

REPORT
INDEPENDENT MEXICO LABOR EXPERT BOARD
MARCH 20, 2023

The Independent Mexico Labor Expert Board submits this Report to the Interagency Labor Committee (ILC) and the United States Congress pursuant to Section 734 of the United States-Mexico-Canada Agreement Implementation Act, P.L. 116-113 (Jan. 29, 2020).

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I. STATUTORY BASIS FOR THIS REPORT

In Section 731 of the USMCA Implementation Act,¹ Congress established the Independent Mexico Labor Expert Board (IMLEB), hereinafter “the Board,” comprising 12 members appointed by Congressional leadership and the Labor Advisory Committee, for the purpose of monitoring and evaluating the implementation of Mexico’s labor reform and compliance with its labor obligations. The Board shall also advise the Interagency Labor Committee with respect to capacity building activities needed to support such implementation and compliance.

Section 733 of the Act states that “The United States shall provide necessary funding to support the work of the Board, including with respect to translation services and personnel support.”

Section 734 of the Act provides that “the Board shall submit to appropriate congressional committees and to the Interagency Labor Committee an annual report that—

(1) contains an assessment of—

(A) the efforts of Mexico to implement Mexico’s labor reform;² and

(B) the manner and extent to which labor laws are generally enforced in Mexico;
and

(2) may include a determination that Mexico is not in compliance with its labor obligations.”

II. ACTIVITIES OF THE BOARD

In preparing this report, the Board submitted information requests to the Interagency Labor Committee and to Mexican authorities. The Board appreciates the support provided by USTR and DOL officials and the Government of Mexico.

The Board provides this report to assist the ILC and the Congress in their assessment of the efforts of Mexico to implement Mexico’s labor reform, and the manner and extent to which labor laws are generally enforced in Mexico.³

¹ P.L. 116-113, Jan. 29, 2020.

² As defined in the statute, “Mexico’s labor reform” means the legislation on labor reform enacted by Mexico on May 1, 2019. P.L. 116-113, §701(3).

³ This report incorporates and builds on the Board’s Interim Report submitted on December 15, 2020 and Report submitted on July 7, 2021, including the conclusions and recommendations. See letter of February 16, 2021 from Richard A. Neal, Chairman, Committee on Ways and Means, U.S. House of Representatives (“The Committee appreciates the report’s concluding recommendations, as they assist

The Board mourns the passing on November 20, 2022 of our colleague and former Board member Fred Ross, Jr., and we extend condolences to his family, friends and colleagues.⁴ Two other former Board members, Kyle Fortson and Owen Herrstadt, resigned on January 7, 2022 and July 15, 2022, respectively. We welcome two new members: Rudy Ernesto Gonzalez, appointed by the Speaker on December 21, 2022; and Maria Lorena Cook, appointed by the Labor Advisory Committee on December 23, 2022.

In addition to Mr. Gonzalez and Ms. Cook, the Board's members include Benjamin Davis (chair), Timothy Beaty, Catherine Feingold, Daniel Mauer, Stefan Marculewicz, Philip Miscimarra, Sandra Polaski, Charlotte Ponticelli, and Jason Wade, with one vacancy resulting from Ms. Fortson's resignation.⁵

III. MONITORING AND EVALUATING THE IMPLEMENTATION OF MEXICO'S LABOR REFORM AND COMPLIANCE WITH ITS LABOR OBLIGATIONS

A. Introduction and scope of the report

Mexico enacted major amendments to its Federal Labor Law (FLL) on May 1, 2019⁶ to implement reforms to Article 123 of the Mexican Constitution that were adopted in 2017⁷, and additional provisions to comply with Article 23 and Annex 23-A of the USMCA.⁸ The reform legislation addresses a number of long-standing obstacles to labor justice,

with and inform compliance determinations, and are based on the Expert Board's comprehensive assessment.")

⁴ [In Memoriam: Fred Ross, Jr.](#)

⁵ Board members Beaty, Cook, Davis, Feingold, Gonzalez, Mauer, Polaski, and Wade join in the views expressed in Parts I through V of this Report. Board members Marculewicz, Miscimarra and Ponticelli join in the views expressed in Parts I, II, V and VI of this Report. The Board is unanimous regarding the findings that Mexico's labor reform efforts that are required under the USMCA remain incomplete in significant respects, and notwithstanding the need to make substantial additional progress, the current circumstances do not warrant a determination that Mexico has failed to comply with its USMCA labor obligations.

Board Member Miscimarra recused himself and played no role in the evaluation or discussion of any matters involving General Motors or Saint-Gobain México that are addressed in this Report.

⁶ DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Federal de la Defensoría Pública, de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores y de la Ley del Seguro Social, en materia de Justicia Laboral, Libertad Sindical y Negociación Colectiva, May 1, 2019, available at https://www.dof.gob.mx/nota_detalle.php?codigo=5559130&fecha=01/05/2019

⁷ DECRETO por el que se declaran reformadas y adicionadas diversas disposiciones de los artículos 107 y 123 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Justicia Laboral, available at http://www.dof.gob.mx/nota_detalle.php?codigo=5472965&fecha=24/02/2017

⁸ See USMCA, Chapter 23, available at <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

including protection contracts, the lack of democratic governance in many labor unions, and the lack of independence of government institutions responsible for labor relations and labor justice.⁹ Key provisions of the labor law reform can be found in Annex A of this report.

Following the enactment of the labor reform in 2019, a number of appeals (*amparos*) challenging the constitutionality of several provisions of the law were filed by some incumbent unions.¹⁰ On November 25, 2020, the Second Chamber of the Supreme Court issued four decisions upholding the constitutionality of a number of key Articles.¹¹ The Court withheld judgment on another group of Articles that were challenged, pending an allegation of actual injury.¹² In no case did the Court find a provision to be unconstitutional. Another set of decisions in February 2021 upheld additional elements of the reform.¹³ In March 2021, the Supreme Court published 12 theses of jurisprudence

⁹ The deficiencies that the labor reform addressed were discussed in detail in our earlier report, IMLEB Report and Separate Statement of Members Fortson et al. 2021.07.7, available at: DOI: 10.13140/RG.2.2.25585.35689. These issues were also the subject of numerous reviews by the International Labor Organization and its Committee on the Application of Standards and Committee on Freedom of Association (CFA). See for example Committee on the Application of Standards, Convention 87 – Mexico, 104th ILC Session (2015), available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3241939. The CFA cases include CFA Case Nos. 2694, 2393, 2478, 2774, 2919, and 3156 available at: CFA Case Nos. 2393, 2478, 2774, 2919, and 3156. See, ILO, Freedom of Association Case (Mexico), available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20060:0::NO::P20060_COUNTRY_ID,P20060_COMPLAINT_STATU_ID:102764,1495812.

¹⁰ Before the 2019 reform, tripartite Conciliation and Arbitration Boards (CABs) at state and federal levels registered contracts, including protection contracts, and adjudicated collective labor disputes. In many cases, the leaders of employer-dominated unions holding the protection contracts were also the worker “representatives” serving on the CABs (and not infrequently, political office-holders as well). The challenges were filed by unions that benefited from the status quo. María del Pilar Martínez, Arranca la oleada de amparos contra la reforma laboral, , El Economista, June 23 2019, available at: <https://www.eleconomista.com.mx/politica/Arranca-la-oleada-de-amparos-contra-la-reforma-laboral-20190623-0001.html>; Mexican Supreme Court to consider challenges of new labor law, Inside Trade, June 25, 2020, available at: <https://insidetradetrade.com/daily-news/mexican-supreme-court-consider-challenges-new-labor-law>.

¹¹ SESIÓN PÚBLICA ORDINARIA DE LA SEGUNDA SALA DE LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN, CELEBRADA A DISTANCIA, EL MIÉRCOLES 25 DE NOVIEMBRE DE 2020, available at <https://www.scjn.gob.mx/sites/default/files/versiones-taquigraficas/documento/2020-11-25/ATAQ-25-11-2020.pdf>, affirming [A.R. 1109/2019](#), [A.R. 18/2020](#), [A.R. 28/2020](#), and [A.R. 30/2020](#). The Court upheld the constitutionality of the following Articles: 110.VI, 371, 371-Bis, 390-Ter, 399-Ter, 400 Bis, 11th Transitional, 22nd Transitional, 23rd Transitional.

¹² The Court deferred a decision on the constitutionality of the following Articles: 245 Bis; 360; 364; 369; 373; 590-D; 897 F; 923; 927; 27th Transitional.

¹³ [SCJN ratifica constitucionalidad de la reforma laboral y da revés a sindicatos](#), Factor Capital Humano, Feb. 9, 2021.

that are binding on all lower courts.¹⁴ In upholding the constitutionality of the reforms, the Supreme Court relied extensively on the interpretation of International Labor Organization (ILO) Conventions 87 and 98 by the ILO's Committee on Freedom of Association, as well as decisions of the Inter-American Court of Human Rights.¹⁵

The May 1, 2019 reform of the federal labor law called for a four-year transition to full implementation of the new labor justice system and specified a number of interim deadlines to achieve the transition.¹⁶ The overall timeline is consistent with the obligations that Mexico assumed under USMCA Annex 23-A, "Worker Representation in Collective Bargaining in Mexico".¹⁷

At the time of this report, more than three and a half of those four years have passed. As the May 1, 2023 deadline for full implementation of the labor reform approaches, this report focuses on the transition period and the experience under the transitional mechanisms. It also reviews the use of a novel USMCA dispute settlement process, the Rapid-Response Labor Mechanism (RRLM), during the transition period. The report then evaluates the effectiveness of the transition and the use of the RRLM to address deficiencies in the transition to the new labor justice system. It concludes with recommendations to the appropriate congressional committees and to the Interagency Labor Committee for further actions needed to achieve effective transition to the new labor justice system at the federal level and compliance with Mexico's labor obligations under the USMCA. The transition at the state level will be the subject of future reports, as the final stage of implementation at that level began on October 3, 2022.

¹⁴ GACETA del SEMANARIO JUDICIAL DE LA FEDERACIÓN, Libro 84, Tomo II (marzo 2021), pp. 1457-1865, <https://egaceta.scjn.gob.mx/gaceta-pdf>. See [SCJN da espaldarazo a nuevas reglas de democracia sindical](#), El Economista, Mar. 30, 2021.

¹⁵ The Supreme Court also recently held that a challenge to union representation cannot proceed while a legal strike is in effect. A contrary ruling would have made it easier for an employer to break a strike by promoting a protection union. Amparo en Revisión No. 118/2020, July 23, 2021, available at https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2021-06/118.pdf

¹⁶ Gobierno de México. Ley Federal del Trabajo, Transitorios, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/125_020719.pdf

¹⁷ USMCA Chapter 23 Labor and Annex 23-A, available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

B. The four-year transition to full implementation of the labor reform: mechanisms and experience to date

1. Transitional mechanisms

As detailed in our previous report of July 7, 2021,¹⁸ most of the early transitional deadlines set out in the labor law reform were met, including the creation of a new independent institution responsible for overseeing the exercise of freedom of association and the right to collective bargaining as well as conciliating individual labor disputes.¹⁹ This institution, the Federal Center for Conciliation and Labor Registry (Federal Center), began its initial operations on November 18, 2020 with headquarters in Mexico City and gradually established decentralized branches in 21 Mexican states.²⁰ The Federal Center started to conduct its functions regarding the registration of unions and collective bargaining agreements on May 1, 2021 and expanded the scope of those functions to cover all states as of November 3, 2021.

Although the Federal Center assumed these responsibilities on May 1, 2021, as stipulated in the FLL, on May 12, 2021 the Mexican Secretariat of Labor and Social Welfare and Federal Center signed a collaboration agreement under which the STPS agreed to backstop the Federal Center when requested, by providing additional personnel for verification of union votes and related oversight.²¹ The term of the agreement is open-ended and reflects the reality that the Federal Center does not currently have the infrastructure or personnel to manage the process alone.²²

A key mechanism of the transition to the new labor justice system is the process of legitimizing existing collective bargaining agreements (CBAs) by submitting them to a secret ballot vote by the workers they cover. This process was meant to eliminate protection or ghost contracts that had been negotiated without workers' participation over the course of a long and well-documented history of collusion between protection unions

¹⁸ IMLEB Report and Separate Statement of Members Fortson et al. July 7, 2021, available at: https://www.researchgate.net/publication/359529197_IMLEB_Report_and_Separate_Statement_of_Members_Fortson_et_al_2021077

¹⁹ Gobierno de México. Ley Orgánica del Centro Federal de Conciliación y Registro Laboral, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LOCFCRL_060120.pdf

²⁰ Branches are currently being established in the remaining eleven states and the state level transition will be discussed in a future report.

²¹ Centro Federal de Conciliación y Registro Laboral. Boletín 22/2021 “Inspectores de la STPS apoyarán al Centro Federal Laboral en verificación de procedimientos de democracia sindical”, May 12, 2021, available at: https://centrolaboral.gob.mx/images/prensa/022-12052021_Convenio_STPS-CFCRL.pdf

²² Maria del Pilar Martinez, “Autoridad laboral fortalece inspección de procedimientos de democracia sindical,” *El Economista*, May 12, 2021, available at: <https://www.eleconomista.com.mx/empresas/Autoridad-laboral-fortalece-inspeccion-de-procedimientos-de-democracia-sindical-20210512-0084.html>

and employers.²³ The STPS estimated in 2020 that the large majority—80 to 85 percent—of existing CBAs are not legitimate.²⁴ Clearing away the protection contracts was necessary to establish a sound foundation for the new system, in which workers can exercise their right to vote on whether to approve CBAs.

