) Maximizes the contributions of ecosystems. b) improves recovery capacity. c) Rejects the intensive use of industrialized monoculture energy and other destructive methods.”⁸ Food sovereignty is closely related to food security and the guarantee of the human right to adequate food.⁹ However, according to the OCHR: “The right to food is different from food security and food sovereignty. [...] Food sovereignty is an emerging concept according to which peoples define their own food and own model of food production (such as agriculture and fisheries), determine the extent to which they want to be self-reliant and protect domestic food production and regulate trade in order to

achieve sustainable development objectives [...]. A right to food sovereignty is recognized under some national laws; however, there is currently no international consensus on it.”¹⁰ Article 305 of the Constitution of Venezuela is a prominent example of the recognition of food sovereignty in domestic law.¹¹

With the adoption of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) in 2018, the right to food sovereignty was officially included in an international soft law legal instrument.¹² The declaration recognized “the special relationship and interaction between peasants and other people working in rural areas, and the land, water and nature to which they are attached and on which they depend for their livelihood.” According to the declaration’s preamble: “the concept of food sovereignty has been used in many States and regions to designate the right to define their food and agriculture systems and the right to healthy and culturally appropriate food produced through ecologically sound and sustainable methods that respect human rights.” A direct recognition of peasant’s rights to food sovereignty is included in Article 15- 5. Pursuant to this article: “Peasants and other people working in rural areas have the right to determine their own food and agriculture systems, recognized by many States and regions as

¹⁰ OCHR. *The Right to Adequate Food*: fact sheet no. 34. Geneva: UN, 2010. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>.

¹¹ According to this provision: “The State will promote sustainable agriculture as a strategic basis for comprehensive rural development in order to guarantee the food security of the population; understood as the sufficient and stable availability of food at the national level and timely and permanent access to it by the consuming public. Food security will be achieved by developing and privileging domestic agricultural production, understood as that coming from agricultural, livestock, fishing and aquaculture activities. Food production is of national interest and fundamental for the economic and social development of the Nation. For these purposes, the State will dictate the financial, commercial, technological transfer, land ownership, infrastructure, labor training and other measures that may be necessary to achieve strategic levels of self-sufficiency. In addition, it will promote actions within the framework of the national and international economy to compensate for the disadvantages inherent to agricultural activity. The State will protect the settlements and communities of artisanal fishermen, as well as their fishing grounds in continental waters and those close to the coastline defined in the law.” For more details about the recognition of food sovereignty in Venezuelan Law: MCMICHAEL, P. *et al.* The state of food sovereignty in Latin America: political projects and alternative pathways in Venezuela. *Journal of Peasant Stud Posted*, 2009.

¹² AZZARITTI, Alezio. The Right to Food Sovereignty in International Law. *Ordine internazionale e diritti umani*, n. 4, p. 990-1012, 2021.

⁷ WHITTMAN, Hannah. Food sovereignty: An inclusive model for feeding the world and cooling the planet. *One Earth*, v. 6, 2023, p. 474-478.

⁸ NYÉLÉNI. *Home page*. Available at: <https://nyeleni.org>.

⁹ FAKHRI, Michael. *The Right to Food in the Context of International Trade Law and Policy*, Interim Report of the Special Rapporteur on the Right to Food. Geneva: Un, 2020.

the right to food sovereignty. This includes the right to participate in decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods that respect their cultures.” According to UNDROP Article 15-6: “States shall formulate, in partnership with peasants and other people working in rural areas, public policies at the local, national, regional and international levels to advance and protect the right to adequate food, food security and food sovereignty and sustainable and equitable food systems that promote and protect the rights contained in the present Declaration”. Article 2-3 of the UNDROP states that: “States shall elaborate, interpret and apply relevant international agreements and standards to which they are a party in a manner consistent with their human rights obligations as applicable to peasants and other people working in rural areas.” The declaration also provides the following: “States shall take all measures necessary to ensure: (a) The prevention of risks to health and safety derived from technologies, chemicals and agricultural practices, including through their prohibition and restriction;” (Article 14-4).

As mentioned above, the UNDROP is not a binding treaty and does not establish enforceable legal obligations for States.¹³ However, some developing countries, such as Mexico, have decided to voluntarily fulfil their duties under the declaration.

The recovery of Mexico’s food sovereignty and the protection of the right to food sovereignty of its peasant and indigenous communities constitutes a priority for the current Mexican Government.¹⁴ In full conformity with its obligation under UNDROP’s Articles 14-4 and 15-5, on 13 April 2020, Mexico adopted the Federal Law for the Promotion and Protection of Native Corn, which “declared the production, marketing and consumption activities of native corn [...], a national cultural manifestation [...]”.¹⁵ During the same year, on 31 February 2020, Mexican President Andrés Ma-

nuel López Obrador issued a Presidential Decree aimed to limit “the use of glyphosate as an active substance in agrochemicals and genetically modified corn in Mexico.” Three years later, on 13 of February 2023, the President issued a new Decree establishing various actions regarding glyphosate and GM corn, and particularly a ban on the importation of GM corn. According to the decree’s preamble: “with the objective of achieving self-sufficiency and food sovereignty, our country must focus on establishing sustainable and culturally appropriate agricultural production, through the use of agroecological practices and inputs that are safe for human health, the biocultural diversity of the country and the environment, as well as congruent with the agricultural traditions of Mexico;”¹⁶

Mexico is a key market for U.S.’ agricultural exports. In 2019, the U.S. and Mexico traded over 47.5 billion dollars in agricultural goods and corn is the U.S. agricultural product most exported to Mexico.¹⁷ The majority of the corn exported from the US is yellow GM corn.

In 2023, the US submitted a request for the establishment of a USMCA panel to examine the compatibility of Mexico’s “biotechnology measures concerning GM corn”¹⁸ with the Sanitary and Phytosanitary (SPS) Chapter of USMCA. The panel was constituted in August 2023. The panel constituted under USMCA in the *US–Mexico GM–corn* dispute delivered its final report on 20 December 2024.¹⁹ Most of Mexico’s defenses were based on the protection of peasant and indigenous communities’ right to food sovereignty, as established under the UNDROP. They were all rejected by the panel and the US won the case.

¹³ KAMPHUIS, Charis. Litigating indigenous dispossession in the global economy: law’s promises and pitfalls. *Brazilian Journal of International Law*, v. 14, n. 1, 2017.

¹⁴ SUÁREZ, Victor. Mexico’s quest for food sovereignty: An interview with Undersecretary of Agriculture. *LATP*, 2023. Available at: <https://www.iatp.org/mexicos-quest-food-sovereignty-interview-undersecretary-agriculture-victor-suarez>.

¹⁵ MEXICO. *Ley Federal para la Producción y Fomento del Maíz Nativo*. Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LFFPMN_130420.pdf.

¹⁶ MEXICO. *Decreto Presidencial del 13 de Febrero de 2023*. Decreto por el que se establecen diversas acciones en materia de glifosato y maíz genéticamente modificado. Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5679405&fecha=13/02/2023#gsc.tab=0.

¹⁷ ANTONIO, Lydia. Mexico The entry into force of USMCA and the agrifood sector. In: UNITED STATES-MEXICO-CANADA AGREEMENT, 2020, Mexico City. *Proceedings [...]*, Mexico City, 27 jul. 2020. https://www.gob.mx/cms/uploads/attachment/file/567897/1_The_entry_into_force_of_the_new_USMCA_and_the_agrifood_sector___Mtra_Lydia_Antonio_.pdf

¹⁸ USTR. Panel request, Mexico– Biotech. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>.

¹⁹ MEXICO. *Measures concerning genetically engineered corn Mexico–USA–2023–31–01. Report of the panel*, 20 dec. 2024. Available at: <https://ustr.gov/sites/default/files/Final%20Report%20ENG.pdf>.

However, three days later, on 23 December 2024, the new elected first woman President of Mexico- Claudia Sheinbaum- announced a constitutional reform to protect native corn, essential for the health and culture of Mexicans, from the cultivation and importation of GM corn. She reaffirmed the intention of the Mexican Government to elevate this protection to a constitutional range in January 2025.²⁰

The objective of this article is to analyze the recent recognition of peasant and indigenous communities' right to food sovereignty under the above mentioned Mexican domestic laws and regulations (2) and to demonstrate their incompatibility with international economic law (3). It will argue that it is impossible to protect and enhance this right within the limits that the "free trade disciplines" of international economic law impose on developing states' domestic agri-food systems. Only a future reform of international economic law could reconcile the protection of peasant and indigenous communities' right to food sovereignty and the promotion of a free and fair international trade in food. In this sense, the article will evaluate the impact of the Mexican domestic laws and regulations on the preservation of native corn for future reforms of international economic law regarding the guarantee of peasant and indigenous peoples' right to food sovereignty (4).

