

Panel established pursuant to Chapter 31 of the Canada-United States-Mexico Agreement

**MEXICO – MEASURES CONCERNING GENETICALLY ENGINEERED CORN
(MEX-USA-2023-31-01)**

**RESPONSE OF CANADA TO POST-HEARING
WRITTEN QUESTIONS FROM THE PANEL**

15 July 2024

1. For the US and Canada: In response to Questions 19 and 21 of the Panel’s Day 1 Questions, both the US and Canada indicated that they would consult further with the corresponding agencies and indicate if there were any indigenous rights issues related to GM products. The Panel remains interested if such information has been identified.

1. Canada understands that the Panel is interested in whether any of the legal rights of Indigenous peoples in Canada relate to, or are implicated by, GM products. There is no express relationship between the two under Canadian law.
2. In Canada, the rights of Indigenous peoples are constitutionally protected. Those protections are set out in Section 35 of Canada’s *Constitution Act, 1982*, which recognizes and affirms the Aboriginal and treaty rights of the “Aboriginal peoples of Canada”,¹ which include First Nations, Métis and Inuit.
3. Section 35 protects two types of rights: Aboriginal rights and treaty rights. These rights are collective in nature.
4. Aboriginal rights generally reflect ancestral practices, customs or traditions integral to the distinctive culture of Indigenous groups, and that are of central significance to the Indigenous group in question. Canadian courts have determined that Aboriginal and treaty rights are group and site specific, meaning that different Indigenous groups may have different rights.
5. Treaty rights are the result of negotiation and agreement between government and an Indigenous group and may be found in historic or modern treaties, which are solemn agreements between government and Indigenous groups. There are no historic or modern treaties in Canada that address GM products.
6. Canadian courts have elaborated on and clarified the meaning and scope of the rights of Indigenous peoples that are constitutionally protected by section 35 of the *Constitution Act, 1982*. For example, traditional activities like fishing, hunting and trapping have been recognized as constitutionally protected rights that are included in treaties. Additionally, courts have recognized a wide range of traditional practices as Aboriginal rights for particular

¹ “Indigenous peoples” is a collective name for the original peoples of North America and their descendants. As the *Constitution Act, 1982* uses “Aboriginal peoples of Canada,” a defined term under Canadian law, you will see both phrases used in Canada’s response.

Indigenous groups, including: the right to hunt and fish for particular species, the right to fish for food, social and ceremonial purposes, the right to fish and sell fish for a moderate livelihood or commercially, and the right to harvest wood for domestic purposes. Aboriginal title is another type of Aboriginal right that includes the exclusive occupation and use of a particular tract of land – it is a right to the land itself, not just the right to carry out activities on it.

7. Canadian courts have not considered the interaction between the rights of Indigenous peoples, including those associated with their traditional use of lands and waters, and GM products.