According to both the FLL and Mexico's commitments under USMCA Annex 23-A, all existing CBAs must be reviewed and voted upon by workers at least once by May 1, 2023, that is, during the four years after the labor reforms took effect. During the first two years of the transition, until May 1, 2021, the STPS was responsible for oversight of CBA legitimations. STPS issued protocols laying out the procedures required to verify workers' support for their CBAs.²⁵ Under these rules it is the incumbent union holding title to the contract that may schedule a legitimation vote, through an online platform operated by the STPS, with at least 10 days' notice to the affected workers. The incumbent union decides if and when to hold the vote, makes the arrangements for the vote, and must ask either the STPS or a notary public hired and paid by the union to observe the vote and verify that it followed the procedures stipulated in the protocol, for example that it was held in a place accessible to the workers and allowed them to cast votes without coercion. The employer is required to provide the necessary facilities and give workers a printed or electronic copy of the collective bargaining agreement at least three business days before the vote.²⁶

After the vote, the union must post the results in the workplace and report the result to the STPS. If a majority of eligible workers voted to approve the agreement, STPS then certifies that the contract is legitimate unless it sees irregularities or inconsistencies in the data reported to it by the union. If the contract does not have the majority support of the workers it is terminated. However, the law stipulates that if the contract is terminated,

²³ Arturo Alcalde and Graciela Bensusan, "El sistema de justicia laboral en México: situación actual y perspectivas". Fundación Friedrich Ebert México, 2013, available at: <http://library.fes.de/pdf-files/bueros/mexiko/10311.pdf>; U.S. Department of Labor, USMCA Labor Rights Report, 2019, available at: <https://www.dol.gov/agencies/ilab/united-states-mexico-canada-agreement-usmca-labor-rights-report>; ILO Committee of Experts on the Application of Conventions and Recommendations, "Observation, Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Mexico, 2017," available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3343978

²⁴ Associated Press, "Mexican official: 80% of labor contracts are pro-company", Jan. 7, 2020, available at: <https://apnews.com/article/fd72a72e16876163f5eb8c74c29f74e3>; Omar Brito, "Solo 15% de contratos colectivos pasará legitimación de trabajadores: STPS," Milenio, Oct. 7, 2020, available at: <https://www.milenio.com/politica/15-contratos-colectivos-pasara-legitimacion-trabajadores>

²⁵ Gobierno de México. Protocolo para la legitimación de contratos colectivos de trabajo existentes, available at: https://dof.gob.mx/nota_detalle.php?codigo=5566910&fecha=31/07/2019

²⁶ Gobierno de México. Protocolo para la legitimación de contratos colectivos de trabajo existentes, Art. 30.I.d., available at www.dof.gob.mx/2021/CFCRL/Protocolo_Legitimacion_ContratosColectivos.pdf. Article 25 of this Protocol requires employers to provide workers with a printed copy of the CBA at least three days prior to the legitimation vote, and the third transitional article of the *Lineamientos generales para los procedimientos de democracia sindical* promulgated on Aug. 7, 2022 reaffirms this obligation, see https://centrolaboral.gob.mx/CFCRL/Idemocracia_sindical.pdf, but it is difficult to determine the degree of compliance.

any provisions that are superior to the legal minimum must be maintained by the employer for the benefit of the workers.

A number of observers, including the IMLEB in its first interim report of December 15, 2020, expressed serious concerns about this process because of the potential conflict of interest inherent in assigning full control of the process for legitimizing collective bargaining agreements to the union that controls the CBA and benefits from it through the collection of union dues.²⁷ In response to such criticisms the STPS modified the initial protocol, making two key changes.²⁸ First, the STPS assigned itself the authority to verify compliance with the requirements for legitimation votes before, during or after the votes, including in cases where the union chose to have the process overseen by a notary. Second, it established an online mechanism through which workers could register complaints of non-compliance with regard to a particular legitimation vote. The revised protocol set out a number of grounds that would constitute non-compliance and assured confidentiality for the complainants.

In anticipation of the transfer of responsibility for the legitimation process from STPS to the Federal Center on May 1, 2021, the Coordination Council for the Implementation of the Reform of the Labor Justice System (CCIRSJL) - the body that governs the Federal Center - agreed on a new protocol for the legitimation process that incorporated the substantive and procedural approaches of the original and amended STPS protocols.²⁹ The new protocol transferred responsibility for oversight of the process to the Federal Center and set out the responsibilities of the government personnel who will verify compliance with the requirements.

In our report of July 7, 2021, the IMLEB called attention to the ongoing conflicts of interest that had not been addressed in the revised protocol and recommended further changes.³⁰ In March 2022 the US Trade Representative and US Department of Labor provided a number of recommendations to the Mexican government for amending the protocol,

²⁷ IMLEB Interim Report, December 15, 2020, available at: https://www.researchgate.net/publication/359733044_IMLEB_Interim_Report_and_Separate_Statement

²⁸ Gobierno de México. Agreement by which various provisions of the Protocol for the Legitimation of Existing Collective Bargaining Agreements are modified and added, April 2, 2021, available at: https://dof.gob.mx/nota_detalle.php?codigo=5610863&fecha=04/02/2021

²⁹ Gobierno de México. Extracto del Acuerdo por el que se aprueba el Protocolo para el procedimiento de legitimación de contratos colectivos de trabajo existentes, April 30, 2021, available at: <https://legitimacion.centrolaboral.gob.mx/Upload/ProtocoloLegitimacion.pdf>

³⁰ IMLEB Report and Separate Statement of Members Fortson et al. 2021.07.7, available at: https://www.researchgate.net/publication/359529197_IMLEB_Report_and_Separate_Statement_of_Members_Fortson_et_al_2021077

including promotion of a more active role by the Federal Center verifiers in detecting and sanctioning unfair labor practices.³¹

On August 17, 2022, the Governing Board of the Federal Center published “General Guidelines for Union Democracy Procedures”, described as a “guiding tool” for those involved in union elections “to organize, participate in and monitor the procedures of union democracy.”³² The guidelines create the position of “union electoral observer”, who must be accredited by the Federal Center, and prescribe requirements for oversight by these observers and by Federal Center staff of elections of union leaders, votes on initial or revised collective bargaining agreements and union bylaws, and elections when two or more unions claim the right to bargain on behalf of the workers of a workplace (*recuentos*). The guidelines incorporate some lessons learned during disputed legitimization votes, including the need for government oversight before, during, and after votes on collective bargaining agreements. For example, the guidelines ban the presence of “electronic devices with which the voter or any other person can photograph or evidence the meaning of the vote, or violate the secrecy of it.”³³ Claims that workers were offered bribes for photos of votes in favor of corrupt incumbent unions are discussed in cases in Section C below. While the guidelines address *prospective* votes for election of union officers, ratification of union statutes and of initial or revised CBAs, and elections between two or more unions,³⁴ they also include transitional provisions that apply the guidance to workers’ complaints related to legitimization votes on *existing* collective bargaining agreements, without addressing the conflicts of interest inherent in allowing incumbent protection unions to organize and conduct the votes.³⁵

2. Legitimation of existing collective bargaining agreements to date

STPS launched an online platform for arranging legitimization votes in August 2019 and the first votes were held in September 2019. As of March 19, 2023, the Federal Center reported that 13,659 CBAs has been legitimated, 211 CBAs had been rejected and 2,632,070 workers had been consulted. An additional 1,490 votes have been scheduled through the end of April.³⁶

³¹ US Interagency Labor Committee for Monitoring and Enforcement, “Report on labor monitoring and enforcement under USMCA”, July 18, 2022

³² Centro Federal de Conciliación y Registro Laboral, Extracto del Acuerdo por el que se aprueban los Lineamientos Generales para los Procedimientos de Democracia Sindical, Diario Oficial, 17 August 2022, available at https://centrolaboral.gob.mx/CFCRL/Idemocracia_sindical.pdf

³³ Ibid., Art. 34.II.i..

³⁴ Ibid., Art. 2.XIV

³⁵ Ibid., Art. Transitorio Segundo. This appears to limit the intervention of the labor authorities to cases where workers file complaints.

³⁶ Centro Federal de Conciliación y Registro Laboral, “Legitimation of Collective Labor Contracts,” available at: <https://legitimacion.centrolaboral.gob.mx/>, consulted on March 19, 2023.

In addition, the Center and the STPS announced on January 20, 2023 that the total number of existing CBAs has been revised downward from about 550,000 to 139,000, after eliminating duplicates, contracts for a fixed term or specific job (e.g. in construction), and files with insufficient documentation.³⁷

Based on these numbers, fewer than 10 percent of existing contracts have so far been legitimated. While there may be an increase for the months of May, June, and July, even if the number of legitimation votes for each of these months doubled (from 800 to 1,600), that would raise the number of legitimized contracts on August 1 to 18,500, or 13% of the total number of contracts on file.

In contrast, the 2,517,223 workers consulted so far corresponds to slightly over 50 percent of the estimated 4.6 million union members in the country.³⁸ The difference between the percentage of workers and the percentage of contracts can be explained at least in part by the fact that some of the CBAs submitted to legitimation votes cover large numbers of workers, such as those of the National Union of Social Security Workers (SNTSS) and the National Union of Petroleum Workers of the Mexican Republic (STPRM).³⁹

The question then is what happens to the approximately 87% of active contracts that the STPS and CFCRL have estimated exist, but that will not have been legitimated before the deadline.

One scenario is that these agreements will be nullified, leaving nearly half of the current unionized workforce without collective bargaining coverage. While the terms and conditions of existing CBAs are supposed to be maintained in individual employment contracts, it is likely that in many cases workers lack the information and the capacity to enforce these agreements effectively.

A second possibility is that some unions that have not acted to legitimize their CBAs (which requires support from a majority of the workers) may instead opt to let these

³⁷ 100 días para concluir el plazo de legitimación de contratos colectivos, January 20, 2023, available at:

<https://www.gob.mx/stps/prensa/100-dias-para-concluir-el-plazo-de-legitimacion-de-contratos-colectivos?idiom=es>

³⁸ Ibid.; Gobierno de México. “The Labor Reform in numbers,” available at:

<https://reformalaboral.stps.gob.mx/#documentos>; Gerardo Hernández, “Protection contracts, the great challenge for labor reform and the T-MEC,” *El Economista*, November 22, 2021, available at: <https://www.eleconomista.com.mx/capitalhumano/Contratos-de-proteccion-el-gran-desafio-para-la-reforma-laboral-y-el-T-MEC-20211119-0045.html>. For reference, unions represent about 21.3% of Mexico’s 21.6 million formal sector workers, and 9.7% of the total workforce of 47.4 million.

³⁹ Centro Federal de Conciliación y Registro Laboral, Joint Communication 011/2021, June 14, 2021, available at: <https://centrolaboral.gob.mx/comunicados/112-inicia-legitimacion-del-contrato-colectivo-del-sindicato-nacional-de-trabajadores-del-seguro-social>; Centro Federal de Conciliación y Registro Laboral, Las y los trabajadores de PEMEX deciden respaldar su Contrato Colectivo de Trabajo, July 19, 2022, available at: <https://www.gob.mx/cfcr/prensa/las-y-los-trabajadores-de-pemex-deciden-respaldar-su-contrato-colectivo-de-trabajo?idiom=es>.

contracts be nullified and then seek a new Certificate of Representativeness, which requires only 30% of the bargaining unit.

A third option would be for incumbent unions to seek an extension of the deadline for the legitimization votes. The government had stated that no extension will be granted.⁴⁰ but on February 17, 2023, it announced that it would extend the deadline for completing legitimization votes until August 1, 2023, while still requiring all unions seeking to legitimize contracts to complete the application process by May 1.⁴¹

During votes held to date there have been numerous anecdotal and press reports of threats of loss of benefits or loss of employment if an agreement is rejected—although this is explicitly prohibited by the law—and of misinformation or suppression of information about the voting process.⁴² The STPS reported that during the year from May 1, 2021 to April 30, 2022, 287 complaints were raised through the online complaint process regarding issues that arose during legitimization processes. According to STPS, 214 did not proceed due to the lack of necessary information or because the issues did not come under the protocol. Only 14 of the complaints were resolved.⁴³ An analysis by the Maquila Solidarity Network of the reports (*actas de resultados*) that unions must file on the results of votes also found a number of anomalies.⁴⁴ Among the *actas* that were reported through

⁴⁰ Zenyazen Flores, México urge a sindicatos legitimizar contratos ante vencimiento de plazo en T-MEC, Bloomberg Linea, Jan. 20, 2023, available at: <https://www.bloomberglinea.com/2023/01/20/mexico-urge-a-sindicatos-legitimizar-contratos-ante-vencimiento-de-plazo-en-t-mec/>

⁴¹ Ivette Saldaña, Acuerdo gobierno extender plazo para legitimar contratos, El Universal, February 17, 2023, available at: <https://www.eluniversal.com.mx/cartera/acuerda-gobierno-extender-plazo-para-legitimizar-contratos>; Secretaría de Trabajo y Previsión Social, La fecha para el registro de Contratos Colectivos de Trabajo vence el 1° de mayo del 2023, February 17, 2023, available at: <https://www.gob.mx/stps/prensa/la-fecha-para-el-registro-de-contratos-colectivos-de-trabajo-vence-1-de-mayo-del-2023?idiom=es>. As of March 19, 2023, only eight legitimization votes have been scheduled between May 2 and August 1. Centro Federal de Conciliación y Registro Laboral, “Legitimation of Collective Labor Contracts,” available at: <https://legitimacion.centrolaboral.gob.mx/>, consulted on March 19, 2023.

⁴² See for example Nacha Cattán, “Nafta Rewrite Runs Into Trouble as Mexican Reform Comes Up Short,” Bloomberg, Nov. 20, 2019, available at: <https://www.bloomberg.com/news/articles/2019-11-20/nafta-rewrite-runs-into-trouble-as-mexican-reform-comes-up-short>; María Del Pilar Martínez, “Impiden difundir en planta de GM en Ramos Arizpe información sobre derechos laborales,” El Economista, March 23, 2022, available at: <https://www.eleconomista.com.mx/empresas/Impiden-difundir-en-planta-de-GM-en-Ramos-Arizpe-informacion-sobre-derechos-laborales-20220323-0051.html>; José Gregorio Aguilar, “Obreros de Aptiv II impugnarán elecciones de legitimación de contrato colectivo de trabajo,” Gaceta.mex, November 23, 2021, available at: <https://www.gaceta.mx/2021/11/obrerros-de-aptiv-ii-impugnaran-elecciones-de-legitimacion-de-contrato-colectivo-de-trabajo/>

⁴³ STPS reply to information request submitted by IMLEB, May 11, 2022, on file with the authors of this report.

⁴⁴ Maquila Solidarity Network, “Legitimizing collective bargaining agreements in Mexico: What have we learned to date?” December 2021, available at: <https://www.maquilasolidarity.org/en/%20legitimizing-cba-mexico>

April 2021, 193 reported no negative votes and 70 *actas* indicated that 30 percent or more of the eligible voters did not cast votes. In some cases, required information was missing, such as the name of the company or workplace, the correct number of the collective bargaining agreement in question or the location where the vote took place. There is no publicly available information on whether the STPS or Federal Center have conducted follow-up investigations regarding these or other legitimization votes in order to verify whether workers actually received copies of their CBAs and were able to read and understand them.