2 The protection of peasant and indigenous communities' right to food sovereignty under Mexican domestic laws and regulations on native corn

For the current Mexican Government, the protection of native corn- corn produced by its indigenous and peasant communities- was first seen as a mean to protect their right to food sovereignty through the access to a corn that "respects their cultures" (UNDROP Article 15-5). As noted above, the Federal Law for the Promotion and Protection of Native Corn, which was adopted in 2020, declared the production, marketing and consumption activities of native corn and in Cons-

tant Diversification, as a national cultural manifestation in accordance with Article 3 of the General Law of Culture and Cultural Rights.²¹ In addition, the law stated that its objective was to "declare the protection of Native Corn and Constant Diversification in everything related to its production, marketing and consumption, as an obligation of the State to guarantee the human right to food and to establish institutional mechanisms for the protection and promotion of Native Corn and in Constant Diversification." The law defined "Constant Diversification" as "evolutionary process of continuous domestication through breeding techniques and native agriculture, which for millennia has allowed genetic diversity with variants in size, texture, cob and grain color with capacity for adaptability to wide climatic conditions and versatility in uses" (article 1 of the Federal Law).

The Law also established the National Council of Native Corn (CONAM), a consultative body of the Mexican President, with competence to provide its opinion in matters of protection of native corn and Constant Diversification. One of the members of the CONAM is the President of the National Institute of Indigenous People and other three of its members are representatives of indigenous communities (Article 6 of the federal law). By so doing, Mexico complied with its obligation under Article 15-5 of the UNDROP regarding the protection of the right of peasant and indigenous peoples' to food sovereignty thought the guarantee of their participation in decision-making processes on food and agricultural policy.

The second Mexican domestic measure aimed at protecting peasant and indigenous communities' right to food sovereignty was the Presidential Decree of 30 December 2020. As mentioned above, the decree stated objective was the achievement of "self-sufficiency and food sovereignty"²² and the measures it introduced were related to peasant and indigenous peoples' (and the Me-

²¹ According to this provision: "The cultural manifestations referred to in this Law are the material and immaterial past and present, inherent to history, art, traditions, practices and knowledge that identify groups, towns and communities that make up the nation, elements that people, individually or collectively, they recognize it as their own for the value and meaning that it brings to them in terms of their identity, training, integrity and cultural dignity, and to those who have the full right to access, participate, practice and enjoy in an active and creative way."

²² MEXICO. *Decreto Presidencial del 30 de Diciembre de 2020*. Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5609365&fecha=31/12/2020#gsc.tab=0.

²⁰ ROJAS, Arturo. Sheinbaum busca la protección constitucional del maíz blanco mexicano. *El Economista*, 2025. Available at: <https://www.economista.com.mx/politica/sheinbaum-busca-proteccion-constitucional-maiz-blanco-mexicano-20250107-740863.html>.

xican people, in general) right to healthy and adequate non-GM corn, produced through ecologically sound and sustainable methods which do not use glyphosate (UNDROP Article 15-5). According to the decree's Article 6: "With the purpose of contributing to food security and sovereignty and, as a special measure to protect native corn, the milpa, biocultural wealth, peasant communities, gastronomic heritage and the health of Mexican men and women, the authorities in this biosecurity matter, within the scope of their jurisdiction, in accordance with the applicable regulations, will revoke and refrain from granting permits for the release of genetically modified corn seeds into the environment. Likewise, the biosafety authorities, within the scope of their jurisdiction, in accordance with the applicable regulations and based on criteria of self-sufficiency in the supply of corn grain without glyphosate, will revoke and refrain from granting authorizations for the use of genetically modified corn grain in the diet of Mexican men and women, until it is completely replaced on a date that cannot be later than January 31, 2024, in congruence with the policies of food self-sufficiency of the country and with the transition period established in the first article of this Decree."

The Presidential Decree of 13 February 2023 complemented the 2020 decree with a ban on the importation of GM corn. Its Article 3 stated that: "The agencies and entities of the Federal Public Administration are instructed so that, within the scope of their powers: I. Refrain from acquiring, using, distributing, promoting and *importing* genetically modified corn, as well as glyphosate or agrochemicals that contain it as an active ingredient, for any use, within the framework of public programs or any other government activity." According to article 6 of the 2023 Presidential Decree: "The authorities in matters of biosafety, within the scope of their competence, with the purpose of contributing to food security and sovereignty, and as a special measure of protection of native corn, the milpa, biocultural wealth, peasant communities, gastronomic heritage and human health, in accordance with applicable regulations: I. They will revoke and refrain from granting permits for the release of genetically modified corn seeds into the environment in Mexico; II. They will revoke and refrain from granting authorizations for the use of genetically modified corn grain for human consumption, and III. They will promote, in coordination with the National Council of Science and Technology, the

reforms of the applicable legal instruments, related to the object of this decree."

As its title suggests, the General Law of Adequate and Sustainable Food was adopted in March 2024 with the objective to protect peasant and indigenous peoples' (and all Mexicans') right to food sovereignty through an access to a "healthy and adequate food, produced through ecologically sound and sustainable methods" (UNDROP Article 15-5). The law included elements of food sovereignty in the definition of the human right to food. Indeed, its Article 4 establishes that it promotes: "The acceptability and cultural relevance of food, which consists of considering the non-nutrition-related values associated with food and food consumption, as well as the well-founded concerns of consumers about the nature of the foods available;"; as well as "sustainability, consisting of food production having a reduced environmental impact, with respect for biodiversity and ecosystems, in order to enable access to food for present and future generations;". Additionally, food sovereignty criteria are used when establishing the right to consume the "foods that constitute the regional regulatory baskets" (article 23 of the law). The components of the baskets are clarified in article 24 of the law. These baskets must contain: "at least one whole cereal, preferably corn and its derivatives, and one legume, primarily beans, fruits, vegetables and foods of animal origin." Article 25 of the law establishes that baskets must be produced locally and regionally, in a sustainable and culturally acceptable manner for the population. The fourth title of the law intended to regulate "food production" also contains numerous provisions related to peasant and indigenous peoples (and all Mexicans') right to food sovereignty. According to article 45 of the law: "All people have the right to have the appropriate conditions for food production and participate in comprehensive and sustainable rural development in the communities, in accordance with the provisions of the Rural Development Law." Article 46 of the general law affirms Mexico's search for self-sufficiency in sustainable food production in the following terms: "The programs and actions that are designed and executed, in the terms of the applicable provisions on food production, must seek the "self-sufficiency in each locality and region of the country, especially considering biocultural diversity and agroecosystems for local production and self-consumption of adequate foods." Likewise, article 47 reiterates that: "The policies of the three levels of

government, regarding food production, must have the following as their main objectives: [...] II. Self-sufficiency and food sovereignty”, based on the “VIII. Preservation of the use of traditional techniques and ancestral knowledge for food production.” Self-sufficiency in food production is established as the guiding principle of the entire food production policy of Mexico in article 44 of the law. Article 45 establishes that: “family or community production of food for self-consumption will be considered a priority” and article 46 mentions that said production must respect ecological balance. Finally, article 48 promotes self-sufficiency in food production in Mexico “under the self-consumption model, the production of local crops and small and medium-scale agricultural production”, which include peasant, indigenous and small farmers food production systems.

The future reform of the Mexican Constitution on the protection of native corn is to be adopted in conformity with these previous laws and regulations.

3 The incompatibility of the Mexican domestic laws and regulations with the classic “free trade disciplines” of international economic law

The enhancement of the right of peasant and indigenous communities’ to food sovereignty under Mexican domestic law is inconsistent with the obligations imposed on Mexico under international economic law. In the classic vision of international economic law, corn is a simple commodity that must be subject to the so-called “free trade disciplines”. These “disciplines” include, among others, the reduction and complete elimination of tariff barriers to international trade in corn, the prohibition of some corn subsidies and restrictions on the use of food safety standards and regulations as non-tariff barriers to trade in corn.

