

# CRITICAL REPORT ON GE MAIZE CONTAMINATION IN MEXICO

## The United States continues to delay its publication

### Backgrounder on the NAFTA Commission for Environmental Cooperation (CEC) process on maize genetic contamination in Mexico

#### What is NAFTA?

The North American Free Trade Agreement (NAFTA) is a regional agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America to implement a free trade area.

#### What is the CEC?

The Commission for Environmental Cooperation (CEC) is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC). The CEC was established to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the NAFTA.

#### History

In June 2002, the Secretariat of the NAFTA Commission for Environmental Cooperation announced it would undertake an investigation, under Article 13 of the NAFTA treaty, on the impacts of transgenic maize contamination in Mexico.<sup>1</sup> The CEC Secretariat took this step after receiving numerous requests from civil society groups and individuals from the three NAFTA countries to undertake this analysis.<sup>2</sup>

The CEC has finished a long-awaited report on the contamination of Mexican maize varieties by U.S. genetically engineered (GE) maize. However, it has not been released, until now.

#### How was the report assembled?

The CEC Secretariat formed an advisory group of experts<sup>3</sup> to oversee the investigation. The advisory group commissioned a series of studies to provide input to their deliberations and drafts of those studies were presented to a public symposium in Oaxaca, Mexico, 11 March. Based on those studies, the advisory group developed consensus findings and recommendations for the three NAFTA governments. On 13 April, the Joint Public Advisory Committee (JPAC) to the CEC also presented the NAFTA governments with their conclusions based on the studies. The JPAC concluded that: *“Minimally, a moratorium on imports of transgenic corn to Mexico should be put in place until the risks to human health, cultural integrity of maize producers in Mexico and the environment generally are better understood and appropriate long-term decisions can be made.”*<sup>4</sup>

In May, the advisory group provided its findings and recommendations to the Secretariat. The Secretariat forwarded its report, including those findings and recommendations, to the CEC Council of Ministers on 13 May. According to a memo sent to the alternate representatives (alternates to the Ministers) and members of the JPAC, the Secretariat was planning for the release of the report at a press conference in Mexico City

---

<sup>1</sup> Announced in a memorandum from the CEC Executive Director to Council members, 14 June 2002. Available on CEC Maize and Biodiversity web page: [www.cec.org/maize/index.cfm?varlan=english](http://www.cec.org/maize/index.cfm?varlan=english)

<sup>2</sup> On 24 April 2002, indigenous communities from Oaxaca and three environmental organizations (Greenpeace Mexico, the Mexican Center for Environmental Rights, and the Union of Mexican Environmental Groups) filed a formal request with the CEC for an Article 13 report.

<sup>3</sup> The make-up of the Maize and Biodiversity advisory group is detailed on the CEC website listed above.

<sup>4</sup> A copy of the JPAC letter, dated 13 April 2004, can be found on the CEC Maize and Biodiversity web page. A portion of the JPAC letter was quoted by the European Commission in its submission to the WTO dispute settlement panel. See footnote 5.

on June 7. The Mexican government was clearly in favor of publishing the report and keen to have it released to the public prior to the upcoming Council meeting in Puebla, Mexico, 21-23 June. Persons inside the process indicated that in early May Canada was also in favor of the reports publication.

The United States asked for more time to review the report. The U.S. Government apparently convinced the other two NAFTA governments, at a meeting on June 3 in Ottawa, to help them stall the publication of the report. Canada retracted its initial agreement to publish the report and requested until at least July 1 to review the findings and recommendations. All three governments provided their comments to the CEC Secretariat by the end of July.<sup>5</sup>

### **What effect could the report have now that it is released?**

The Bush Administration has intervened several times to delay the publication of the report and there is still no official date for publication. There are at least two reasons why the U.S. might want to delay publication of a report that highlights the environmental, human health and socio-cultural risks of GE maize.

First, inside sources have alluded to the potential implications of the report for the WTO case being brought by the US and Canada against the European Union. The EC scientific submission to the dispute settlement panel on the WTO case directly cites the 13 April JPAC letter to the CEC Council.<sup>6</sup> One of the main recommendations of the report is that U.S. maize be milled immediately upon entry into Mexico to prevent the risks posed if the maize grains were planted. Another recommendation that will have bearing on the WTO case supports a continued moratorium in Mexico on the commercial planting of transgenic maize.

The report will also clearly have an effect on the current U.S. efforts to send genetically engineered maize as food aid. A number of African countries have rejected whole U.S. maize as a potential threat to their environment, and requested only milled maize. The report backs up these demands as it concludes that there is insufficient data on which to conclude safety of transgenic maize for the Mexican environment and recommends milling of maize to reduce these risks.

### **When will the report be officially released?**

As mentioned above, the three governments provided their comments to the CEC Secretariat by the end of July; the Secretariat finalized the report before the end of August. Heavy US pressure delayed the official transmittal of the document to the member governments until 13 September. Now a 60-day time clock is ticking for final approval from governments for publication. However, the U.S. Government has stated publicly it will take longer than 60 days if it wants.<sup>7</sup>

---

<sup>5</sup> Text of the US and Canadian government comments available on the Greenpeace website.