Concerns have also been raised about the use of public notaries—selected and paid by the union that currently controls the CBA—to monitor legitimization votes.⁴⁵ STPS reported that 22.3 percent of legitimization votes had been verified by a notary without participation by any government official as of March 31, 2022.⁴⁶ In Mexico, the use of notaries compensated by the incumbent union is an established practice in labor proceedings. Despite the potential conflict of interest inherent in this arrangement as well as concerns about corruption,⁴⁷ the STPS and the Federal Center signed a joint Memorandum of Understanding with the National College of Mexican Notaries (CNNM), and the United Nations Development Program (UNDP) to train and encourage the participation of notaries in the processes of legitimization of collective contracts.⁴⁸

C. Rapid-Response Labor Mechanism cases filed to date

Annex 31-A of the USMCA establishes a novel Facility-Specific Rapid-Response Labor Mechanism (RRLM), which provides an expedited process to address claims that

⁴⁵ Jose Gregorio Aguilar, “Obreros de Aptiv II impugnarán elecciones de legitimación de contrato colectivo de trabajo,” *Gaceta.mex*, November 23, 2021, available at: <https://www.gaceta.mx/2021/11/obrerros-de-aptiv-ii-impugnaran-elecciones-de-legitimacion-de-contrato-colectivo-de-trabajo/>; María del Pilar Martínez, “Legitimaciones de contratos colectivos están envueltos en la simulación: Susana Prieto,” *El Economista*, August 4, 2022, available at <https://www.eleconomista.com.mx/empresas/Legitimaciones-de-contratos-colectivos-estan-envueltos-en-la-simulacion-Susana-Prieto-20220804-0068.html>.

⁴⁶ STPS reply to information request submitted by IMLEB, May 11, 2022, on file with the authors of this report.

⁴⁷ See, e.g., Gardenia Mendoza, “Notarios, pieza clave en la corrupción de los gobernadores de México”, April 17, 2017, *La Opinión*, available at: <https://laopinion.com/2017/04/17/notarios-pieza-clave-en-la-corrupcion-de-los-gobernadores-de-mexico/>; Alertan por red que opera en notarias y juzgados que se apropia de predios y casas de manera ilegal, Reporte Indigo, March 18, 2019, available at: <https://www.reporteindigo.com/reporte/alertan-por-red-que-opera-en-notarias-y-juzgados-que-se-apropia-de-predios-y-casas-de-manera-ilegal/?fbclid=IwAR37VoNaKAJnEij6a0nI5jGEzpJYEtYrebpAtlSvE2mC93cK9rfeBpLhfjU>

⁴⁸ STPS, “STPS especifica la labor de los notaries públicos en los procesos de legitimación de contratos colectivos,” Bulletin Number 062/2021, June 27, 2021, available at: <https://www.gob.mx/stps/prensa/stps-especifica-la-labor-de-los-notarios-publicos-en-los-procesos-de-legitimacion-de-contratos-colectivos>

workers' rights to organize or bargain collectively have been denied at a firm or facility.⁴⁹ The new mechanism is intended to expedite the response to a denial of rights and recognizes that such violations typically originate at the firm level rather than through government action or inaction.

The RRLM has been actively employed by the US government, Mexican and US unions and civil society during the transition to the new labor justice regime in Mexico. Five RRLM cases have been initiated by the US on its own action or in response to petitions from the public, and at least two additional petitions have been filed by unions and civil society organizations requesting that cases be initiated. Three of the five cases involved US-owned firms in the Mexican automotive sector, one involved a Japanese firm producing electronics for the auto sector and one involved a merged Italian-French-US auto firm. The additional petitions involve a US-owned auto parts firm and a French firm producing automobile glass. It is instructive to examine these cases closely, because much more information is available about them than about other legitimation or representation votes and they provide important lessons for implementation of the Mexican labor reform going forward.

1. General Motors, Silao, Guanajuato

The first case to proceed under the RRLM mechanism involved a General Motors factory in Silao, Guanajuato. A legitimation vote on April 22, 2021 was halted by the STPS after it observed irregularities in the process, including destroyed ballots and the refusal of the union to provide information on the ballots already cast.⁵⁰ After further review the STPS nullified the vote on May 11, 2021 and ordered a new vote within 30 days.⁵¹ The decision was based on a finding of serious deficiencies that included a failure by the employer and union to provide workers a printed copy of the CBA in advance of the vote; acts of violence, intimidation or coercion to prevent workers from voting; denial of entry to accredited observers by the incumbent union and the company; evidence that people who did not identify themselves were allowed to vote; failure to protect ballots, voting lists and voting records; and irregularities in the place, date and time of the vote.⁵² The STPS

⁴⁹ USMCA, Chapter 31, Annex 31-A “Facility-Specific, Rapid Response Labor Mechanism”, pp. 31-A-1—31-A-9, available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/31-Dispute-Settlement.pdf>

⁵⁰ Gobierno de México. STPS Information Note 001/2021, April 22, 2021, available at: <https://www.gob.mx/stps/prensa/nota-informativa-001-2021?idiom=es>

⁵¹ Gobierno de México. STPS Communication 0007/2021, May 11, 2021, available at: <https://www.gob.mx/stps/prensa/comunicado-0007-2021?idiom=es>; Bertha Becerra, “Sindicato de GM en Silao debe volver a votar contrato colectivo tras irregularidades: STPS”, *El Sol de México*, May 11, 2021, available at: <https://www.elsoldemexico.com.mx/finanzas/sindicato-de-gm-en-silao-debe-volver-a-votar-contrato-colectivo-tras-irregularidades-stps-6703224.html>

⁵² Maria Del Pilar Martinez, “CTM union was losing vote in GM when process was suspended”. *El Economista*, May 13, 2021, available at: <https://www.eleconomista.com.mx/empresas/Sindicato-de-CTM-perdia-votacion-en-planta-de-General-Motors-en-Silao-que-trato-de-esconder-20210513-0074.html>; Aristegui Noticias. “There will be extraordinary surveillance of the new vote in General Motors-Silao:

declined to investigate allegations by workers of other irregularities before and during the process, including dismissals and harassment by the incumbent union leaders and company executives and threats that workers would lose the benefits of the CBA if they voted against the contract. Claims by current and dismissed workers of such violations were widely reported in the media.⁵³

On May 12, 2021 the US Trade Representative (USTR) asked the Mexican government to review whether workers at the facility were being denied the rights of free association and collective bargaining.⁵⁴ The request was self-initiated by USTR under the terms of the RRLM.⁵⁵ USTR directed the US Secretary of the Treasury to suspend the final settlement of customs accounts for imports from GM's Silao facility until it could be determined if there had been a denial of rights and, if so, until it was remedied.⁵⁶ This preserved the option for the US to impose tariffs above the USMCA levels or other penalties on the relevant products of the factory. This mechanism, known as suspension of liquidation, has been available to the US government in the context of other trade disputes and is specifically permitted under Article 31-A.4 of the USMCA.⁵⁷

A GM spokesperson told the media "We do not believe there was any GM involvement in the alleged violations and have retained a third-party firm to conduct an independent and

STPS". May 15, 2021, available at: <https://aristeguinoticias.com/1405/dinero-y-economia/habra-vigilancia-extraordinaria-de-la-nueva-votacion-en-general-motors-silao-stps/>

⁵³ Jared Laureles. "Suspenden firma de contrato colectivo de trabajo en General Motors". *La Jornada*, April 22, 2021, available at: <https://www.jornada.com.mx/notas/2021/04/22/economia/suspenden-firma-de-contrato-colectivo-de-trabajo-en-general-motors/>; Alonso Merino Lubetzky. "Trade union freedom? General Motors union opens 15-hour window for 10,000 workers to vote on new contract". *POPLab*, April 18, 2021, available at:

<https://poplab.mx/article/Libertad Sindical Sindicato de General Motors abre ventana de 15 horas para que 10 mil trabajadores voten nuevo contrato>; Bertha Becerra, May 11, 2021 op. cit.

⁵⁴ USTR. "United States Seeks Mexico's Review of Alleged Workers' Rights Denial at Auto Manufacturing Facility", May 12, 2021, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/united-states-seeks-mexicos-review-alleged-workers-rights-denial-auto-manufacturing-facility-0>; Gobierno de México. "STPS Joint Communication 009/2021", May 12, 2021, available at: <https://www.gob.mx/stps/prensa/comunicado-conjunto-009-2021?idiom=es>

⁵⁵ World Trade Online. "U.S. launches first USMCA complaint against GM plant in Mexico", May 12, 2021, available at: <https://insidetrade.com/daily-news/us-launches-first-usmca-complaint-against-gm-plant-mexico>

⁵⁶ USTR. May 12, 2021, available at: <https://ustr.gov/sites/default/files/enforcement/USMCA/USTR%20USMCA%20RRM%20Ltr%20to%20Treasury%20for%20posting.pdf>

⁵⁷ USMCA, Chapter 31, Annex 31-A "Facility-Specific Rapid Response Labor Mechanism", p. 31-A-3, available at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/31-Dispute-Settlement.pdf>

thorough review."⁵⁸ Mexican media reported claims by workers that the union that controls the contract at the GM plant—the National Union of Workers of the Metal-Mechanical, Sidero-Metallurgical, Automotive and Suppliers of Auto Parts in General, Energy, its Derivatives and Related Industries of the Mexican Republic “Miguel Trujillo López,” affiliated to the Confederation of Workers of Mexico (CTM) and headed by Tereso Medina Ramírez, formerly a Senator of the PRI party and currently a Federal Deputy—was offering various bribes to workers to vote in favor of the union contract in a subsequent vote and claimed that the GM human resource department was offering the incumbent union facilities to hold small group meetings to coerce workers.⁵⁹

The 30-day deadline for a new vote set by the STPS passed and was ignored by the Miguel Trujillo López union.⁶⁰ In June, members of the dissident workers’ group *Generando Movimiento* (Generating Movement), which opposed the incumbent union, reported being arrested while distributing leaflets to workers critical of working conditions in the factory.⁶¹

On June 21, 2021, the STPS issued a revised determination that the new consultation must be held not later than August 20, 2021 and warned the union that, “in the event of non-compliance, the collective contract will be terminated, preserving the benefits and working conditions recognized in it for the benefit of the workers.”⁶² The USTR and Mexican authorities commenced discussions of the case in the context of the RRLM

⁵⁸ Agence France Press, “US Asks Mexico to Probe GM Union Vote”, May 12, 2021, available at: <https://www.industryweek.com/talent/labor-employment-policy/article/21164070/us-asks-mexico-to-probe-gm-union-vote-under-usmca>.

⁵⁹ Zona Franca, “Denuncian rifa de 15 autos en GM Silao para cooptar a trabajadores a favor del sindicato,”

May 26, 2021, available at: <https://zonafranca.mx/politica-sociedad/denuncian-rifa-de-15-autos-en-gm-silao-para-cooptar-a-trabajadores-a-favor-del-sindicato/?fbclid=IwAR1RjkQ99T3VvQ91xxma5FUF-MxYJJNLxTyP4A02IU6sCBXxuSOW9NKqOE>; Óscar Ramos, “Trabajadores de GM denuncian coacción por el sindicato Miguel Trujillo López,” *El Sol de León*, May 19, 2021, available at: <https://www.noticiasvespertinas.com.mx/local/trabajadores-de-gm-denuncian-coaccion-por-el-sindicato-miguel-trujillo-lopez-silao-guanajuato-cct-6736684.html>; Jacob Sánchez, “Piden a General Motors sacar las manos del proceso de legitimación en Silao”, *El Sol de México*, May 20, 2021, available at: <https://www.elsoldemexico.com.mx/finanzas/piden-a-general-motors-sacar-las-manos-de-proceso-de-legitimacion-en-silao-6739944.html?fbclid=IwAR3HR1RznHqGXy5jQfSvt1XjX4vLeVqQ9wejhebjoaOTaPptiAeU10FeCh0>

⁶⁰ Daina Beth Solomon and David Shepardson, “Fresh GM union vote in Mexico headed for delay – sources”, Reuters, June 7, 2021, available at: <https://www.reuters.com/business/autos-transportation/fresh-gm-union-vote-mexico-headed-delay-sources-2021-06-07/>

⁶¹ Karla Silva, “Disidentes sindicales de GM Silao denuncian detención,” *El Correo de Guanajuato*, June 18, 2021, available at: <https://periodicocorreo.com.mx/disidentes-sindicales-de-gm-silao-denuncian-detencion-de-policias-de-leon-en-romita/>

⁶² Gobierno de México. STPS Communication 010/2021, June 21, 2021, available at: <https://www.gob.mx/stps/prensa/comunicado-numero-010-2021>

request and agreed on a remediation plan on July 8, 2021.⁶³ The plan called for unprecedented levels of oversight by the STPS of the new vote, beginning weeks before the August vote in order to prevent and address any intimidation and coercion of the workers in advance of the vote. It also included monitoring by the International Labor Organization (ILO) and an independent Mexican institution, the National Electoral Institute (INE). It also called on the STPS to distribute accurate workers' rights information at the facility, establish and staff a hotline for complaints by workers and investigate and sanction those responsible for violations related to the suspended April vote. The remediation plan was largely implemented, although worker advocates complained of continued misinformation and intimidation, specifically in captive audience meetings conducted by representatives of the employer and the Miguel Trujillo López union⁶⁴ – and there is no evidence that any sanctions were imposed for misconduct during the April vote.⁶⁵ Finally, the CFCRL failed to adopt the best practices of the Silao Remediation Plan in its revised legitimization protocol as required under Section 20 of the Remediation Plan.

In the event, the vote occurred on August 17-18, 2021 over a 34-hour voting period, under national and international scrutiny and with a high voter turnout. The result was a decisive rejection by the workers of the contract held by the Miguel Trujillo López-CTM union, with a vote of 3,214 workers opposed and 2,623 in favor.⁶⁶ On August 30, a new independent union, SINTTIA, was formed out of the *Generando Movimiento* group that had opposed the incumbent union.