The duty to eliminate tariff barriers to free trade in corn appears in all the free trade agreements that Mexico has concluded.²³ The complete elimination of tariffs on corn promoted the complementarity and integration of Mexico’s import market with the markets

of countries that export corn. However, in some cases this complementarity became a dependency of the Mexican market on the export markets of other countries. This happened with all basic grains. In the case of rice, imports represented 74% of the national consumption in 2010, in the case of wheat, foreign purchases accounted for 42% of domestic consumption and, in the case of corn, they accounted for 24% of the national demand.²⁴ These imports have continued to grow over the last decade. In the first quarter of 2023, the record in imports of grains and oilseeds was 10.5 million tons, 13.1% higher in volume and 24.9% in value than in the same period of 2022.²⁵

The elimination of tariffs in corn through the free trade agreements concluded by Mexico was reciprocal and all parties to the treaties were expected to benefit from the liberalization and equal access to internal corn markets. However, the reciprocity in the elimination of tariffs in corn was not accompanied by the necessary reciprocity in the elimination of subsidies for corn production. Indeed, Mexico’s free trade agreements allowed the developed countries parties to these treaties to maintain permitted form of heavy corn subsidies. The effects of these subsidies destabilized Mexico’s domestic corn production. Thanks to the elimination of tariffs, the small-scaled producers of domestic corn—mostly peasant and indigenous communities—were forced to compete with artificially cheaper corn (thanks to the application of subsidies) from developed countries. This extra-economic cheapening, combined with the cheapening of corn due to the more advanced industrialization of the agricultural sectors of developed countries, often consisted of setting the price of corn even below the cost of production through subsidies to a select group of producers. The sale of imported corn at a price below the production price gave rise to a “dumping” by developed countries in the Mexican domestic corn market. Peasants and indigenous communities were automatically unable to compete with the power of subsidized foreign corn markets and were displaced and completely excluded from trade in corn.²⁶

²⁴ BANCO DE MÉXICO. *Informe Anual*. México: Banco de México, 2010.

²⁵ PILAR MARTÍNEZ, María del. Dependencia en granos achica superávit comercial agroalimentario. *El economista*, 2023. Available at: <https://www.economista.com.mx/empresas/Dependencia-en-granos-achica-superavit-comercial-agroalimentario-20230515-0139.html>

²⁶ LABONTÉ, Ronald *et al.* USMCA (NAFTA 2.0): tightening the

²³ It is incorporated, for example, in Article 4 “Market Access” of the WTO Agreement on Agriculture and in Article 2.4 of the USMCA “Treatment of Customs Tariffs”.

The devastating effects of US subsidies on corn in the Mexican agri-food system began shortly after the entry into force of NAFTA - the predecessor treaty of the USMCA. Under NAFTA's rules, Mexico was required to eliminate tariffs on corn over a 15-year period, while the US was allowed to maintain heavy agricultural subsidies on corn. The complete elimination of Mexican tariffs on corn resulted in a sudden and sharp drop in corn prices in Mexico and led to dumping of US (yellow GM) corn. With tariff-free corn trade, subsidized US corn exports to Mexico grew considerably, while Mexico's own (weaker) agricultural subsidies went primarily to large commercial corn producers rather than small farmers from peasant and indigenous communities. The national area planted with corn went from 9,196,478 hectares in 1994 to 7,157,586 in 2019, which represented a 22% reduction in the area allocated to that crop²⁷. Mexico completely lost its self-sufficiency in national corn production and almost 5 million peasant and indigenous people were displaced between 1991 and 2007, of which 3 million moved from independent farming to (mostly) seasonal agricultural labor, these events being one of the sources of the first wave of mass migration of Mexican peasants to the US.²⁸

The promotion of free trade in corn in international economic law was also achieved by restricting the use of food safety standards and regulations as non-tariff barriers to international trade. In the case of corn, food standards are applied by states to ensure that corn is safe for human health. The domestic measures that states might adopt to protect corn safety for human health fall under the SPS Agreement of the WTO and the USMCA's Chapter 9 "SPS Measures" incorporates its essential provisions.

The stated aim of the SPS regime in international economic law was to harmonize corn safety regulations among states and to avoid their use as arbitrary and discriminatory non-tariff obstacles to free trade.²⁹ The

constraints on the right to regulate for public health. *Globalization and Health*, v. 15, p. 35, 2019.

²⁷ HERNÁNDEZ PÉREZ, Juan Luis. La agricultura mexicana del TLCAN al TMEC: consideraciones teóricas, balance general y perspectivas de desarrollo. *El Trimestre Económico*, v. 88, n. 352, p. 1121-1152, 1 out. 2021. DOI <http://dx.doi.org/10.20430/ete.v88i352.1274>.

²⁸ LABONTÉ, Ronald *et al.* USMCA (NAFTA 2.0): tightening the constraints on the right to regulate for public health. *Globalization and Health*, v. 15, p. 35, 2019.

²⁹ DOWNES, C. Worth Shopping Around, Defining Regulatory Autonomy under the SPS and TBT Agreements. *World Trade Review*,

"free trade disciplines" of international economic law seek a necessary balance between two competing values: the protection of human health against SPS risks and the need to liberalize trade in corn.³⁰ SPS measures are a permitted exception to the GATT (and GATS) obligations to trade liberalization, non-discrimination, and market access. However, the invocation of the exception is subject to the conditions of Article XX b) of the GATT 1994 and Article 31.1 of the USMCA incorporates its provisions in the text of the agreement.³¹ USMCA's and WTO's state members have the sovereign right to adopt domestic SPS measures, but only if they are able to prove that the measures are necessary to protect the life or health of humans (the necessity test) and do not constitute a mean of arbitrary or unjustifiable discrimination between countries and/or a disguised restriction on international trade (the Article XX *Châpeau*/Preamble's test).

These rules might appear to be contrary to the common sense, which is to recognize states' sovereign right to protect human life and health first and to consider their duty to comply with economic and trade values as a secondary concern, i.e. free trade in corn should be the exception and the protection of human health, the rule. Without human life and health there could be no free trade and no economic gains. However, the logic of international economic law on corn safety in the age of globalization was exactly the opposite: to enhance free trade in corn first and to consider the protection of human life and health from foodborne diseases only as a limited in scope exception to free trade. The burdensome conditions for the invocation of the exception supposed an important legal restraint on States' normative sovereignty, but it was expected that the other benefits from trade liberalization in corn would make this "sacrifice of sovereignty" worthy.

The stated aim of the SPS regime in international trade law- the suppression of the non-tariff barriers to trade in corn- was complemented by a less obvious one- deregulation. It was accepted that developing sta-

v. 14, p. 553, 2015.

³⁰ VAN DER BOSCH, Peter. *The Law and Policy of the World Trade Organization*. London: Cambridge University Press, 2023. p. 1022

³¹ The logic of the WTO's SPS Agreement and Chapter 9 of the USMCA follows the sense of article XX b) of the GATT 1994. In fact, article 2.4 of the WTO SPS Agreement establishes a presumption that a measure that is compatible with the SPS agreement is *ipso iure* consistent with article XX b).

tes' SPS measures can obstruct market access for corn producers (mainly, multinational companies) from the developed states. So, to have more open domestic markets, developing countries were convinced (or forced) to accept that they must suppress or at least lower the level of protection of corn safety (and, consequently, human health) on their territories. Thus, the objective of international trade law's "free trade disciplines" on domestic SPS measures on corn safety was in fact the elimination or, at least, the weakening of regulations of all kinds (i.e. deregulation). Producers and multinational companies from developed states won with this equilibrium, but the (small scaled) food producers in developing countries and the consumers of their products lost a huge amount of legal protection of such an important societal value, as human health.³²

The recognition, in Mexican domestic laws and regulations, of peasant and indigenous communities' right to food sovereignty in the production and consumption of native corn is not, *per se*, contrary to the above-mentioned "free trade disciplines" of international economic law. However, if Mexico adopts domestic measures aimed to enhance this right and if these measures affect international trade in corn, they will fall directly under their scope. Thus, for example, if Mexico adopts domestic measures that impose tariffs on corn imports, corn export subsidies to encourage the production of native corn, prohibitions on the import of certain types of corn in Mexico, labels on corn products to show that they have been produced according to ecological and sustainable agri-food processes and/or that they have a certain "national content" of native corn, or obligates Mexican governmental bodies to buy only native corn produced in Mexico, the State must respect its commitments under international economic law's "free trade disciplines".

As shown above, the 2023 Mexican Presidential Decree prohibited the imports of a specific type of corn in Mexico- the GM corn- to protect human health from the adverse effects of glyphosate, a pesticide present in GM corn and corn products. This measure directly

affected the international trade in corn and fell within the SPS regime of international economic law.