<sup>6</sup> Text excerpted from the European Commission's submission to the WTO dispute settlement panel sent on May 17 (*European Communities - Measures Affecting the Approval and Marketing of Biotechnology Products - DS291, DS292, DS293*, pp. 23-24):

#### *Biodiversity - Preservation of centre of origin*

Genetically modified crops may pose a particular threat to their particular species centre of origin. The centre of origin of a species is an invaluable and irreplaceable source of genetic material for plant breeding. It is usually characterized by the highest observable levels of genetic variability. A given centre of origin of natural biodiversity for a particular species could be placed at particular risk by cross pollination from genetically modified varieties of the same species to wild relatives.

One example relates to the recent reports of genetically modified corn growing in Mexico which has then out-crossed with wild relatives, even over very great distances. Mexico is accepted as the centre of origin of maize. Against a background of growing concern, on 13 April 2004 the relevant advisory committee established under the North American Free Trade Agreement (NAFTA) recommended to the Environment Ministers of Canada, Mexico and the United States that a "moratorium on imports of transgenic corn to Mexico should be put in place until the risks to human health, cultural integrity of maize producers in Mexico, and the environment generally are better understood and appropriate long-term decisions can be made." They added: "There is a very strong case to be made here for governments to apply the precautionary principle in their decision-making processes, to require that industry be comprehensive when submitting rationale and to create space for public debate." (emphasis added)

<sup>7</sup> In a recent *Chicago Tribune* article ("Report could put a crimp in corn exports," 29 September 2004) US Environmental Protection Agency spokesperson Richard Hood is quoted as saying that "the CEC rules are "pretty flexible" and that U.S. officials will take longer than 60 days if they need it."

	CHRONOLOGY	CEC process and WTO dispute
2001	September	Mexican authorities announce contamination of Mexican landraces (locally cultivated farmer varieties) in Oaxaca.
	November	Quist and Chapela publish paper in Nature documenting contamination. A huge attack on their work begins. Nature eventually withdraws support for the original publication.
	November	On the same day that Quist and Chapela publish their paper, the Mexican National Institute of Ecology announce their results confirming the original findings at an OECD scientific conference in North Carolina.
2002	April	Indigenous communities from Oaxaca, the Union of Mexican Environmental Groups, CEMDA (Mexican Center for Environmental Rights) and Greenpeace petition the NAFTA Commission for Environmental Cooperation (CEC) to undertake a study of the contamination (Article 13 of the NAFTA environmental side agreement that established the CEC).
	June	NAFTA CEC announces it will study the maize contamination issue.
	October	Advisory group is established. The advisory group will define the scope of the CEC process and commission studies to provide further information. The advisory group includes several genetic engineers and representatives of the biotechnology industry. There is one "NGO" member who works for an agricultural development organization, and one representative of a Mexican environmental organization. Greenpeace and co-petitioners protest the advisory panel composition; CEC adds one indigenous community representative.
	7 August	Argentina, Canada and the US request the establishment of a panel by the Dispute Settlement Body of the WTO, after informal consultations provide no resolution to their complaint.
2004	4 March	Three person panel appointed by WTO Director General to rule on the US/Canadian/Argentinan complaint against Europe.
	March	Drafts of the CEC commissioned studies are released. The study authors reconfirm contamination and warn that there is no way to contain transgenes once they contaminate Mexican maize varieties.
	March	The CEC holds a public meeting in Oaxaca to solicit comments on the studies. Hundreds turn out to say "no al maiz transgenico" (no to transgenic maize).
	March-April	A broad coalition of organizations presents a manifesto to the CEC entitled "Defender nuestro maiz, cuidar la vida" (Defend our maize, care for life). Hundreds of individuals and groups signed the statement.
	April	The Joint Public Advisory Committee (JPAC) to the CEC, made up of 5 civil society representatives from each of the NAFTA member countries, sends a strong letter to the CEC Council of Ministers criticizing the studies and the western bias of the advisory group and the authors of the studies. The JPAC calls for a moratorium on imports of transgenic maize from the United States.
	April	US and Canada provide their first written submissions to the

<b>2004</b>	May	WTO dispute panel. EU provides its first written submission to the WTO dispute panel, including quotes from the JPAC letter to the CEC Council.
	May	The advisory group finishes writing consensus findings and recommendations and forwards them to the CEC Secretariat. The Secretariat compiles a report, including the advisory group findings and recommendations, and forwards it to the Council for their approval (13 May). The Secretariat also distributes a memo indicating Mexico's request to publish the report during the week of 7 June.
	3 June	CEC parties meet in Ottawa and decide to delay publication of the report.
	June 21-23 June	US and EU give their first oral evidence in the WTO case. The CEC Council meets in Puebla, Mexico for its yearly ministerial meeting. A public session is held 22 June 2004 where numerous civil society groups, <i>campesinos</i> and indigenous peoples demanded the release of the report.
	19 July July	US submits its first rebuttal in WTO case. NAFTA governments provide comments on the report to the CEC. (copies available on request)
	August	The WTO dispute panel decides to appoint a scientific advisory panel, an indication that they see merit in the EU arguments on risks of GMOs. As of the middle of October the panel members had not yet been agreed upon by all Parties to the dispute.
	31 August 13 September	Final version of the report is printed. CEC Secretariat provides final version of report to Council members, triggering a 60-day review period, ensuring that publication will take place after US presidential elections.
	29 September	<i>Chicago Tribune</i> runs an article where US spokesperson Richard Hood is quoted saying that "the CEC rules are "pretty flexible" and that U.S. officials will take longer than 60 days if they need it."
	25 November	Second oral hearing in the WTO case. Also the deadline for the second written submission.
	<b>2005</b>	March