After the CTM contract was officially nullified on November 3, 2021, SINTTIA filed a request with the Federal Center for a Certificate of Representativeness to represent the workers. Under the labor law reform such a request requires support from at least 30 percent of the workers, in this case at least 2,000 of the roughly 6,000 workers in the

⁶³ USTR. "United States and Mexico Announce Course of Remediation for Workers' Rights Denial at Auto Manufacturing Facility in Silao," July 8, 2021, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/july/united-states-and-mexico-announce-course-remediation-workers-rights-denial-auto-manufacturing>

⁶⁴ Solidarity Center and ILAW Network, Legitimación de contratos colectivos de trabajo en México, November 2022, p. 29.

⁶⁵ Jared Laureles and Carlos Garcia, "Revelan presión de CTM y GM Silao en votación para legitimar contrato," La Jornada, August 18, 2021, available at: <https://www.jornada.com.mx/2021/08/18/politica/015n1pol>. Of particular concern is the government's apparent failure to investigate and prosecute the persons responsible for the theft of ballots in the April 22 legitimization vote. The Labor Secretariat reported in its Resolution of May 11, 2021 that "the STPS filed a criminal complaint with the Office of the Attorney General of the State of Guanajuato to determine responsibility," but has not provided any further information on the status of this case. RESOLUCION RESPECTO AL PROCEDIMIENTO DE LEGITIMACION DEL CONTRATO COLECTIVO DE TRABAJO NÚMERO CC-973-2005-XII-2019-7819, 11 mayo 2022, p. 35. The failure of the STPS to investigate these threats was a violation of Section 18 of the Remediation Plan.

⁶⁶ Gobierno de México, STPS Bulletin Number 081/202, August 19, 2021, available at: <https://www.gob.mx/stps/prensa/concluye-sin-incidentes-legitimacion-del-contrato-colectivo-en-general-motors-de-silao>

facility, and SINTTIA submitted the supporting names and signatures. Subsequently three other unions requested the Certificate of Representativeness, presumably also submitting the names and signatures of at least 30 percent of the workers as required by Article 390 Bis II of the law. The former union, Miguel Trujillo López, did not request a certificate.

Under the new procedures of Article 390 Bis of the reformed labor law, the Federal Center ordered a vote to be held on February 1-2, 2022 to determine which union commanded the greatest support of the workers, with the four unions on the ballot. The result was a landslide victory for SINTTIA, which received 4,192 of the 5,478 votes cast. The three other unions received 932, 247 and 18 votes respectively. This raises serious doubt that each of them had met the legal requirement to submit signatures from over 2,000 workers to the Federal Center supporting their application to appear on the ballot. The requirement of proof of support from at least 30 percent of workers is a critical part of the labor reform because it establishes that a union cannot claim to represent workers or intervene in a union representation election without evidence of substantial support. The STPS and Federal Center apparently take the position that the signatures provided by the unions are not subject to verification in terms of their authenticity, relying on a principle of good faith and the obligations of union organizations to tell the truth under oath.⁶⁷ Given the extensive, persistent and well-documented problems with corruption by protection unions in Mexico, this lack of government oversight and transparency is highly problematic. The issue is important not only during the transition period but for the future working of the new labor justice system in Mexico and we will return to it in our evaluation of Mexico's efforts to implement its labor reform and our recommendations.

In addition to the February 1-2 vote was marred by death threats against the General Secretary of SINTTIA, Alejandra Morales, and members of her family. It is unclear whether Federal or state authorities conducted any investigation of these threats.⁶⁸

After SINTTIA won the vote, the Federal Center issued the Certificate of Representativeness and the union began negotiations with the management of the GM Silao plant.⁶⁹ A tentative agreement for a new CBA was reached on May 10, 2022 that provides a first year wage increase of 8.5 percent—at the time reported to be the highest in the Mexican auto industry—and other benefits.⁷⁰ The covered workers approved the

⁶⁷ STPS reply to information request submitted by IMLEB, May 11, 2022, on file with the authors of this report.

⁶⁸ Solidarity Center and ILAW Network, *Legitimación de contratos colectivos de trabajo en México*, November 2022, p. 32; *Amenazan a SINTTIA y trabajadores de General Motors*, El Sol de León, January 31, 2022, available at <https://www.elsoldeleon.com.mx/local/amenazan-a-sinttia-y-trabajadores-de-general-motors-7802316.html>.

⁶⁹ Centro Federal de Conciliación y Registro Laboral, Announcement 013, February 16, 2022, available at: <https://centrolaboral.gob.mx/comunicados/150-el-centro-laboral-emite-constancia-de-representatividad-a-sindicato-que-obtuvo-mayoria-en-la-consulta-en-gm-silao>

⁷⁰ Sindicato independiente nacional de trabajadores trabajadoras de la industria automotriz (SINTTIA), “Avances logrados con el CCT negociado entre el SINTTIA y la empresa GM-Silao”, May 12, 2022, available at: <https://www.facebook.com/Sinttia->

new contract by a large margin through a vote that took place on May 25-26, 2022. In March 2023, the union negotiated an additional 10% wage increase.⁷¹

The experience at the GM Silao plant is considered a success by both the US and Mexican governments, in that a fraudulent contract legitimization vote was halted and subsequent contract and union election votes were held with high participation by workers and without adverse incidents.⁷² With regard to the outcome, many observers and labor advocates consider that the two votes revealed the preferences of the workers for an independent union, which could not have been achieved without the labor law reform, the labor obligations of the USMCA and substantial oversight of the process by the two governments and outside observers.⁷³

At the same time, we note that the profound irregularities observed in the April legitimization vote at the GM Silao facility are similar to the anecdotal and press reports of widespread irregularities in many other such votes. In the GM case, complaints had been registered in advance of the vote with both the STPS, through the complaint procedure set up in the February 2021 revision of the protocol, and with the US government, through a hotline created pursuant to the USMCA implementing bill “to receive confidential information regarding labor issues among USMCA countries directly from interested parties, including Mexican workers”.⁷⁴ This brought unprecedented scrutiny from the Mexican government

[101078715648932/photos/a.101773975579406/169231408833662](https://www.reuters.com/business/autos-transportation/gm-agrees-hike-wages-85-major-mexico-plant-union-says-2022-05-12/); Daina Beth Solomon, “GM agrees 8.5% raise with Mexico union in test of new trade deal”, Reuters, May 12, 2022, available at: <https://www.reuters.com/business/autos-transportation/gm-agrees-hike-wages-85-major-mexico-plant-union-says-2022-05-12/>

⁷¹ Daina Beth Solomon, “GM and union reach deal for 10% pay hike at Mexico pickups plant,” Reuters, March 13, 2023, available at: <https://www.reuters.com/business/autos-transportation/gm-agrees-10-pay-increase-mexico-pickups-plant-union-2023-03-13/>.

⁷² Ibid.; USTR. “Ambassador Tai, Secretary Walsh applaud successful first course of remediation under USMCA’s Rapid Response Labor Mechanism, September 22, 2021, available at: <https://mail.google.com/mail/u/0/#label/Trade%2C+labor%2FNAFTA%2FUSMCA%2FCases+filed+under+USMCA%2FGM+Silao/FMfcgzGlvRncXFsqXIGWvPKLrHJxMXx>; USTR. “Statement from Ambassador Katherine Tai on February 1-2 Vote by Workers in Silao, Mexico,” February 23, 2022, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/february/statement-ambassador-katherine-tai-february-1-2-vote-workers-silao-mexico>; Yvonne Martinez, “México cumple ‘al pie de la letra’ compromisos laborales del T-MEC: Clouthier,” La Razon de Mexico, February 3, 2022, available at: <https://www.razon.com.mx/negocios/mexico-cumple-pie-letra-compromisos-laborales-t-mec-clouthier-469811>.

⁷³ See for example Maria Del Pilar Martinez, “Mexico will remove all this unionism of lies: specialists,” February 8, 2022, El Economista, available at: <https://www.eleconomista.com.mx/empresas/Mexico-quita-todo-ese-sindicalismo-de-mentiras-especialistas-20220208-0118.html>; Daina Beth Solomon, “Fed up’ GM workers in Mexico pick new union in historic vote,” February 4, 2022, Reuters, available at: <https://www.reuters.com/business/autos-transportation/gm-workers-mexico-elect-independent-union-historic-labor-vote-2022-02-03/>; Margaret Spiegelman, “AFL-CIO hails Mexican union vote ‘made possible’ by USMCA,” Inside U.S. Trade. February 3, 2022,

⁷⁴ Gobierno de México. Agreement by which various provisions of the Protocol for the Legitimation of Existing Collective Bargaining Agreements are modified and added, available at:

in advance of the legitimization vote. The mechanisms for complaints were utilized by GM workers who had already been organizing through the *Generando Movimiento* group, supported by Mexican labor advocates and other unions. It is highly doubtful that most Mexican workers are aware of these mechanisms. The complaint procedures established by the two governments promise confidentiality to workers filing complaints, which is necessary, but at the same time there is no public transparency about the frequency, nature, sector or geographical distribution of complaints.⁷⁵ It is not at all clear how the STPS and now the Federal Center decide whether to act on complaints and where to deploy monitoring resources.

We have already noted that during the subsequent process to determine union representation status in February 2022, three of the unions that intervened to appear on the ballot received so few votes that it seems implausible that they could have legitimately acquired supporting signatures from over 2,000 workers. The requirement to demonstrate support of 30 percent of the affected workers is an explicit requirement of the reformed labor law (Article 390 Bis II) and the Federal Center is required to validate that support (Article 390 Bis III a). It is troubling that the STPS and Federal Center do not accept their responsibility to verify the signatures or otherwise determine that the claimed worker support is real before granting a union's request to appear on the ballot. We will return to these issues in our evaluation of Mexico's efforts to implement its labor reform and our recommendations.

2. Tridonex, Matamoros, Tamaulipas

The second case brought under the Rapid-Response Labor Mechanism was initiated in response to a petition filed on May 10, 2021 by the AFL-CIO, the Sindicato Nacional Independiente de Trabajadores de Industrias y Servicios "Movimiento 20/32" (SNITIS) and others.⁷⁶ The petition claimed that Tridonex, a subsidiary of Philadelphia-based Cardone Industries Inc. that produces automotive parts in Matamoros, Tamaulipas, was denying its workers' right to freedom of association and collective bargaining. The organizations claimed that Tridonex had fired and harassed those who tried to organize with SNITIS, an independent union.⁷⁷ They also claimed that the company had

https://dof.gob.mx/nota_detalle.php?codigo=5610863&fecha=04/02/2021; US Congress, Public Law 116–113, Section 717 Hotline, available at: <https://www.congress.gov/116/plaws/publ113/PLAW-116publ113.pdf>

⁷⁵ As noted above, the IMLEB requested information from STPS about the frequency and geographic distribution of complaints. The information provided covered a range of serious complaints, but only for the 14 complaints which were not dismissed due to lack of information or other reasons.

⁷⁶ In addition to the SNITIS and the AFL-CIO the parties filing the complaint were the Service Employees International Union (SEIU) and Public Citizen. "AFL-CIO, SEIU, SNITIS And Public Citizen Announce Filing of First USMCA 'Rapid Response Mechanism' Labor Case to Fight for Mexican Workers Denied Independent Union Representation," May 10, 2021, available at: <https://aflcio.org/press/releases/afl-cio-seiu-snitis-and-public-citizen-announce-filing-first-usmca-rapid-response>

⁷⁷ This included the arrest and detention of the union's legal advisor, Susana Prieto Terrazas, after she attempted to deliver a worker petition to the office of the Local CAB on March 10, 2020. Prieto was subsequently banned from entering the State of Tamaulipas. See "Mexican labor activist's arrest sends

collaborated with the incumbent union, the Industrial Union of Workers in Maquiladora and Assembly Plants of Matamoros (SITPME) which is affiliated with the CTM, to deny workers the right to ratify their collective bargaining agreement as well as several other rights guaranteed under the reformed labor law. After review of the petition the US Interagency Labor Committee for Monitoring and Enforcement determined that there was sufficient credible evidence of a denial of rights to warrant a “good faith invocation of enforcement mechanisms” and on July 9, 2022 submitted a request to Mexico to review the claim.⁷⁸ On July 16, 2021 SNITIS filed a demand with the Federal Conciliation and Arbitration Board (CAB), seeking an election to determine which union would represent the workers.⁷⁹ SNITIS stated that an earlier effort to secure an election through the Tamaulipas state CAB had been ignored for over a year.⁸⁰

Mexico did not accept the petition under the RRLM mechanism, arguing that the events occurred before the USMCA came into force.⁸¹ The USTR subsequently negotiated directly with Tridonex, reaching an agreement that provided back pay to some of the fired workers, a declaration of neutrality by the company in any future union election, and

‘wrong signal’ under North America trade deal,” Reuters, Jun. 30, 2020, available at: <https://www.reuters.com/article/us-usa-trade-usmca-mexico-analysis-idUSKBN2413E4>; Tamaulipas Attorney General, Bulletin FGJE-202-2020, 1 July 2020, available at <https://www.fgjitam.gob.mx/fiscalia-general-de-justicia-comunicacion-social-fgje-301-2020/>. The ban on entering the State of Tamaulipas was subsequently lifted by a judicial order. See Le otorgan amparo a la Dip.Susana Prieto Terrazas, sí puede acudir a Tamaulipas, La Región Tamaulipas, January 10, 2023, available at <https://laregiontam.com.mx/2023/01/10/le-otorgan-amparo-a-la-dip-susana-prieto-terrazas-si-puede-acudir-a-tamaulipas/>; Susana Prieto visita a trabajadores de Tridonex, llevaba más de dos años sin visitar Tamaulipas, El Sol de Tampico, January 24, 2023, available at: <https://www.elsoldetampico.com.mx/local/regional/susana-prieto-visita-a-trabajadores-de-tridonex-en-matamoros-9516858.html>.

⁷⁸ USTR. “United States Seeks Mexico’s Review of Alleged Freedom of Association Violations at Mexican Automotive Parts Factory,” June 09, 2021, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/united-states-seeks-mexicos-review-alleged-freedom-association-violations-mexican-automotive-parts>

⁷⁹ Under the transitional provisions of the labor law reform cases arising before its effective date continue to be heard by the CABs while new cases come under the responsibility of the new Federal Center and labor courts. The state level courts were to be phased in over three years, with Tamaulipas in the last tranche of states due to launch their new institutions as of May 1, 2022. However the STPS requested a delay of the effective date for this tranche of states to October 3, 2022. Under the law the auto sector is under federal jurisdiction.