The US demand in the *US- Mexico GM corn dispute* relies precisely on the incompatibility of the 2020 and 2023 Mexican Presidential Decrees on the protection of native corn with the USMCA's SPS Chapter.³³ According to the US, the Mexican Presidential decree's measures are SPS measures that affect international trade, as their "main purpose" includes "the rights to health and a healthy environment, native corn, . . . as well as to ensure nutritious, sufficient and quality diet."³⁴ The regulation of GM products has already been considered an SPS measure in the case law of the DSB of the WTO. In *EC- Approval and Marketing of Biotech Products* (2006)³⁵, the panel determined that measures adopted by the European Communities with respect to biotech products (i.e. genetically modified organisms or GMO) were SPS measures pursuant to Annex A (1) of the SPS agreement.³⁶ Following this precedent, the panel in the *US- Mexico GM corn dispute* determined that the 2023 Mexican Presidential Decree's measures are SPS measures that "may, directly or indirectly, affect trade between the Parties," within the meaning of Article 9.2 of the USMCA.³⁷

Being a SPS measures, the measures instructed by the 2023 Mexican Presidential Decree on the ban of import of GM corn must respect the three main obligations settled in USMCA's Chapter 9 according to which it must be proven that: 1) Mexico has adopted SPS

³² STIEGLITZ, Joseph. *El malestar en la globalización*. Madrid: Taurus Santillana Ediciones Generales, 2022, p. 72-73; MURINA, Marina; NICITA, Alessandro. Trading with Conditions: the effect of sanitary and phytosanitary measures on the agricultural exports from low-income countries. *The World Economy*, v. 40, n. 1, p. 168-181, 29 nov. 2015. DOI <http://dx.doi.org/10.1111/twec.12368>. p. 8.

³³ USTR. Panel request, Mexico- Biotech. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>.

³⁴ USTR. Panel request, Mexico- Biotech. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 88

³⁵ EUROPEAN COMMISSION. *European Communities: Measures Affecting the Approval and Marketing of Biotech Products*. United States, 29 sep. 2006. Available at: https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-settlement/wto-disputes-cases-involving-eu/wtds291-european-communities-measures-affecting-approval-and-marketing-biotech-products-gmos_en: 1 jan. 2025.

³⁶ EUROPEAN COMMISSION. *European Communities: Measures Affecting the Approval and Marketing of Biotech Products*. United States, 29 sep. 2006. Available at: https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-settlement/wto-disputes-cases-involving-eu/wtds291-european-communities-measures-affecting-approval-and-marketing-biotech-products-gmos_en: 1 jan. 2025.

³⁷ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 102-115.

measures that are *necessary* to protect human health (the *necessity* requirement); 2) the Mexican SPS measures are based on scientific principles and on sufficient scientific evidence (the “*scientific disciplines*”), and 3) the Mexican SPS measures are not an arbitrary discrimination that constitutes a disguised restriction on trade (the “*non-discrimination*” requirement’). The US claims before the panel were based on the violation, by the Mexican SPS measure, of these three requirements.

The US claimed that Mexico didn’t respect the procedural and formal requirements on the conduct of the assessment of the probable risk for human health caused by the consumption of GM corn which contain glyphosate residues, as established in Articles 9.6.3 and 9.6.8 of USMCA. The US contented that the Mexican SPS measures are inconsistent with USMCA Article 9.6.3 because they are based neither on (1) relevant international standards, guidelines, or recommendations, nor on (2) an “appropriate” risk assessment.³⁸ Regarding the formal procedure of the risk assessment, the US demand also invoked a violation of USMCA Article 9.6.7 which imposes obligations related to the transparency of the risk assessment procedure.

In conformity with UNDROP’s Article 14-4, Mexico submitted that the SPS measures were justified by the prevention of the risks that the chemical glyphosate represents to Mexican people (and Mexican peasant and indigenous communities’) health. The Mexican Government produced scientific evidence to prove the risks of glyphosate for human health, including not only risks for cancer, but also for kidneys, neurological and gastrointestinal diseases. The Mexican National Council for Human Studies, Science and Technology (*Consejo Nacional de Humanidades, Ciencias y Tecnologías-CONAHCYT*, in Spanish) elaborated a compilation of continuously updated scientific articles on the herbicide glyphosate, published in national and international journals that address biosafety issues.³⁹ In addition, during the negotiation between US and Mexican officials in March 2023, before the US submission of the *US- Mexico GM corn* dispute to a USMCA panel, many Mexican

scientists publicly exposed scientific evidence about the human health risks from exposure to glyphosate, including in children and even newborns. All these scientific works were exhibited before the panel and Mexico argued that they demonstrated the conduction of a risk assessment study that sufficiently justifies the adoption of the SPS measures.⁴⁰ Mexico also claimed that it did not base the SPS measures on international standards, guidelines or recommendations, as there are none that meet its appropriate level of protection.⁴¹ Regarding the protection of the risk for human health resulting from direct consumption of GM corn, Mexico stated that it has adopted a “zero risk” allowed level of protection, because “the presence of contaminants and toxins in GM corn grain, such as transgenic proteins and glyphosate, has been well documented. In addition, the adverse health effects of these contaminants and toxins have been scientifically demonstrated.”⁴²

However, the panel constituted determined that the scientific evidence produced by the Mexican Government was insufficient to demonstrate an appropriate risk assessment pursuant to article 9.6.3. of the USMCA.⁴³ After examining the international principles and standards’ framework for undertaking risk assessment, the panel considered that “the availability of this detailed international guidance on the conduct of food safety and pest risk assessments informs the analysis in this case”.⁴⁴ The panel therefore concluded that the scientific documents produced by the Mexican CONAHCYT “do not meet any of the requirements of a risk assessment.”⁴⁵ In addition, the Panel found that Mexico did not comply with the transparency requirement of USMCA Article 9.6.7.⁴⁶

³⁸ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag.132-134.

³⁹ CONAHCYT. *Efectos nocivos del herbicida glifosato*. Available at: <https://conahcyt.mx/cibigem/index.php/sistema-nacional-de-informacion/documentos-y-actividades-en-bioseguridad/repositorio-glifosato?pagina=38&busqueda=>

⁴⁰ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 135-136.

⁴¹ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 122.

⁴² USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>.Parag. 140.

⁴³ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 181.

⁴⁴ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>.Parag. 185.

⁴⁵ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>.Parag. 196-197.

⁴⁶ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>.

The panel didn't name scientific experts to decide upon the quality of the scientific evidence produced by the Mexican Government and didn't make determination upon the existence of sufficient scientific evidence on the level of risk for human health that the glyphosate represents. It considered that Mexico has failed to proof respect for the internationally recognized principles and standards about the methodology of conducting a risk assessment. By so doing, the panel recognized the mandatory nature of these principles and standards and departed from the findings of the panel in *EC- Hormones* (1997).⁴⁷ According to the statements of the panel in this case, they do not possess binding legal nature and are simple guiding principles on which a government can, but is not obliged to, base its risk assessment. By adopting a merely formal and procedural vision of the risk assessment of the dangers of glyphosate for human health, the panel's report missed the opportunity to provide highlight on the current "scientific battle" about the certainty of such dangers.

Even if there is not sufficient scientific certainty about the risks from glyphosate for human health, Mexico argued that it is implementing a precautionary approach in the risk assessment, in accordance with USMCA's article 9.6. 4 c) (which is based on article 5-7 of the WTO SPS Agreement). However, the panel rejected this argument and considered that the SPS measures were not provisional measures within the meaning of article 9.6.4.⁴⁸

Finally, the US claimed that that the Mexican SPS Measures "go well beyond that which is necessary to protect human, animal, or plant life or health," and are consequently inconsistent with Article 9.6.6(a) which is closely related to its Article 9.6.10.⁴⁹ Mexico argued that the adopted SPS measures were the only possible measures to achieve a "zero-risk" allowed level of protection, as only if non-GM corn grain is used for direct consumption, any possibility of human health risks from

direct consumption of GM corn grain are eliminated.⁵⁰ In determining whether the conditions laid down in article 9.6.10 are met, i.e. whether Mexico, by applying an import ban on GM corn, has adopted the less-trade restrictive possible SPS measure to achieve human health protection from the adverse effects on human health of the ingestion of glyphosate contained in GM corn, the USMCA's panel had to look to the characteristics of the Mexican SPS measure and had to decide if there were alternative less trade-restrictive measures which were reasonably available. However, once again, the panel preferred not to develop this analysis. Instead, it found that "Because (contrary to Article 9.6.3) Mexico did not base its Measures either on relevant international standards, guidelines or recommendations, or an appropriate risk assessment, it has failed to ensure that they are based on relevant scientific principles (contrary to Article 9.6.8). In these circumstances, the Panel finds that the Measures are also being applied beyond the extent shown to be necessary, contrary to Article 9.6.6(a)."⁵¹