⁸⁰ Public Citizen, “New Lawsuit Filed Against Mexican “Tridonex” Subsidiary of U.S. Autoparts Maker Targeted in First USMCA Labor Case Brought by Unions, Public Citizen,” July 23, 2022, available at: <https://www.citizen.org/news/new-lawsuit-filed-against-mexican-tridonex-subsidiary-of-u-s-autoparts-maker-targeted-in-first-usmca-labor-case-brought-by-unions-public-citizen/>; Blanca Juárez, “The 20/32 Movement gathers labor and union strength with the help of the USMCA,” August 2, 2021, El Economista, available at: <https://www.eleconomista.com.mx/capitalhumano/El-Movimiento-2032-toma-fuerza-laboral-y-sindical-de-la-mano-del-T-MEC-20210730-0087.html>

⁸¹ Ivette Saldaña, “Mexico will not accept complaints from the US of cases prior to USMCA such as Tridonex: SE,” August 11, 2021, El Universal, available at: <https://www.eluniversal.com.mx/cartera/mexico-no-aceptara-denuncias-de-eu-de-casos-previos-t-mec-como-la-de-tridonex-se>

agreement that STPS inspectors and independent observers could access the facility during work hours to provide training to workers on their rights of collective bargaining and freedom of association.⁸² Separately USTR and STPS agreed that in addition to the worker training, STPS would immediately undertake robust inspections of the Tridonex facility, continue its presence during and after the potential union election vote and ensure that Tridonex did not interfere during the vote.⁸³ The agreement was controversial with SNITIS, in that it did not include reinstatement for the fired workers and those receiving back pay could be asked to waive legal claims for wrongful termination.⁸⁴

After significant delay, the Federal CAB scheduled a vote for February 28, 2022 in response to the SNITIS petition, with the SNITIS and SITPME unions on the ballot. During the weeks before the vote, SNITIS alleged that workers were being offered bribes to vote for the incumbent union and on the day of the vote SNITIS supporters claimed that thugs hired by SITPME were around the plant trying to intimidate voters.⁸⁵ Workers claimed that SITPME was offering 500 pesos to workers who took cell phone photos as evidence of casting their ballot in favor of the SITPME.⁸⁶ Both USTR officials and members of Congress asserted that they were following the process closely.⁸⁷ SNITIS won the vote overwhelmingly, receiving 1,126 votes while SITPME obtained 176 votes, with a turnout of 80.4 percent of eligible voters.⁸⁸ On March 22, 2022, the Federal CAB

⁸² USTR. "Fact Sheet: Biden Administration Reaches Agreement with Mexican Auto Parts Company to Protect Workers' Rights," August 10, 2021, available at: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2021/august/fact-sheet-biden-administration-reaches-agreement-mexican-auto-parts-company-protect-workers-rights>

⁸³ Ibid.

⁸⁴ Jared Laureles, "Arbitrario, acuerdo anunciado por gobierno de EU con Tridonex: abogada," La Jornada, August 12, 2021, available at: <https://www.jornada.com.mx/2021/08/12/politica/014n3pol>

⁸⁵ Margaret Spiegelman, "AFL-CIO's Shuler: Mexico must probe reported moves to 'steal' Tridonex vote," Inside U.S. Trade, March 2, 2022.

⁸⁶ Luis Feliz Leon, "A New Union, At Last? Mexican Auto Parts Workers Get to Vote, Three Years After Strike Wave", February 19, 2022, Labor Notes, available at: https://labornotes.org/2022/02/new-union-last-mexican-auto-parts-workers-get-vote-three-years-after-strike-wave?link_id=4&can_id=67c284a0d006ad2ae885f719605af4e0&source=email-mexico-solidarity-bulletin-centering-alternatives-for-global-justice&email_referrer=email_1449433&email_subject=mexico-solidarity-bulletin-march-2-food-as-more-than-sustenance

⁸⁷ Margaret Spiegelman, "Tai: USTR monitoring union vote at Tridonex 'extremely closely'," Inside U.S. Trade, February 28, 2022; Senator Sherrod Brown, "Brown, Wyden release statement following abruptly scheduled Mexican union election in Tridonex USMCA Rapid Response case," February 25, 2022, available at: <https://www.brown.senate.gov/newsroom/press/release/brown-statement-following-abruptly-scheduled-mexican-union-election-tridonex-usmca-rapid-response-case>; Congressman Dan Kildee, "Chairman Blumenauer, Pascrell, Kildee Urge Tridonex to Respect Workers' Freedoms Ahead of Union Vote," February 25, 2022, available at: <https://dankildee.house.gov/media/press-releases/kildee-blumenauer-pascrell-urge-tridonex-respect-workers-freedoms-ahead-union>

⁸⁸ Gobierno de México, "Result of the count on the query by ownership of the collective agreement at the Tridonex plant" Joint Communication 016/2022, February 28, 2022, available at: <https://www.gob.mx/stps/prensa/resultado-del-recuento-sobre-la-consulta-por-titularidad-del-contrato-colectivo-en-la-planta-tridonex>

issued a decision certifying the outcome of the vote and determining SNITIS had the right to represent workers at Tridonex.⁸⁹ SITPME subsequently filed a legal challenge before the Collegiate Tribunal for Labor Matters in the First Circuit.⁹⁰ In addition to challenging the decision, SITPME requested its suspension, which was granted by the Federal CAB.⁹¹ SNITIS filed a legal challenge before the Collegiate Tribunal for Labor Matters in the First Circuit against the suspension issued by the Federal CAB.⁹² Later, it also filed its opposition to SITPME's attempts to try to nullify the outcome of the vote.⁹³ The Collegiate Tribunal for Labor Matters in the First Circuit took several months resolving the different legal challenges before it. In the interim SNITIS was not allowed into the plants and was not able to represent Tridonex workers. In August 2022, the Collegiate Tribunal rejected SITPME's appeal of the Federal CAB decision to recognize SNITIS as the legitimate representative of Tridonex workers.⁹⁴ While SITPME has appealed to the Mexican Supreme Court,⁹⁵ the employer is now recognizing SNITIS as the holder of the CBA.⁹⁶ It should not be forgotten, however, that procedural delays and legal appeals allowed SITPME to maintain control of the CBA for a year after the settlement between the US and Mexico.

3. Panasonic Automotive Systems de México, Reynosa, Tamaulipas

The third Rapid Response Labor Mechanism case was initiated by USTR in response to a petition filed by the Sindicato Nacional Independiente de Trabajadores de Industrias y Servicios (SNITIS)—the independent union that won representation rights at Tridonex—and the Rethink Trade program of the American Economic Liberties Project, an NGO, on April 18, 2022.⁹⁷ Workers at the Japanese-owned firm had voted to reject a contract held by a CTM union in a legitimization vote in October 2021. In March 2022, both SNITIS and the Sindicato Industrial Autónomo de Operarios en General de Maquiladoras de la República Mexicana (SIAMARM), another CTM union, petitioned the Federal Center to

⁸⁹ Federal CAB, Board 15, File No. IV- 163/2021, Decision of March 22, 2022.

⁹⁰ SITPME Appeal, 25 April 2022; SNITIS Counter-Appeal, 20 May 2022.

⁹¹ Federal CAB, Board 15, File No. IV- 163/2021, Decision of April 26, 2022.

⁹² SNITIS Appeal Against Suspension, 4 May 2022.

⁹³ SNITIS Counter-Appeal, 30 May 2022.

⁹⁴ María del Pilar Martínez, "Tridonex no tiene más pretexto para desconocer al SNITIS como líder de los trabajadores," *El Economista*, 14 August 2022, <https://www.eleconomista.com.mx/empresas/Tridonex-no-tiene-mas-pretexto-para-desconocer-al-SNITIS-como-lider-de-los-trabajadores-20220814-0013>.

⁹⁵ AMPARO DIRECTO EN REVISIÓN 4655/2022, 21 September 2022, <https://www2.scjn.gob.mx/ListasNotificacionSIJ/NotificacionesPorLista.aspx?sala=3&fecha=21/10/2022>.

⁹⁶ See <https://www.facebook.com/susana.prietoterrazas/posts/pfbid05YAFGAGqLTp8mDS13y3fApfwq9wK4By6PuRhFNURPpMK63mFuxdcFJF7xpZrcUJrI>

⁹⁷ US Department of Labor, "Committee co-chaired by US Department of Labor, USTR requests Mexico review alleged labor rights denial at Reynosa parts plant", May 18, 2022, available at: <https://www.dol.gov/newsroom/releases/ilab/ilab20220518>

issue a Certificate of Representativeness, which would confer the right to negotiate a new CBA with Panasonic on behalf of the workers. Since two unions had made such a request, the Federal Center was supposed to schedule a vote for workers to determine which union would represent them in negotiations. The RRLM petition claimed that before the representation vote was held, Panasonic signed a new collective bargaining agreement with SIAMARM without the support of the workers.⁹⁸ The new CBA was registered with the Tamaulipas state Conciliation and Arbitration Board, although under the legal reform as of November 3, 2021 all registration of CBAs must now be handled by the Federal Center. Additionally, according to the petition, Panasonic's decision to sign a CBA with SIAMARM without workers' consent or involvement triggered work stoppages which were met with unjustified firings by the company.⁹⁹

After review, the US Interagency Labor Committee for Monitoring and Enforcement found that there was sufficient credible evidence of a denial of rights to warrant a "good faith invocation of enforcement mechanisms".¹⁰⁰ USTR asked the Mexican government to conduct a review of the allegation and directed the US Secretary of the Treasury to suspend the final settlement of customs accounts for goods entering the US from the Panasonic facility pending resolution. Meanwhile, SNITIS won the representation vote conducted by the Federal Center, defeating SIAMARM by a margin of 1,200 to 390 votes.¹⁰¹ In subsequent negotiations that were facilitated by the Mexican government, SNITIS and Panasonic management agreed to a new collective bargaining agreement that includes a 9.5 percent direct salary increase, a one-time bonus of 3.5 percent of each worker's annual salary and reinstatement and back pay for workers who had engaged in

⁹⁸ Jared Laureles, "Panasonic workers in Tamaulipas denounce obstacles to freedom of association". La Jornada, April 9, 2022, available at: <https://www.jornada.com.mx/2022/04/09/estados/023n2est>

⁹⁹ Rethink Trade, "SNITIS and Rethink Trade Announce Filing of New USMCA 'Rapid Response Mechanism' Labor Case to Fight for Mexican Workers at Reynosa Panasonic Plants Denied Legitimate Union Representation", April 18, 2022, available at: <https://rethinktrade.org/press-releases/snit-is-and-rethink-trade-announce-filing-of-new-usmca-rapid-response-mechanism-labor-case-to-fight-for-mexican-workers-at-reynosa-panasonic-plants-denied-legitimate-union-representat/>.

¹⁰⁰ USTR, "United States Seeks Mexico's Review of Alleged Freedom of Association and Collective Bargaining Violations at Panasonic Facility", May 18, 2022, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/may/united-states-seeks-mexicos-review-alleged-freedom-association-and-collective-bargaining-violations>

¹⁰¹ Centro Federal de Conciliación y Registro Laboral, Bulletin 025, April 22, 2022, available at: <https://centrolaboral.gob.mx/comunicados/163-el-centro-federal-laboral-informa-sobre-los-resultados-de-la-consulta-en-panasonic-automotive-systems-de-mexico>. The vote was marked by threats of violence by the CTM. Agencia Reforma, "Pelea e intimida CTM a Panasonic," April 22, 2022, available at <https://www.zocalo.com.mx/pelea-e-intimida-ctm-a-panasonic/>; Jared Laureles and Julia LeDuc, "Entre acusaciones de compra de votos e intimidación a obreros, transcurre consulta en Panasonic," La Jornada, April 22, 2022, available at: <https://www.jornada.com.mx/2022/04/22/politica/013n2pol>. In one particularly graphic video the leader of SIAMARM, Alberto Lara Bazaldúa, tells a crowd of supporters that "Susana Prieto is a traitor to the nation and with her ashes we will build the fatherland of the workers." <https://fb.watch/hFRk0NvqwU/>

work stoppages to protest the earlier illegitimate agreement.¹⁰² This new agreement was approved by workers in a September 12, 2022 vote by a margin of 1,091 to 266 votes.¹⁰³ A subsequent negotiation in February 2023 produced an additional wage increase of 11.92%.¹⁰⁴

USTR commended the Government of Mexico “for coordinating a prompt and thorough resolution to the concerns raised by Mexican workers”, found that there was no ongoing denial of rights and directed the Secretary of the Treasury to resume liquidation of entries of goods from the Panasonic Automotive Systems.¹⁰⁵ USTR stated that the Government of Mexico will conduct further inspections at the facility to monitor the situation.

4. Teksid Hierro de México, Frontera, Coahuila

USTR initiated a fourth complaint under the Rapid-Response Labor Mechanism in response to a petition filed by the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana (SNTMMSSRM).¹⁰⁶ The petition claimed that Teksid, an auto parts manufacturer owned by Stellantis, had refused to recognize the SNTMMSSRM as the workers’ representative despite their vote in favor of the union in 2018, and had fired SNTMMSSRM supporters.¹⁰⁷

¹⁰² Maria Del Pilar Martínez, Panasonic evita huelga en México; firma nuevo contrato y da 9.5% de incremento salarial, *El Economista*, June 10, 2022, available at: <https://www.eleconomista.com.mx/empresas/Panasonic-evita-huelga-en-Mexico-firma-nuevo-contrato-y-da-9.5-de-incremento-salarial-20220610-0031.html>; USTR, “United States Announces Successful Resolution of Rapid Response Labor Mechanism Matter at Panasonic Auto Parts Facility in Mexico”. July 14, 2022, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/united-states-announces-successful-resolution-rapid-response-labor-mechanism-matter-panasonic-auto>.

¹⁰³ Contundente Votación Para Ratificar CCT En Panasonic, Mexico24, September 13, 2022, available at: <https://mexico24siete.mx/contundente-votacion-para-ratificar-cct-en-panasonic/>.

¹⁰⁴ María del Pilar Martínez, Primeros pasos en la verdadera contratación colectiva, Panasonic va por acuerdo, *El Economista*, February 14, 2023, available at: <https://www.eleconomista.com.mx/empresas/Primeros-pasos-en-la-verdadera-contratacion-colectiva-Panasonic-va-por-acuerdo-20230214-0052.html>.

¹⁰⁵ USTR, “United States Announces Successful Resolution of Rapid Response Labor Mechanism Matter at Panasonic Auto Parts Facility in Mexico”, July 14, 2022, available at: <https://mailchi.mp/816818b3180d/embargoed-till-200-pm-united-states-announces-successful-resolution-of-rapid-response-labor-mechanism-matter-at-panasonic-facility-in-mexico-13883323?e=0a211b3818>

¹⁰⁶ USTR, “United States Seeks Mexico’s Review of Labor Rights Issues at Teksid Hierro Facility”, June 2, 2022, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/june/united-states-seeks-mexicos-review-labor-rights-issues-teksid-hierro-facility>

¹⁰⁷ Breana Noble, “UAW petition prompts U.S. to seek Mexican review at Stellantis parts plant”, *Detroit News*,

The company attempted to avoid recognizing the result of the vote by asserting that its workers were covered by a contract with a CTM union deposited in the local CAB, notwithstanding the language in the Mexican Constitution stating that auto parts manufacturing is under the Federal jurisdiction.¹⁰⁸ The Mexican Supreme Court rejected the company's argument in 2021.¹⁰⁹ After the CFCRL affirmed that only the contract deposited in the Federal CAB was valid,¹¹⁰ the US requested and Mexico agreed to review whether there was a denial of rights at the Teksid Hierro facility and USTR directed the Secretary of the Treasury to suspend the liquidation for entries of goods from the facility.¹¹¹

During the U.S. Government's investigation, DOL Labor Attaches interviewed workers who supported SNTMMSSRM, but through threats and intimidation were forced to affiliate to the CTM. Immediately following the interview, Teksid fired seven of these workers.

While the review was underway, the STPS facilitated talks between Teksid management and the SNTMMSSRM and an agreement was reached under which the company recognized the representative status of the union and issued a neutrality statement.¹¹² Teksid agreed to reinstate workers who had been dismissed in 2019 with back pay,¹¹³ give the union access to the facility, and deliver union dues that had been withheld from the workers and owed to the union since May 9, 2019. The Mexican government said it would continue to monitor the facility and the agreement. USTR announced that the situation had been resolved successfully and there was no ongoing denial of rights, and

June 6, 2022, available at: <https://eu.detroitnews.com/story/business/autos/chrysler/2022/06/06/uaw-petition-us-request-mexico-review-labor-rights-violations-stellantis-teksid-hierro-usmca/7503681001/>

¹⁰⁸ The CTM contract was under the control of Tereso Medina Ramírez, the leader of the CTM in Coahuila and a federal deputy for the PRI party, who also controlled the contract at General Motors in Silao until November 2021.

¹⁰⁹ Supreme Court of Justice of the Nation, Recurso de Reclamación 774/2021, Aug. 18, 2021,

¹¹⁰ CFCRL, Certificate of notification CFCRL/CGRCC 4/0102-2022, May 2, 2022.

¹¹¹ USTR, "United States Seeks Mexico's Review of Labor Rights Issues at Teksid Hierro Facility", June 2, 2022, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/june/united-states-seeks-mexicos-review-labor-rights-issues-teksid-hierro-facility>; Secretaria de Economía, Comunicado de Prensa No. 036, June 15, 2022, available at: <https://www.gob.mx/se/articulos/mexico-comprometido-con-el-t-mec-admite-la-solucion-de-revision-por-parte-de-ee-uu-con-respecto-a-teksid-hierro-de-mexico-s-a-de-c-v-305288>; .

¹¹² Maria Del Pilar Martinez, "Sindicato Minero y Teksid firman acuerdo conciliatorio para avanzar en queja laboral interpuesta por EU," Mining Union and Teksid sign conciliatory agreement to advance labor complaint filed by the US", El Economista, July 13, 2022, available at: <https://www.eleconomista.com.mx/empresas/Sindicato-Minero-y-Teksid-firman-acuerdo-conciliatorio-para-avanzar-en-queja-laboral-interpuesta-por-EU--20220713-0024.html>

¹¹³ The seven workers who were dismissed after talking to the Labor Attaches were not reinstated.

directed the Secretary of the Treasury to resume liquidation of entries of goods from the Teksid Hierro facility.¹¹⁴

Meanwhile the CTM on June 9 filed a new demand for a representation election in the Federal CAB. The CAB conducted an election on September 19, 2022 which the SNTMMSSRM won by a vote of 642-172 with two null votes.¹¹⁵ In February 2023, the union and the company negotiated a 9% wage increase and additional benefits.¹¹⁶

In October, Stellantis signed an agreement to sell the Ciudad Frontera plant to Cummins.¹¹⁷

4. Manufacturas VU, Piedras Negras, Coahuila

In June of 2022, La Liga Sindical Obrera Mexicana (LSOM), a Mexican labor organization, and the Comité Fronterizo de Obreras (CFO), a non-profit organization that promotes labor and women's rights on the U.S.-Mexico border, filed a petition under the RRLM process claiming that workers had been organizing an independent union at this US-owned auto parts factory when the management brought in a CTM-affiliated union, the Sindicato de Trabajadores de la Industria Maquiladora de Accesorios y Maquinaria Pesada y Manufactura de Muebles Metálicos de Coahuila,¹¹⁸ and gave it access to the factory to sign up workers, with management pressure on workers to do so.¹¹⁹ This included the firing of one worker and discipline and retaliation against others for speaking out against having a union imposed on them or supporting the independent La Liga Sindical Obrera Mexicana.

¹¹⁴ USTR, "United States Announces Successful Resolution of Rapid Response Labor Mechanism Matter at Auto Parts Facility in Frontera, Mexico", August 16, 2022, available at: <https://mailchi.mp/91c8a867e2ff/embargoed-till-430-pm-us-announces-successful-resolution-of-rapid-response-labor-mechanism-matter-at-auto-parts-facility-in-frontera-mexico-14159223?e=0a211b3818>

¹¹⁵ Maria Del Pilar Martinez, "Trabajadores de Teksid Hierro de México eligen al Sindicato Minero como representante," El Economista, September 20, 2022, available at: <https://www.eleconomista.com.mx/empresas/Trabajadores-de-Teksid-Hierro-de-Mexico-eligen-al-Sindicato-Minero-como-representante-20220920-0056.html>

¹¹⁶ SNTMMSSRM, Importante negociación del CCT de la Sección 327 de Frontera Coahuila, logra un 15.8% de aumento global, February 24, 2023, available at <http://www.sindicatominero.org.mx/boletines2023.aspx>.

¹¹⁷ See UNITED STATES SECURITIES AND EXCHANGE COMMISSION FORM 10-Q for the Quarterly Period Ended September 30, 2022, CUMMINS INC., p. 32 n.18, available at: https://investor.cummins.com/sec-filings/annual-reports/xbrl_doc_only/2881; "Cambia Teksid de dueño," Zócalo, November 20, 2022, available at: <https://www.zocalo.com.mx/cambia-teksid-de-dueno/>.

¹¹⁸ As in the cases of GM Silao and Teksid Hierro, this union is controlled by Tereso Medina Ramírez, head of the CTM in Coahuila and a Federal deputy for the PRI party.

¹¹⁹ La Liga Sindical Obrera Mexicana and Comité Fronterizo de Obreras, "News release", June 17, 2022, available at: <https://acrobat.adobe.com/link/track?uri=urn%3Aaid%3Ausc%3Aaf5680c3b-3b30-30db-9b31-3a0e72b9cc87#pageNum=1>

In July 2022, the US Interagency Labor Committee found that there was sufficient, credible evidence of a denial of rights enabling the good faith invocation of enforcement mechanisms

and USTR requested Mexico to review the situation, noting in particular that opportunities to conduct organizing activities at the VU facility were being afforded to one union but not to LSOM.¹²⁰ USTR directed the Secretary of the Treasury to suspend the final settlement of customs accounts related to entries of goods from the VU facility.

While the review was underway both LSOM and the CTM union petitioned the Federal Center for a Certificate of Representativeness that would confer collective bargaining rights. The Mexican government took actions to educate workers on the voting process and its implications, provide training to VU human resources and supervisory personnel and facilitate a written commitment from the employer to remain neutral.¹²¹ Officials from the Federal Center conducted site visits in the weeks leading up to the vote to investigate allegations of misconduct and invited officials from the ILO and Mexico's National Electoral Institute to serve as election-day observers.¹²² The vote took place on August 31, 2022, with LSOM winning 65 percent of the votes.¹²³ On September 9, 2022, the Federal Center issued a Certificate of Representativeness authorizing LSOM to bargain collectively on behalf of VU workers. As a result of those actions, USTR said it agreed that "there is no ongoing denial of rights" and directed the Secretary of the Treasury to resume liquidation of entries of goods from the Manufacturas VU facility.¹²⁴

¹²⁰ USTR, "United States Seeks Mexico's Review of Alleged Denial of Workers' Rights at Automotive Components Facility", July 21, 2022, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/united-states-seeks-mexicos-review-alleged-denial-workers-rights-automotive-components-facility>; Dan Dupont, "U.S. asks Mexico to review another auto-parts facility for labor violations", Inside US Trade, July 21, 2022.

¹²¹ USTR, "United States Announces Successful Resolution of Rapid Response Labor Mechanism Matter at Manufacturas VU Automotive Components Facility in Mexico", September 14, 2022, available at: <https://mailchi.mp/9611f0ecf7bf/united-states-announces-successful-resolution-of-rapid-response-labor-mechanism-matter-at-manufacturas-vu-automotive-components-facility-in-mexico?e=0a211b3818>

¹²² US Department of Labor, "Secretary of Labor, US Trade Representative support protection of labor rights at Mexico's Manufacturas VU auto parts facility", September 14, 2022, available at: <https://www.dol.gov/newsroom/releases/ilab/ilab20220914>

¹²³ Gobierno de México, "Resultados de la consulta en la empresa VU Manufacturing", September 01, 2022, available at: <https://www.gob.mx/cfcril/prensa/resultados-de-la-consulta-en-la-empresa-vu-manufacturing>

¹²⁴ USTR, "United States Announces Successful Resolution of Rapid Response Labor Mechanism Matter at Manufacturas VU Automotive Components Facility in Mexico", September 14, 2022, available at: <https://mailchi.mp/9611f0ecf7bf/united-states-announces-successful-resolution-of-rapid-response-labor-mechanism-matter-at-manufacturas-vu-automotive-components-facility-in-mexico?e=0a211b3818>

On December 29, 2022, the LSOM and the CFO filed a second Rapid Response petition with the Interagency Labor Committee.¹²⁵ The petition alleges that Manufacturas VU has refused to bargain in good faith, including refusing to accept or respond to the union's proposals and refusing to allow LSOM representatives who are not employees to enter the facility while allowing non-employee representatives of the CTM free access.¹²⁶ In addition, the petition asserts that the CTM has engaged in public attacks on Julia Quiñonez, the Director of the CFO, raising concerns about her safety.¹²⁷ The Interagency Labor Committee accepted the petition on January 30, 2023.¹²⁸ On February 9, 2023, Mexico agreed to review the case.¹²⁹ On March 16, 2023, Mexico concluded that the employer had committed "grave irregularities" and initiated the ten day consultation period with the U.S.¹³⁰

The VU case highlights significant continuing obstacles to the exercise of freedom of association. In particular, it shows how requiring unions that receive a Certificate of Representativeness to reach agreement on a CBA within six months creates a negative incentive for employers and protection unions to delay the bargaining process. At VU:

¹²⁵ Verónica Gascón, "Incumple Manufacturas VU pacto laboral con el sindicato," Reforma, January 4, 2023, available at <https://www.reforma.com/incumple-manufacturas-vu-pacto-laboral-con-el-sindicato/ar2530200?referer=--7d616165662f3a3a6262623b727a7a7279703b767a783a-->.

¹²⁶ La Jornada, "Alista Liga Sindical Obrera queja laboral contra empresa VU Manufacturing," November 19, 2022, available at <https://www.jornada.com.mx/notas/2022/11/19/politica/alista-liga-sindical-obrera-segunda-queja-laboral-a-amparo-del-t-mec/>; El Norte, "Denuncian incumplimiento de Manufacturas VU," December 14, 2022, available at <https://www.elnorte.com/denuncian-incumplimiento-de-manufacturas-vu/ar2521086>.

¹²⁷ GM Noticias, "Trabajadores de la empresa VU acusan a Julia Quiñones por malos manejos sindicales," November 4, 2022, available at <https://gmnoticias.mx/trabajadores-de-la-empresa-vu-acusan-a-julia-quinones-por-malos-manejos-sindicales/>.

¹²⁸ U.S. Department of Labor, Trade Representative again request Mexico review alleged labor rights denial at Piedras Negras auto parts, January 30, 2023, available at: <https://www.dol.gov/newsroom/releases/ilab/ilab20230130>

¹²⁹ Mexico, Secretariat of Labor and Social Welfare, México admite a revisión la solicitud presentada por el Gobierno de los Estados Unidos al amparo del Mecanismo Laboral de Respuesta Rápida, 9 Feb. 2023, available at: <https://www.gob.mx/stps/prensa/mexico-admite-a-revision-la-solicitud-presentada-por-el-gobierno-de-los-estados-unidos-al-amparo-del-mecanismo-laboral-de-respuesta-rapida?idiom=es>.

¹³⁰ Mexico, Secretariat of the Economy and Secretariat of Labor and Social Welfare, El Gobierno de México concluye investigación sobre la solicitud presentada por el Gobierno de los Estados Unidos al amparo del Mecanismo Laboral de Respuesta Rápida sobre una presunta denegación de derechos colectivos en la empresa Manufacturas VU, en Piedras Negras, Coahuila, March 16, 2023, available at: <https://www.gob.mx/se/prensa/el-gobierno-de-mexico-concluye-investigacion-sobre-la-solicitud-presentada-por-el-gobierno-de-los-estados-unidos-al-amparo>; Reuters, Mexico finds 'serious irregularities' in labor probe at VU Manufacturing, March 16, 2023, available at: <https://www.reuters.com/business/autos-transportation/mexico-finds-serious-irregularities-labor-probe-vu-manufacturing-2023-03-17/>.