In conclusion, the first category of US claims, completely embraced by the panel's report, beyond the highly technical legal language of the USMCA, were aimed to demonstrate that the Mexican import ban on GM corn is an unjustifiable non-tariff barrier to free trade in corn that must be modified and/or suppressed, as Mexico didn't respect the "necessity requirement" and the "scientific disciplines" of the USMCA's SPS regime. The US and the panel's arguments could be summarized as follows. Mexico's ban on the importation of GM corn was not a measure necessary to protect human health from the effects of glyphosate, as it was not based on a correct risk assessment procedure. It was rather a politically motivated measure, destined to protect the producers of native corn- Mexican peasant and indigenous communities- from the competition of the US yellow GM corn producers. Mexico was allowed to enhance its population's right to a healthy corn only to the extent permitted by the USMCA's "free trade disciplines". By acceding to the USMCA, after the renegotiation process of NAFTA, Mexico voluntarily accepted to submit itself to these disciplines in the name of the

gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf. Parag. 200.

⁴⁷ EUROPEAN COMMISSION. *Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26. Belgian: EC, 18 aug. 1997.

⁴⁸ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 117.

⁴⁹ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 204.

⁵⁰ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 215.

⁵¹ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 221.

benefits from free trade in corn with the US (and Canada). Mexico must subordinate issues of human health in corn production and consumption to those of free trade. Corn is a commodity, and free trade in corn places important administrative and scientific burdens on the adoption of domestic regulations aimed to protect the right to healthy corn. Whenever free trade in corn is affected by a domestic SPS measures, market deregulatory (and not state interventionist) solutions must prevail.⁵²

The main part of the Mexican defense before the USMCA’s panel was aimed to demonstrate that, even if it was assumed that the SPS measures were a not-tariff obstacle to free trade in corn, i.e. even if they were a form of protectionism in favor of native corn producers (peasant and indigenous communities), they were justified under Articles 15- 5 and 2-3 of the UNDROP. In accordance with UNDROP’s Article 15-5, Mexico argued that it could legally impose a non-tariff barrier to free trade in corn, if it is aimed at protecting peasant and indigenous peoples’ right to determine their own corn production system and to have access to healthy and culturally appropriate native corn, which is produced through ecological and sustainable methods that do not use harmful herbicides, such as glyphosate. Under UNDROP’s Article 2-3, Mexico contended that, by applying a no tariff obstacle to free trade in corn, it had interpreted and applied USMCA in a manner consistent with the protection of peasant and indigenous peoples’ human and food sovereignty rights. However, Mexico’s claims never included a direct reference to UNDROP because of its soft law (and revolutionary) legal nature. The Mexican arguments somehow tried to link the justifications of the SPS measures under the UNDROP within the permitted exceptions to free trade in corn under the USMCA and the GATT binding provisions. The Mexican Government also tried to use Article 24.15 of the USMCA⁵³, which is not normally an exception to free trade in corn, to advance the right of peasant and indigenous communities to food sovereignty.

On the first place, Mexico invoked the public morals and exhaustible natural resources exceptions of Articles

XX(a) and (g) of the GATT 1994, which was linked to the protection of peasant and indigenous’ communities right to food sovereignty, as Mexico tried to demonstrate that the SPS measures were adopted in respect of the right of these communities (and of all Mexicans) to a corn that is culturally suitable.

For Mexican peasants and indigenous people and for all society, *maíz* is more than a simple commodity that must be subject to the market solutions of free trade. Corn is not only the main ingredient of the Mexican diet, but it also has an extremely strong cultural value for Mexican peasant and indigenous peoples and for Mexican society itself. Mexicans considers themselves as “*los hijos e hijas del maíz*” (“the sons and daughters of maize”), following legends from the Mayan and Aztec cultures. Mexico is the center of origin and diversity of corn. There are 59 breeds and thousands of varieties of Mexican native corn. According to archaeological evidence, its domestication dates to at least 8,000 years ago. 29 of September is the National Day of the Maize in Mexico. As stated in a recent publication by the Mexican CONAHCYT on the commemoration of that day: “Corn, due to its qualities and because it is the basic food, is considered a gift of nature. Being a cultural product, corn is personified, it merges with man.”⁵⁴ From a cultural and symbolical point of view, the recovery of the Mexican food sovereignty starts with corn.

In this sense, before the USMCA panel Mexico contended that the SPS measures were “necessary to protect native corn, the milpa, the biocultural wealth and the gastronomic heritage of Mexico under the terms of Article XX (a) of the GATT 1994.” Mexico added that the measures address risk not only to human health, but also to native corn, which is “considered cultural heritage in Mexico” according to the Federal Law for the Promotion and Protection of Native Corn and is “vitaly important to the identity and culture of Mexico’s indigenous and peasant communities, who are considered custodians and stewards of this tradition and biodiversity.”⁵⁵ Mexico linked the protection of native corn varieties to its moral public duty to “preserve [...] the livelihoods of communities that derive their income and livelihood from the cultivation and processing” of

⁵² RIGOD, Boris. The Purpose of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. *European Journal of International Law*, v. 24, p. 509, 2013.

⁵³ Pursuant to this article: “Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.”

⁵⁴ SECIHTI. *De saberes y sabores*. Available at: <https://conahcyt.mx/de-saberes-y-sabores/>.

⁵⁵ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 264.

native corn.⁵⁶ It further added that the SPS measures protect “public morals by preventing harmful displacement of native corn and the corresponding negative impact on indigenous communities and associated gastronomic traditions.”⁵⁷ In the same sense, Mexico invoked Article 24.15 of the USMCA⁵⁸ and submitted that the SPS measures and the objectives they seek to achieve are consistent with this provision because they “contribute to the protection of culture, heritage, traditions, communities, and the identity of people of indigenous origin, in relation to the natural biodiversity of native Mexican corn and its various varieties of corn”.⁵⁹

In the same sense, Mexico also linked the protection of peasant and indigenous people’s rights under UNDROP Article 2-3 with Article 32.5 of the USMCA.⁶⁰ In Mexico’s view, “native corn is part of the identity of indigenous peoples and therefore, through the 2023 Presidential Decree, Mexico complies with its obligations, under both domestic and international law, to respect the social and cultural identity and heritage, the customs, traditions and the institutions of indigenous people.”⁶¹ According to Mexico, every measure to protect native corn is a measure to protect indigenous rights, as “the protection of native corn is a cultural manifestation that falls within the definition of ‘cultural heritage’ of indigenous peoples”.⁶²

⁵⁶ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 266.

⁵⁷ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 267.

⁵⁸ Article 24.15 of the USMCA on Trade and Biodiversity provides: “3. The Parties recognize the importance of respecting, preserving, and maintaining knowledge and practices of indigenous peoples and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.”

⁵⁹ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 257.

⁶⁰ Article 32.5 provides: “Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, services, and investment, this Agreement does not preclude a Party from adopting or maintaining a measure it deems necessary to fulfill its legal obligations to indigenous peoples.”

⁶¹ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 312 s.

⁶² USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 319.

The peasant and indigenous communities’ right to non-GM native corn produced through ecological and sustainable processes was addressed under the exhaustion of natural resources exception of GATT Article XX (g). In the view of Mexico, the SPS measures were aimed to the conservation of the biodiversity and genetic integrity of native corn varieties as “exhaustible natural resources” within the meaning of this article. Mexico submitted that the SPS measures related to the conservation of a natural resource: the “native varieties and landraces of corn and maize, including their biodiversity and genetic integrity” and stated that “[t]his natural resource is exhaustible because Mexico’s native corn, including its natural biodiversity and genetic integrity, is under threat of loss and possibly extinction as evidenced through the transgenic contamination of native corn in Mexico”.⁶³

Mexico also tried to demonstrate that its SPS measures satisfy the requirements of the *chapeau* of Article XX because the Measures: (1) are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination; and (2) do not constitute a disguised restriction on international trade.⁶⁴

The panel rejected all the defenses that Mexico based on exceptions on free trade in the name of the protection of peasant and indigenous communities human and food sovereignty rights. It started by recognizing “the importance to Mexico of protecting the traditions and livelihoods of indigenous and peasant communities, particularly as these are intertwined with the cultivation of native corn.”⁶⁵ However, the panel first determined that the SPS measures are not necessary to protect public morals, as Mexico failed to show how GM corn threatens the traditions or livelihoods of the indigenous and farming communities.⁶⁶ In respect to the exhaustible natural resources exception, the panel considered that Mexico did not take any domestic measures to address the purported threat to the genetic in-

⁶³ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 276.