■ First, the Federal Labor Tribunal rejected the LSOM's bargaining demand on jurisdictional grounds, asserting that the autoparts produced by VU Manufacturing are not "mechanical or electrical" and therefore the union had to re-file its demand in the Coahuila Labor Tribunal.¹³¹ (Similar arguments were advanced in the Teksid and Tridonex cases.) The Tribunal has repeatedly imposed procedural delays, putting pressure on the independent union which has only six months to conclude a CBA with the company under its Certificate of Representativeness.¹³²

■ Second, while the LSOM in its petition to the ILC asserted that VU Manufacturing has a duty to bargain in good faith and to provide information (e.g. addresses of employees), the US request for review to the Government of Mexico does not assert this claim. Mexico has ratified ILO Convention 98, which establishes the duty to bargain in good faith (and to provide information), and these obligations are directly incorporated into Mexican law.¹³³ Accordingly, the US must demand and Mexico must ensure that protection unions and employers not use procedural delays (by either the executive or the judicial branch) to exhaust the six month period during which employers are required to negotiate with the union holding the Certificate of Representativeness.

6. BBB Industries de Mexico, Reynosa, Tamaulipas

On August 2, 2022, the Sindicato Nacional Independiente de Trabajadores de Industrias y Servicios (SNITIS)—the independent union that won representation rights at Tridonex and Panasonic—and the Rethink Trade program of the American Economic Liberties Project filed a petition claiming that a contract legitimization vote had been rigged by the incumbent Confederación de Trabajadores de México (CTM) union, SIAMARM, in complicity with the management of BBB Industries de Mexico.¹³⁴ A group of BBB workers had submitted a challenge to the July legitimization vote with the Federal Center, claiming that the US-owned auto parts firm and SIAMARM representatives had threatened workers if they voted against the CTM-held contract and noting irregularities, including that workers did not receive a copy of their CBA in a timely manner, the number of votes cast significantly exceeded the number of those eligible to vote according to the list exhibited

¹³¹ Under Article 123.A.XXXI(a)12 of the Constitution, some categories of autoparts are under Federal government jurisdiction, while others are under Local (State) jurisdiction.

¹³² La Jornada, "Manufacturas VU se niega a negociar nuevo CCT, denuncian," February 16, 2023, available at: <https://www.jornada.com.mx/notas/2023/02/16/sociedad/manufacturas-vu-se-niega-a-negociar-nuevo-cct-denuncian/>

¹³³ Christina M. Cerna, Status of Human Rights Treaties In Mexican Domestic Law, ASIL Insights, 23 Feb. 2016, available at <https://asil.org/insights/volume/20/issue/4/status-human-rights-treaties-mexican-domestic-law>; Stanley Gacek, Mexico's Ratification of ILO Convention Number 98 and the Future of Protection Contracts, Mexican Law Review 12, 1 (2019), available at https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-05782019000200157.

¹³⁴ See Rethink Trade, "SNITIS and Rethink Trade File New USMCA 'Rapid Response Mechanism' Labor Case Against Reynosa BBB Industries Over Rigged Union Election", August 2, 2022, available at: <https://rethinktrade.org/press-releases/snit-is-and-rethink-trade-file-new-usmca-rapid-response-mechanism-labor-case-against-reynosa-bbb-industries-over-rigged-union-election/>

at the workplace, and that the notary hired by the CTM union to oversee the vote had not been present during key moments of the vote.¹³⁵ The independent union and Rethink Trade then submitted the petition to the US Interagency Labor Committee.

On August 17, the Federal Center dismissed the workers' challenge of the legitimization vote, claiming that there was insufficient evidence of wrongdoing. It is noteworthy that in reaching this conclusion the Federal Center neither conducted any kind of follow up investigation nor did it interview the workers who filed the complaint.¹³⁶

After the 30-day review period established by the Interagency Labor Committee to respond to petitions, USTR issued a statement saying that the petition did not reach a standard of a "sufficient, credible evidence of a denial of rights" to trigger USMCA enforcement tools.¹³⁷ This was the first reported rejection of a petition by the Committee and no further details of the reasons for rejection were publicly available. SNITIS said it was disappointed by the decision and "will continue demanding action from the authorities to redress this denial of labor rights".¹³⁸

On September 7, 2022, SNITIS filed a demand for title to the CBA with the Federal Conciliation and Arbitration Board, seeking an election to determine which union represents the workers. SIAMARM reportedly challenged the jurisdiction of the Federal CAB, but this challenge was rejected.¹³⁹ The Federal CAB has not scheduled a vote. In December, SIAMARM organized a wildcat strike to demand a productivity bonus equal to 10% of wages.¹⁴⁰

7. Saint-Gobain México, Cuautla, Morelos

The next petition filed under the RRLM process arose after workers voted to reject the contract held by an incumbent union in the French-owned automobile glass plant in a legitimization vote conducted by the incumbent union - the Union of Workers of the Glass Industry, affiliated to the Confederation of Workers and Peasants (CTC) under the

¹³⁵ Ibid.

¹³⁶ CFCRL, Resolución de Inconformidad, CFCRL/CGV/IN/128/2022, August 17, 2022.

¹³⁷ Daina Beth Solomon, "U.S. rejects Mexican union petition for labor probe at BBB Industries", Reuters, September 1, 2022, available at: <https://www.reuters.com/world/americas/us-rejects-mexican-union-petition-labor-insertprobe-bbb-industries-2022-09-01/>

¹³⁸ Ibid.

¹³⁹ Video message from Susana Prieto Terrazas, December 13, 2022, <https://www.facebook.com/100003001904705/videos/876720660448557/>

¹⁴⁰ Jaime Jiménez, "Protestan trabajadores de BBB Industries, exigen su bono de productividad," El Sol de Tampico, December 14, 2022, available at <https://www.elsoldetampico.com.mx/local/regional/protesta-de-trabajadores-de-bbb-industries-exigen-su-bono-de-productividad-9332567.html>; Interview with Byron Cavazos, representative of SIAMARM, December 14, 2022, available at <https://www.facebook.com/yanivegam/videos/898875787780097>

supervision of the Federal Center on July 5-6, 2022.¹⁴¹ An independent union, the Independent Union of Free and Democratic Workers of Saint-Gobain, had been organizing in the factory for some time and called for a “no” vote on the contract, which was rejected by a margin of 814-700, with 25 null votes. Five independent observers were permitted to monitor the vote.¹⁴² Both the independent union and the CTC then petitioned the CFCRL for a Certificate of Representativeness, and the Center scheduled a vote on September 28 and 29 to determine the representation. The General Secretary of the independent union publicly denounced threats against himself and his family¹⁴³

International unions representing Saint-Gobain workers in other countries urged the French management to “to ensure that the local management team complied with Mexico’s labour reform and ILO conventions on freedom of association, showed respect for labour-related human rights and the voting process, and allowed for a free and fair ballot to take place.”¹⁴⁴ On September 27, just before the representation vote was held, the independent union along with the AFL-CIO and the United Steelworkers (USW) filed a petition with the US Interagency Labor Committee alleging multiple violations of workers’ rights including threats of violence against independent leaders and captive audience meetings in which both company managers and CTC representatives urged workers to support the CTC.¹⁴⁵ The vote was overseen by the Federal Center with National Electoral Institute and external observers. The independent union won with a 62 percent share of the vote, 957-578.¹⁴⁶ It is now in the process of negotiating a collective

¹⁴¹ Gobierno de México, “Trabajadores de Saint-Gobain deciden no respaldar su contrato colectivo”, July 7, 2022, available at: <https://www.gob.mx/cfcr/prensa/trabajadores-de-saint-gobain-deciden-no-respaldar-su-contrato-colectivo?idiom=es>

¹⁴² Four of the independent observers issued a report on the proceedings. REPORT on SAINT GOBAIN DE MÉXICO S.A. DE C.V. COLLECTIVE BARGAINING AGREEMENT LEGITIMATION VOTE, October 19, 2022.

¹⁴³ Dulce Gaviña, “Trabajadores de Saint Gobain denuncian amenazas de empresa y sindicato,” El Sol de Cuautla, July 5, 2022, available at <https://www.elsoldecuautla.com.mx/finanzas/trabajadores-de-saint-gobain-denuncian-amenazas-de-empresa-y-sindicato-8550105.html>. The CTC has a long history of using violence to control workers. See Salvador Maldonado Aranda, *Entre el corporativismo y el caciquismo en México: El cacicazgo sindical en el Valle de México*, 2003, p.16, available at <http://www2.izt.uam.mx/sotraem/Documentos/Documentos/Amet2003/templates/res/tema3/SALVADOR%20MALDONADO.pdf>; Armando Sánchez Albarrán, *Cultura política y procesos políticos en la región de Zumpango*, Plaza y Valdés 2014, p. 122, available at https://www.researchgate.net/publication/337428379_CULTURA_POLITICA_Y_PROCESOS_POLITICOS_EN_LA_REGION_DE_ZUMPANGO.

¹⁴⁴ IndustriALL, “Saint-Gobain workers in Mexico reject employer protection contract”, July 12, 2022, available at: <https://www.industrialunion.org/saint-gobain-workers-in-mexico-reject-employer-protection-contract>.

¹⁴⁵ USW News, “Steelworkers, AFL-CIO file Petition on Worker Abuse at Mexico Glass Plant”, September 27, 2022, available at: <https://www.usw.org/news/media-center/releases/2022/steelworkers-afl-cio-file-petition-on-worker-abuse-at-mexico-glass-plant>

¹⁴⁶ Gobierno de México, “Saint-Gobain workers vote for a new union”, September 29, 2022, available at: <https://www.gob.mx/cfcr/prensa/trabajadores-de-saint-gobain-votan-por-un-nuevo-sindicato>

bargaining agreement with the company.¹⁴⁷ On March 5, 2023, the union announced a tentative agreement including a 9% wage increase, subject to ratification by the members.¹⁴⁸

In its review of the RR petition, USTR noted that the reported denials of workers' rights were troubling but concluded on the basis of the outcome of the election that the "situation at the facility improved for workers" and determined that "any past denial of rights with respect to the votes no longer existed".¹⁴⁹ USTR concluded that further immediate action on the petition was not needed and stated that the Mexican and US Governments would monitor progress at the facility.

8. Unique Fabricating, Santiago de Queretaro, Querétaro

On March 6, 2023, the United States initiated a Rapid Response case against Unique Fabricating, an autoparts company in the state of Querétaro.

The committee's request follows the department's Feb. 2, 2023, receipt of a USMCA Rapid Response Labor Mechanism petition filed by the "Transformación Sindical" union with the U.S. Department of Labor. Among its claims, the union alleges Unique Fabricating refused to grant the union access to the facility and interfered with its organizing efforts.¹⁵⁰ Mexican media report that the complaint specifically alleges interference by a Querétaro state labor official.¹⁵¹

Mexico accepted the complaint for review on March 17, 2023.¹⁵²

¹⁴⁷ See Alejandra Quintero, Mexican Workers Are Rejecting Company Unions, Jacobin, February 19, 2023, available at: <https://jacobin.com/2023/02/mexico-auto-industry-independent-union-organizing-saint-gobain-cuautla>.

¹⁴⁸ María del Pilar Martínez, Saint Gobain firma contrato con nuevo sindicato; se someterá a consideración de los trabajadores, El Economista, March 5, 2023, available at: <https://www.eleconomista.com.mx/empresas/Saint-Gobain-firma-contrato-colectivo-de-trabajo-con-nueva-organizacion-sindical-20230305-0014.html>.

¹⁴⁹ USTR, "United States Announces Successful Resolution of a Rapid Response Mechanism Petition Regarding a Saint Gobain Facility in Mexico", October 22, 2022, available at: <https://mailchi.mp/e6d2849038c0/united-states-announces-successful-resolution-of-a-rapid-response-mechanism-petition-regarding-a-saint-gobain-facility-in-mexico?e=0a211b3818>

¹⁵⁰ US DEPARTMENT OF LABOR, TRADE REPRESENTATIVE REQUEST MEXICO REVIEW LABOR RIGHTS DENIAL ALLEGATION AT UNIQUE FABRICATING PLANT IN QUERETARO, February 6, 2023, available at <https://www.dol.gov/newsroom/releases/ilab/ilab20230306>.

¹⁵¹ Viviana Estrella, Unique Fabricating deberá reconocer a sindicato queretano tras resolución de queja en el marco del T-MEC, El Economista, March 15, 2023, available at: <https://www.eleconomista.com.mx/empresas/Unique-Fabricating-debera-reconocer-a-sindicato-queretano-tras-resolucion-de-queja-en-el-marco-del-T-MEC-20230315-0065.html>

¹⁵² Mexico, Secretariat of the Economy, El Gobierno de México admite a revisión la solicitud presentada por el Gobierno de Estados Unidos al amparo del Mecanismo Laboral de Respuesta Rápida, sobre una presunta denegación de derechos colectivos en la empresa Unique Fabricating de México, March 17, 2023, available at: <https://www.gob.mx/se/prensa/el-gobierno-de-mexico-admite-a-revision-la-solicitud-presentada-por-el-gobierno-de-estados-unidos-al-amparo-del-mecanismo-laboral-de>.

D. Evaluating the transitional phase of Mexico's implementation of the labor reform and use of the Rapid Response Labor Mechanism to date

As noted in the introduction, this report focuses on the transitional period of Mexico's implementation of its labor reform, in light of the approaching end of the transition on May 1, 2023. The transition for the Federal Center was completed as of November 3, 2021, while state level implementation of the labor reform was staged in three phases, with the third and final group of states implementing the reforms on October 3, 2022. The initiation of the Federal and state labor tribunals followed these same three phases. We evaluate the progress made at the federal level, as the institutions and procedures have now been in place for over a year. We will evaluate the implementation at state level in a future report as more experience is gained at that level.¹⁵³

Following the evaluation of the transition at the federal level, we assess the use of the USMCA's novel Rapid Response Labor Mechanism to date, in particular for the light it sheds on the transition to the new labor justice system and Mexico's compliance with its labor obligations under the USMCA.

1. Evaluating the transitional phase of Mexico's implementation of its labor reform at the federal level and Mexico's compliance with the labor obligations of the USMCA

The transitional provisions and timetable for the four-year transition to full implementation of Mexico's reform of its labor justice system were set out in the May 1, 2019 law that implemented the constitutional amendments of 2017. The law recognized that the deep transformation of the system would take some time and in a final section specified the transitional measures ("Transitorios") to be taken during the four-year phase-in period.