⁶⁴ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 280.

⁶⁵ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 287.

⁶⁶ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 294.

tegrity of native corn, and, therefore didn't fulfil the requirement established under GATT Article XX a) to make the measure targeted to protect exhaustible natural resources "effective in conjunction with restrictions on domestic production or consumption." The panel rejected the other two exceptions on the basis of the test of the *Chapeau* of GATT Article XX and considered that the SPS measures constituted "a means of arbitrary or unjustifiable discrimination" and "a disguised restriction on international trade." According to the panel, their objective to obtain "food self-sufficiency" clearly shows that they are protectionist in nature. In addition, in the opinion of the panel, the fact that these measures "single out GM corn and do not address other forms of gene flow to native corn by non-native, non-GM corn" that are grown domestically also proofs that they constitute an arbitrary restriction on free trade in corn between Mexico and the US.⁶⁷

Even if, according to USMCA's Article 31.18-2, Mexico might argue that it is not obliged to follow the findings of the panel's 117 pages final report by abrogating its internationally illegal domestic SPS measures, the US will put pressure on the Mexican Government to do so. Consequently, the defense of Mexico's peasant and indigenous communities' right to food sovereignty though domestic legal measures might face strong obstacles in the future. However, even if the rules of Mexican domestic law on the protection of this right should be compatible with the disciplines of free trade agreements, Mexican domestic law can also embody aspirations for a better international economic law in the age of deglobalization.

4 Mexican domestic laws and regulations as a catalyst for future reforms of international economic law

International economic law in the age of deglobalization has gone under a profound process of reform. In many fields, drastic normative changes have been introduced to reduce the constraints on the exercise of states' public power and sovereignty. In internatio-

nal investment law, for example, the adoption of USMCA and the modification of the provisions of other international investment agreements have rebalanced investors' international legal protection with states' sovereignty regarding the control and regulation of FDI transborder flows.⁶⁸ In this sense, States' normative sovereignty was reaffirmed in USMCA's Article 14. 16, which states: "Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, safety, or other regulatory objectives."

Even if states are the "masters of treaties", the trade chapters of USMCA and those of other free trade agreements, have not undergone similar reforms.

However, it is to argue that the USMCA's trade chapters, particularly its SPS Chapter, could be renegotiated in 2026 as was the case for its investment chapter in 2020. The Mexican domestic laws and regulations on native corn could indicate the will of one of the parties to the agreement to amend its provisions according to USMCA Article 34.3. Additionally, the recognition of Mexico's peasant and indigenous communities right to food sovereignty in domestic law instruments and the adoption of similar reforms in other developing countries could foster a reform of the WTO SPS agreement, which, pursuant to article 34.4 of the USMCA, could conduce to a reform of the USMCA's Chapter 9. These reforms might also give birth to a consistent state practice (*inveterata consuetudo*) which is required for the creation of a customary norm of international economic law. They also could lead to the transformation of UNDROP into a binding international treaty and/or to the recognition of its customary nature. Developing countries, such as Mexico, did not have the sufficient bargaining power in the negotiations of free trade agreements during the age of globalization, but the regulatory changes in their domestic laws might generate important implications for the reform of these treaties in the age of deglobalization.

⁶⁷ USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>. Parag. 298.

⁶⁸ PETROVA GEORGIEVA, Virdzhiniya. Mexico in International Investment Law: from NAFTA to USMCA. In: MENEZHURUN, Nitish *et al.* (ed.). *International Investment Law and Arbitration from Latin American Perspective*. New York: Springer, 2024.

The promotion of Mexico’s peasant and indigenous communities’ right to food sovereignty in domestic law is closely related to the protection of their human right to food. Food sovereignty is a prerequisite for the guarantee of the human right to food, as food adequacy means that food should be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides. Adequate food should also be culturally acceptable.⁶⁹ In consequence, the food sovereignty of the peasant and indigenous communities of the USMCA’s member states could only be reached, if the provisions of its trade chapters are consistent with their human right to food.

In the age of deglobalization, criticisms against free trade agreements point out precisely their negative impact on the protection of human rights. Human rights that might be violated by free trade agreements include, among others, the right to food, the right to work, the right to health, and the right to a healthy environment.⁷⁰ Regarding the human right to food, free trade agreements, such as the USMCA, negatively affect this right by forcing small agricultural producers, particularly peasant and indigenous peoples, to abandon their farmlands, unable to compete with low import prices. This causes a violation of the right to food not only of the food producers themselves, but also of the consumers of their products and, ultimately, the loss of food sovereignty of the State.⁷¹

Since the 1990s, various UN bodies have called for subjecting free trade agreements to scrutiny regarding the protection of human rights.⁷² In 2011, the Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements were published in a report presented to the UN Human Rights Council.⁷³ In

2017, the ILO formulated principles on the relationship between trade liberalization and the protection of social rights.⁷⁴ At the EU regional level, a prior examination of the effects of free trade agreements on human rights is already carried out: the so-called Sustainability Impact Assessment (SIA).⁷⁵ Similarly, the bilateral free trade agreement between Canada and Colombia establishes a permanent monitoring mechanism of the impact of the treaty on respect for human rights on the territory of the two member countries.⁷⁶

There are concrete examples of carrying out this type of study before the entry into force of a free trade agreement. Thus, for example, before the entry into force of the African Continental Free Trade Area, at the request of the UN Economic Council for Africa in 2015, an analysis of its potential impact (positive and negative) on some human rights, the respect of which is considered particularly threatened in the African commercial context (in particular, the right to an adequate standard of living, the right to food, the right to work and social security and the rights of women) was conducted. At the end of the study, the authors proposed a series of measures that the treaty negotiators should adopt to avoid a potential negative effect of the treaty on human rights. With respect to the human right to food, the report proposed the establishment of a list of basic foods, excluded from the liberalization of trade in goods, and the insertion of a safeguard clause regarding the guarantee of food safety.⁷⁷

⁶⁹ OCHR. *The Right to Adequate Food*: fact sheet no. 34. Geneva: UN, 2010. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>.

⁷⁰ ZERK, Jennifer. Human Rights Impact Assessment of Free Trade Agreements. *International Law Programme*, feb. 2019. p. 6

⁷¹ ZERK, Jennifer. Human Rights Impact Assessment of Free Trade Agreements. *International Law Programme*, feb. 2019. p. 6

⁷² OHCHR. *Human rights, trade and investment*: report of the High Commissioner for Human Rights. Geneva: UN, 2 July 2003. Available at: <https://digitallibrary.un.org/record/500177>.

⁷³ UN. *Report of the Special Rapporteur on the right to food, Olivier De Schutter*. Guiding principles on human rights impact assessments of trade and investment agreements, UN Doc. A/HRC/19/59/Add.5, Geneva: Human Rights Committee, 2011. Available at: [sion/Session19/A-HRC-19-59-Add5_en.pdf.

⁷⁴ ILO. *Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements*. Geneva: ILO, 2017. Available at: \[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_564702.pdf\]\(https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_564702.pdf\); UNDP. *Human development impact assessment of trade policy: A Toolkit*. Geneva: UNDP, 2012. Available at: <http://www.undp.org/content/dam/undp/library/Poverty%20Reduction/Trade%2C%20Intellectual%20Property%20and%20Migration/HUMAN%20DEVELOPMENT%20IMPACT-Trade%20policy%20toolkit.pdf>

⁷⁵ EUROPEAN COMMISSION. *Handbook for trade sustainability impact assessment*. 2. ed. Belgian: EC, 2016. Available at: \[http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/index_en.htm#_methodology\]\(http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/index_en.htm#_methodology\). p. 17

⁷⁶ CANADA INTERNATIONAL. *Agreement Concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Columbia*. Available at: \[www.canadainternational.gc.ca/colombia-columbie/bilateral_relations_bilaterales/hrft-co_2012-dple.aspx?lang=eng\]\(http://www.canadainternational.gc.ca/colombia-columbie/bilateral_relations_bilaterales/hrft-co_2012-dple.aspx?lang=eng\).

⁷⁷ ZERK, Jennifer. Human Rights Impact Assessment of Free Trade Agreements. *International Law Programme*, feb. 2019. p. 10](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSes-</p>
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The USMCA has never been subject to a human rights impact assessment regarding the human right to food. However, future renegotiation or amendment of the USMCA's provisions on trade in agricultural goods can bare from these new initiatives in international economic law in the age of deglobalization. If the study identifies serious risks for the protection of the human right to food of the population, in general, and of peasant and indigenous communities, in particular, in Mexico (the US or Canada), the three states can adopt normative changes in the treaty's provisions to avoid these negative impacts, consisting, for example, in the exclusion of some agri-food products (such as corn) from the liberalization of trade in goods.

Another possible form to protect peasant and indigenous peoples' right to food sovereignty through a reform of the USMCA in the age of deglobalization is to admit that the goal of harmonization of member states SPS measures might suffer exceptions, whenever the regulatory heterogeneity is justified by domestic public policy priorities, such as the protection of public health and cultural values. If the heterogeneity reflects variations in domestic conditions and preferences of the communities affected by the SPS measures within the territories of member states, a deviation from the international standards should be permitted. In the same sense, the WTO and the other international organizations should modify the processes of adoption of the international principles and standards of risk assessment listed in the *GM corn dispute* between Mexico and the US and make them more inclusive and more centered in sustainable development, particularly regarding the agri-food sector. The process of adoption of international principles and standards regarding risk assessments of food safety must be reformed to ensure that they respect the special and differential needs of developing countries and acknowledge the national right to regulate in different ways to achieve legitimate policy purposes, such as the protection of public health from foodborne diseases, the enhancement of the cultural rights of local peasant and indigenous communities and the achievement of the sustainable development goals in the agricultural sector.

It is also important to rethink the legal regime of SPS measures related to food safety under the permitted exceptions of GATT Article XX and USMCA's article 31.4. In the first place, this analysis could be conducted not only by arbitrators but also by political negotiators,

who are more able to assess the value to their own societies of the different public welfare interests at stake. In the second place, it could be necessary to provide in both articles a broader range of legitimate purposes that directly include food sovereignty concerns and the protection of peasant and indigenous communities' rights. As the Mexico defense before the USMCA panel showed, UNDROP's provisions might be a useful guide for these efforts.

In the age of deglobalization, USMCA's state members could include in the text of the treaty a normative recognition and definition of peasant and indigenous communities right to food sovereignty. As noted above, only the human right to food is recognized in binding sources of international law and food sovereignty is an emerging concept, only incorporated in domestic law instruments, such as the attacked Mexican measures in the *US-Mexico GM corn* case, or the Venezuelan Constitution, and in soft law international instruments, such as the UNDROP. USMCA could become a pioneer food sovereignty-enhancing free trade agreement and include provisions related to the promotion of free and fair trade in agriculture in accordance with the obligation to respect states' and (peasant and indigenous) people's right to food sovereignty. It could establish that the promotion of free trade should not impede protectionism towards domestic small-scale food producers whenever it is necessary to achieve sustainable development objectives and protect human health and human rights. Free trade policies and practices should be reoriented to serve Mexican, US and Canadian people's rights to food that is safe, healthy, ecologically sustainable and culturally suitable. Because of the strong integration of the agri-food markets of the three states, there are structural causes of the lack of food sovereignty in the region that have dimensions beyond the control of one State. To address such dimensions, it is possible to argue that one state is responsible for the protection of the food sovereignty of all the other members of the treaty and only a coordinated effort among parties to the USMCA might guarantee (indigenous and peasant) people's right to food sovereignty. The three states should also refrain from taking measures which undermine the enjoyment of food sovereignty by communities in other countries and promote international assistance and cooperation to enable other states to meet their obligations in relation to food sovereignty.

5 Conclusion

The Mexican experience in protecting peasant and indigenous peoples' right to food sovereignty illustrates the complexities surrounding the transition of international economic law to a new paradigm in the age of deglobalization. International economic law in the Post-World War II global order was to promote sustainable development, equitably distribute its benefits, achieve full employment, and improve the living conditions of all individuals. At the center of its norms and institutions was the idea that economic growth is the only answer to the fight against poverty and that free trade is the key to this growth. International economic law undoubtedly achieved its objectives in terms of the promotion of free trade. However, during the period of globalization, its norms and institutions failed to reduce poverty, eliminate hunger, and promote social well-being for all. In fact, they reduced poverty, eliminated hunger and fostered prosperity for the few, but not for the lot.⁷⁸ The legal and institutional framework of international economic relations was not able to reconcile the promotion of free trade with some essential extra-economic purposes for States and individuals, such as food, water, education, health, community relations, environmental conditions, and respect for human rights. These extra-economic purposes have become central issues for the new agenda of international economic law in the current period of deglobalization.

The protection of the right to food sovereignty of small-scale farmers from developing countries is one of these extra-economic objectives. This right is contrary to the logic of current free trade agreements, as they exclude the possibility of developing states to protect their domestic food producers and to achieve self-sufficiency and self-reliance in food production.⁷⁹ Food sovereignty in this logic only means "food protectionism". Mexican domestic laws and regulations in favor of the peasant and indigenous peoples' right to define their own food production systems and have access to food which is culturally appropriate and produced through sustainable methods were considered legally wrong by a USM-

CA panel of three arbitrators. However, they might be seen as morally right by people in developing countries across the globe. As Mexico argued before the USMCA panel "the impact of transgenic contamination and its adverse effects on the culture, heritage, traditions, identity, livelihoods, food self-sufficiency and well-being of indigenous and peasant communities, as well as the people of Mexico in general, reflect grave moral wrongs".⁸⁰

Perhaps the time has come to create a new international economic law for a new world order in the 21st century, a law that is responsible for promoting not only free trade for multinational corporations, but also socioeconomic development for small farmers, such as peasants and indigenous peoples. This law should put in place a new multilateral trade system for food sovereignty and allow countries from the Global South to have more regulatory space in terms of protection of their small-scale food producers from the dumping of highly subsidized food from the Global North.⁸¹ In this new trade system, trade in corn should be not only free from non-tariff obstacles for developed countries' multinational companies, but also fair for developing countries' peasants and indigenous peoples.⁸²

References

"PROSPERITY for a Few, Poverty for the Lot," WTO and Free Trade Agreements Have Failed the People! *La Via Campesina*, 29 nov. 2021.

ANTONIO, Lydia. Mexico The entry into force of USMCA and the agrifood sector. *In: UNITED STATES-MEXICO-CANADA AGREEMENT*, 2020, Mexico City. *Proceedings* [...], Mexico City, 27 jul. 2020. Available at: https://www.gob.mx/cms/uploads/attachment/file/567897/1_The_entry_into_force_of_the_new_USMCA_and_the_agrifood_sector_Mtra_Lydia_Antonio_.pdf.

⁸⁰ MEXICO. *Measures concerning genetically engineered corn Mex-USA-2023-31-01*. Report of the panel, 20 dec. 2024. Available at: <https://ustr.gov/sites/default/files/Final%20Report%20ENG.pdf>. Parag. 450.

⁸¹ FERRANDO, Tomaso; MPOFU, Elizabeth. Peasants as "Cosmopolitan Insurgents". *Ajil Unbound*, v. 116, p. 96-100, 2022. DOI <http://dx.doi.org/10.1017/aju.2022.14>.

⁸² PLOEG, Jan Douwe van Der. The peasantries of the twenty-first century: the commoditisation debate revisited. *The Journal Of Peasant Studies*, v. 37, n. 1, p. 1-30, jan. 2010. DOI <http://dx.doi.org/10.1080/03066150903498721>.

⁷⁸ "PROSPERITY for a Few, Poverty for the Lot," WTO and Free Trade Agreements Have Failed the People! *La Via Campesina*, 29 nov. 2021.

⁷⁹ MENSAH, Clément. Incentivising smallholder farmer livelihoods and constructing food security through home-grown school feeding: evidence from Northern Ghana. *Brazilian Journal of International Law*, v. 15, n. 3, 2018.

- AZZARITTI, Alezio. The Right to Food Sovereignty in International Law. *Ordine internazionale e diritti umani*, n. 4, p. 990-1012, 2021.
- BANCO DE MÉXICO. *Informe Anual*. México: Banco de México, 2010.
- CANADA INTERNATIONAL. *Agreement Concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Columbia*. Available at: www.candainternational.gc.ca/colombia-colombie/bilateral_relations_bilaterales/hrft-co_2012-dple.aspx?lang=eng.
- CONAHCYT. *Efectos nocivos del herbicida glifosato*. Available at: <https://conahcyt.mx/cibiogem/index.php/sistema-nacional-de-informacion/documentos-y-actividades-en-bioseguridad/repositorio-glifosato?pagina=38&busqueda=>.
- DOWNES, C. Worth Shopping Around, Defining Regulatory Autonomy under the SPS and TBT Agreements. *World Trade Review*, v. 14, p. 553, 2015.
- EUROPEAN COMMISSION. *European Communities: Measures Affecting the Approval and Marketing of Biotech Products*. United States, 29 sep. 2006. Available at: https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-settlement/wto-disputes-cases-involving-eu/wtds291-european-communities-measures-affecting-approval-and-marketing-biotech-products-gmos_en/. Accessed at: 1 jan. 2025.
- EUROPEAN COMMISSION. *Handbook for trade sustainability impact assessment*. 2. ed. Belgian: EC, 2016. Available at: http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/index_en.htm#_methodology.
- EUROPEAN COMMISSION. *Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26. Belgian: EC, 18 aug. 1997.
- FAKHRI, Michael. *The Right to Food in the Context of International Trade Law and Policy*, Interim Report of the Special Rapporteur on the Right to Food. Geneva: Un, 2020.
- FAO. *GMOs and the environment*. 2024. Available at: <https://www.fao.org/3/x9602e/x9602e07.htm/>. Accessed at: 1 jan. 2025.
- FERRANDO, Tomaso; MPOFU, Elizabeth. Peasants as “Cosmopolitan Insurgents”. *Ajil Unbound*, v. 116, p. 96-100, 2022. DOI <http://dx.doi.org/10.1017/aju.2022.14>.
- HERNÁNDEZ PÉREZ, Juan Luis. La agricultura mexicana del TLCAN al TMEC: consideraciones teóricas, balance general y perspectivas de desarrollo. *El Trimestre Económico*, v. 88, n. 352, p. 1121-1152, 1 out. 2021. DOI <http://dx.doi.org/10.20430/ete.v88i352.1274>.
- ILO. *Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements*. Geneva: ILO, 2017. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_564702.pdf.
- UNDP. *Human development impact assessment of trade policy: A Toolkit*. Geneva: UNDP, 2012. Available at: <http://www.undp.org/content/dam/undp/library/Poverty%20Reduction/Trade%2C%20Intellectual%20Property%20and%20Migration/HUMAN%20DEVELOPMENT%20IMPACT-Trade%20policy%20toolkit.pdf>.
- KAMPHUIS, Charis. Litigating indigenous dispossession in the global economy: law’s promises and pitfalls. *Brazilian Journal of International Law*, v. 14, n. 1, 2017.
- LABONTÉ, Ronald *et al.* USMCA (NAFTA 2.0): tightening the constraints on the right to regulate for public health. *Globalization and Health*, v. 15, p. 35, 2019.
- MCMICHAEL, P. *et al.* The state of food sovereignty in Latin America: political projects and alternative pathways in Venezuela. *Journal of Peasant Stud Posted*, 2009.
- MENSAH, Clément. Incentivising smallholder farmer livelihoods and constructing food security through home-grown school feeding: evidence from Northern Ghana. *Brazilian Journal of International Law*, v. 15, n. 3, 2018.
- MEXICO. *Decreto Presidencial del 30 de Diciembre de 2020*. Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5609365&fecha=31/12/2020#gsc.tab=0.
- MEXICO. *Ley Federal para la Producción y Fomento del Maíz Nativo*. Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LFFPMN_130420.pdf.
- MEXICO. *Measures concerning genetically engineered corn Mex-USA-2023-31-01*. Report of the panel, 20 dec. 2024. Available at: <https://ustr.gov/sites/default/files/Final%20Report%20ENG.pdf>.

- MEXICO. *Decreto Presidencial del 13 de Febrero de 2023*. Decreto por el que se establecen diversas acciones en materia de glifosato y maíz genéticamente modificado. Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5679405&fecha=13/02/2023#gsc.tab=0.
- MURINA, Marina; NICITA, Alessandro. Trading with Conditions: the effect of sanitary and phytosanitary measures on the agricultural exports from low-income countries. *The World Economy*, v. 40, n. 1, p. 168-181, 29 nov. 2015. DOI <http://dx.doi.org/10.1111/twec.12368>.
- NYÉLÉNI. *Home page*. Available at: <https://nyeleni.org>.
- OCHR. *The Right to Adequate Food*: fact sheet no. 34. Geneva: UN, 2010. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>.
- OHCHR. *Human rights, trade and investment*: report of the High Commissioner for Human Rights. Geneva: UN, 2 July 2003. Available at: <https://digitallibrary.un.org/record/500177>
- PETROVA GEORGIEVA, Virdzhiniya. *Desglobalización y derecho internacional económico*. Spain: Tirant lo Blanch, 2024.
- PETROVA GEORGIEVA, Virdzhiniya. Mexico in International Investment Law: from NAFTA to USMCA. In: MENE BHURRUN, Nitish et al. (ed.). *International Investment Law and Arbitration from Latin American Perspective*. New York: Springer, 2024.
- PILAR MARTÍNEZ, María del. Dependencia en granos achica superávit comercial agroalimentario. *El economista*, 2023. Available at: <https://www.economista.com.mx/empresas/Dependencia-en-granos-achica-superavit-comercial-agroalimentario-20230515-0139.html>.
- PLOEG, Jan Douwe van Der. The peasantries of the twenty-first century: the commoditisation debate revisited. *The Journal Of Peasant Studies*, v. 37, n. 1, p. 1-30, jan. 2010. DOI <http://dx.doi.org/10.1080/03066150903498721>.
- RAY, Ipsita; SHUKLA, Anshuman., Fragile Pillars of Food Security: Exploring the Challenges of Availability, Accessibility, and Quality for Global Food Regime. *Brazilian Journal of International Law*, v. 27, n. 2. p. 114-128, 2024.
- RIGOD, Boris. The Purpose of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. *European Journal of International Law*, v. 24, p. 509, 2013.
- ROJAS, Arturo. Sheinbaum busca la protección constitucional del maíz blanco mexicano. *El Economista*, 2025. Available at: <https://www.economista.com.mx/politica/sheinbaum-busca-proteccion-constitucional-maiz-blanco-mexicano-20250107-740863.html>.
- SECIHTI. *De saberes y sabores*. Available at: <https://conahcyt.mx/de-saberes-y-sabores/>. Accessed at: 1 jan. 2025.
- SMITH, Fiona. *Agriculture and the WTO: Towards a New Theory of International Agricultural Trade Regulation*. New York: Elgar International Economic Law series, 2009.
- STIEGLITZ, Joseph. *El malestar en la globalización*. Madrid: Taurus Santillana Ediciones Generales, 2022.
- SUÁREZ, Victor. Mexico's quest for food sovereignty: An interview with Undersecretary of Agriculture. *LATP*, 2023. Available at: <https://www.iatp.org/mexico-quest-food-sovereignty-interview-undersecretary-agriculture-victor-suarez>.
- TITIEVSKAYA, Jana et al. *Slowing Down or Changing Track? Understanding the Dynamics of "Slowbalisation"*, In-Depth Analysis, European Parliamentary Research Service. Cecilia: UN, 2020.
- UN. *Report of the Special Rapporteur on the right to food, Olivier De Schutter*: Guiding principles on human rights impact assessments of trade and investment agreements, UN Doc. A/HRC/19/59/Add.5, Geneva: Human Rights Committee, 2011. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf
- UNCTAD. *Impact of the COVID-19 Pandemic on Trade and Development: Lessons learned*. UN: Geneva, 2022. Available at: https://unctad.org/system/files/official-document/osg2022d1_en.pdf.
- USTR. *Panel request, Mexico- Biotech*. Available at: <https://ustr.gov/sites/default/files/2023-08/US%20Panel%20Request%20-%20Mexico%20Biotech.pdf>
- VAN DER BOSCHE, Peter. *The Law and Policy of the World Trade Organization*. London: Cambridge University Press, 2023.

WHITTMAN, Hannah. Food sovereignty: An inclusive model for feeding the world and cooling the planet. *One Earth*, v. 6, p. 474-478, 2023.

ZERK, Jennifer. Human Rights Impact Assessment of Free Trade Agreements. *International Law Programme*, feb. 2019. p. 6

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