A central aspect of the transition was the process for legitimizing existing collective bargaining agreements by allowing workers to vote whether to accept the agreements and by extension whether to accept representation by the unions that hold the ownership of those agreements. This process was seen as necessary to clear away protection contracts that did not have the support of the workers they covered and to establish a

¹⁵³ We note numerous recent reports of local CABs closing, laying off staff, and denying services on the basis of budget reductions. This is a matter of great concern as there are still hundreds of thousands of pending cases that must be resolved before these bodies can conclude their work. See, e.g., "Crónica de un cierre (muy) anunciado: Juntas de Conciliación bajan sus cortinas," *El Economista*, October 3, 2022, available at

<https://www.eleconomista.com.mx/capitalhumano/Cronica-de-un-cierre-muy-anunciado-Juntas-de-Conciliacion-bajan-sus-cortinas-20221002-0004.html>; "Junta Local de Conciliación y Arbitraje de la CDMX despide a más de 50 abogados," *El Sol de México*, October 4, 2022, available at <https://www.elsoldemexico.com.mx/metropoli/justicia/junta-local-de-conciliacion-y-arbitraje-de-la-cdmx-despide-a-mas-de-50-abogados-8984485.html>; Manuel Fuentes, "Sobre la supresión de pedazos de justicia laboral," *La Silla Rota*, December 13, 2022, available at <https://lasillarota.com/opinion/columnas/2022/12/13/sobre-la-supresion-de-pedazos-de-justicia-laboral-405788.html>.

foundation or baseline of legitimate agreements and representation rights on which the new labor justice system could build. It is also a requirement of USMCA Annex 23-A.2(f).

Under the previous labor law regime, it was possible for unions to register a contract and collect union dues without ever having to communicate with the covered workers or demonstrate their support. In contrast, the new regime established in Article 390 Bis of the revised labor law requires unions that wish to negotiate an initial collective bargaining agreement to first prove support by at least 30 percent of the workers who will be covered by the agreement. This applies to CBAs initiated after the law came into effect in 2019. The four-year transition period thus is a hybrid regime with unions holding existing contracts **not** required to demonstrate support by at least 30 percent of workers while unions that want to register a new contract must show such support. The legitimization of existing contracts—and the right of the union holding the contract to continue representing the workers—requires only that the covered workers vote to accept the contract during the four-year legitimization window.

Despite its pivotal role in rectifying and clearing away protection contracts, this legitimization mechanism had a significant weakness from the beginning because Transitional Article 11 of the revised law allows the **incumbent** union to conduct the contract legitimization process and vote. In other words, the leaders of a union that acquired ownership of a CBA under the old regime—without proof of worker support—can maintain ownership of that contract, secure its control of the collective bargaining relationship with the employer, and continue to collect dues by showing worker support through a voting process that they themselves control, with only minimal oversight by a government official or a notary paid by the incumbent union. Some of the unions that currently control CBAs undoubtedly have the support of the covered workers. But given the long and well-documented history of collusion between protection unions and employers, allowing incumbent unions to control the legitimization process raises significant concerns about potential conflict of interest and undermines the credibility of the transition to a new labor justice system.¹⁵⁴

The GM Silao case brought the risks involved into sharp focus: the STPS found extensive violations of the both the spirit and the letter of the legitimization process at the GM plant, described in section C.1 above. Union activists claim that the types of intimidation and

¹⁵⁴ Arturo Alcalde and Graciela Bensusan, “El sistema de justicia laboral en México: situación actual y perspectivas”. Fundación Friedrich Ebert México, 2013, available at: <http://library.fes.de/pdf-files/bueros/mexiko/10311.pdf>; ILO Committee of Experts on the Application of Conventions and Recommendations, “Observation, Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Mexico, 2017,” available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3343978; U.S. Department of Labor, USMCA Labor Rights Report, 2019, available at: <https://www.dol.gov/agencies/ilab/united-states-mexico-canada-agreement-usmca-labor-rights-report>.

collusion seen there are common in legitimization votes across the country.¹⁵⁵ It was only the presence of an organized group of workers in GM Silao, who were aware of the complaint processes available under the revised STPS protocol and the US Department of Labor hotline, that drew extraordinary surveillance by the STPS and brought the violations to light.

The remediation plan agreed between US and Mexico to repair the denial of rights in the initial GM Silao legitimization vote included a requirement that STPS provide the ballots for the vote and safeguard them throughout the voting process.¹⁵⁶ This requirement was an implicit acknowledgement that the authority assigned to incumbent unions by STPS and Federal Center protocols—to print the ballots and control them throughout the voting process—does not safeguard workers’ legal right to ratify CBAs freely and without coercion.¹⁵⁷ The remediation plan included a commitment that STPS would work with the Coordination Council that governs the Federal Center to review and update the protocol based on the experience and lessons learned from the legitimization process at the GM Silao facility in order to strengthen the Federal Center’s capacity to supervise, investigate, and sanction violations that occur before, during, and after voting.¹⁵⁸ This was a further indication that US and Mexico recognized that the protocol was not adequate to guarantee the rights of workers

Reinforcing the concern that the violations evident in the GM Silao case are widespread are the complaints that formed the basis of subsequent RRLM cases, the anomalies found by the Maquiladora Solidarity Network in its review of the votes conducted through mid-2021,¹⁵⁹ and the summary provided by STPS of the complaints about votes received on the electronic site provided for that purpose.¹⁶⁰

¹⁵⁵ El Economista. “Workers’ uprising at GM, another sign of union discontent”, Factor Capital Humano Editorial, 12 May 2021, available at: <https://factorcapitalhumano.com/leyes-y-gobierno/levantamiento-obrero-en-gm-otro-boton-de-muestra-del-descontento-sindical/2021/05/>

¹⁵⁶ United States and Mexico, Course of Remediation, paragraph 5, July 13, 2021, available at: <https://ustr.gov/sites/default/files/enforcement/USMCA/Silao%20Course%20of%20Remediation%20FINAL%207.13.2021.pdf>

¹⁵⁷ Gobierno de México. Extracto del Acuerdo por el que se aprueba el Protocolo para el procedimiento de legitimación de contratos colectivos de trabajo existentes, available at: <https://legitimacion.centrolaboral.gob.mx/Upload/ProtocoloLegitimacion.pdf>

¹⁵⁸ United States and Mexico, Course of Remediation, paragraph 20, July 13, 2021, available at: <https://ustr.gov/sites/default/files/enforcement/USMCA/Silao%20Course%20of%20Remediation%20FINAL%207.13.2021.pdf>

¹⁵⁹ See footnote 42 above.

¹⁶⁰ As noted above, the IMLEB requested information from STPS about the frequency and geographic distribution of complaints. The information provided covered only 14 complaints (of 287 received). The other complaints were dismissed, citing lack of information or other reasons. The complaints accepted included charges of dissemination of false information to misinform the workers and induce support for the legitimization of the CBA in question; presence of unauthorized persons at the vote; handling of

Perhaps most indicative of the potential conflict of interest and risk of fraud in the current approach is the fact that to date, only one percent of the contracts submitted to a legitimization vote have been rejected.¹⁶¹ Given the STPS' own estimate that only 15 to 20 percent of the existing contracts could pass the legitimization test by proving worker support, the fact that incumbent unions which conducted votes to date have reported majority support for the agreements in 99 percent of the consultations raises serious doubts about the credibility of the legitimization process.¹⁶²

There has not been sufficient oversight by the Mexican government to manage the risks inherent in this hybrid transitional regime, a failure which could allow protection contracts to survive into the future and continue to undermine the rights of workers to freedom of association and collective bargaining long after the transition period concludes. There are major shortcomings both in the number of officials responsible for verifying the legitimization process and in the rules established by the various versions of the Protocol for the Procedure of Legitimation.

Turning first to the question of staffing, as of July 2022, the Federal Center had hired 96 verifying personnel in Mexico City and there are 57 verifying personnel in the states.¹⁶³ While these verifiers can be supplemented with some of the 447 federal labor inspectors and perhaps state inspectors as well, those inspectors already have a full workload investigating wage, hour and health and safety compliance and the application of the major subcontracting reform implemented in 2021.¹⁶⁴ It is thus extremely difficult to see

ballots behind closed doors; and riots after the result of the vote. STPS reply to information request submitted by IMLEB, May 11, 2022, on file with the authors of this report.

¹⁶¹ Centro Federal de Conciliación y Registro Laboral, List of Legitimizations, available at:

https://legitimacion.centrolaboral.gob.mx/Listado_Legitimaciones.aspx

¹⁶² STPS, Boletín 168/2019, "Reforma Laboral atacará contratos de protección en el país: Alfredo Domínguez Marrufo", Sep. 17, 2019, available at: <https://www.gob.mx/stps/prensa/reforma-laboral-atacara-contratos-de-proteccion-en-el-pais-alfredo-dominguez-marrufo?idiom=es>; Omar Brito, "Solo 15% de contratos colectivos pasará legitimación de trabajadores: STPS," Milenio, Oct. 7, 2020, available at: <https://www.milenio.com/politica/15-contratos-colectivos-pasara-legitimacion-trabajadores>; María del Pilar Martínez, "Solo 15% de los contratos colectivos pasarían la legitimación," El Economista, Mar. 18, 2021, available at <https://www.eleconomista.com.mx/empresas/Solo-15-de-contratos-colectivos-pasaran-la-prueba-de-legitimacion-sindical-STPS-20210318-0068.html>.

¹⁶³ US Interagency Labor Committee for Monitoring and Enforcement, "Report on labor monitoring and enforcement under USMCA," July 18, 2022.

¹⁶⁴ US Department of Labor, Bureau of International Labor Affairs (ILAB), Notice of Availability of Funds and Funding Opportunity Announcement for Strengthening Mexican Inspectorate for Labor Enforcement, February 23, 2022, available at: <https://www.grants.gov/web/grants/view-opportunity.html?oppId=338307>. ILAB notes that "According to the ILO's technical advice of a ratio approaching 1 inspector for every 15,000 workers in developing economies, Mexico should employ roughly 3,634 labor inspectors." The US Department of State's "2021 Country Reports on Human Rights Practices: Mexico" reports that "there were 600 federal labor inspectors to cover the entire country; 60 percent of state level labor authorities had fewer than 10 inspectors", available at:

<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/mexico/>

how government authorities can effectively oversee legitimization votes with the current resources.

The Mexican government's current approach to address the staffing shortfall is to authorize notaries to conduct the oversight of legitimization votes. The notaries are selected and paid by the incumbent union that is defending its ownership of the contract, despite the strong potential for a conflict of interest created by this arrangement. The use of notaries compensated by the incumbent union is an existing practice in Mexican labor proceedings but there are allegations of corruption among notaries, as noted above. The joint Memorandum of Understanding signed by STPS and the Federal Center with the National College of Mexican Notaries (CNNM) and the United Nations Development Program (UNDP) encourages the participation of notaries in the process of legitimization of collective contracts.¹⁶⁵ Already almost a quarter of votes have been overseen only by a notary selected by the incumbent union; and as the May 2023 deadline for legitimization approaches, tens of thousands of votes may be monitored only by a notary. In effect, the protocol allows a corrupt union to engage and pay a notary and thus legitimize a CBA and continue to collect dues.

Turning to the rules governing the legitimization process, we have already noted that a number of observers expressed serious concerns about assigning full control of the process for legitimizing collective bargaining agreements to the union that controls the CBA and thus benefits from it through the collection of union dues.¹⁶⁶ In response to such criticisms, including those raised by the IMLEB in our first two reports, the STPS modified the initial protocol in February 2021, making two key changes.¹⁶⁷ First, the STPS assigned itself the authority—although not the responsibility—to verify compliance with the requirements for legitimization votes before, during or after the votes, including in cases where the union chose to have the process overseen by a notary public. Second, it established an online mechanism through which workers could register complaints of non-compliance with regard to a particular legitimization vote. The protocol was amended again in April 2021 in anticipation of the transfer of responsibility for the legitimization process from STPS to the Federal Center on May 1, 2021. The revised protocol incorporates the substantive and procedural approaches of the original and amended STPS protocols and transfers responsibility for oversight of the process to the Federal Center.¹⁶⁸

¹⁶⁵ STPS, Bulletin Number 072/2020, September 08, 2020, available at: <https://www.gob.mx/stps/prensa/stps-firma-memorandum-de-entendimiento-para-que-el-notariado-de-mexico-coadyuve-en-la-implementacion-de-la-reforma-laboral?idiom=es>

¹⁶⁶ IMLEB Interim Report, December 15, 2020, available at: https://www.researchgate.net/publication/359733044_IMLEB_Interim_Report_and_Separate_Statement

¹⁶⁷ Gobierno de México. Agreement by which various provisions of the Protocol for the Legitimation of Existing Collective Bargaining Agreements are modified and added, available at: https://dof.gob.mx/nota_detalle.php?codigo=5610863&fecha=04/02/2021

¹⁶⁸ Centro Federal de Conciliación y Registro Laboral, “Extracto del Acuerdo por el que se aprueba el Protocolo para el procedimiento de legitimación de contratos colectivos de trabajo existentes”, April 30,

The General Guidelines for Trade Union Democracy Procedures (Guidelines) that took effect in August 2022 set out the rules for such procedures going forward and indicate that these may be applied to disputes that arise during the legitimation of existing collective bargaining agreements. They apparently do not replace the detailed procedural rules for legitimation votes contained in the protocol except in cases where the vote is challenged.

The protocol amendments and Guidelines strengthen the **possibility** of greater government oversight of legitimation votes but do not mandate it. In effect, the approach leaves the responsibility to workers to raise complaints, rather than creating an effective and proactive enforcement system that is based on adequate monitoring to detect violations and adequate sanctions to deter them.

Leaving enforcement to workers is problematic considering that they do not have access to a casefile, face extremely short deadlines to file complaints (3 days after the vote concluded), and are often insufficiently organized and under-resourced. It is problematic as well that, as shown by the BBB case, when workers are able to file a complaint, the Federal Center does not conduct a proactive investigation to determine if workers' allegations have merit. Instead, the authorities rely on the information that they have already on file.

A number of specific changes to the protocol and/or the Guidelines could strengthen the legitimation process during its remaining months, when thousands of legitimation votes are expected.

- a. First, the current protocol leaves to the incumbent union the decision whether to have oversight of the legitimation vote by the government or by a private notary paid by that union. Instead, the protocol should require oversight of all legitimation votes by government officials. It is important to note that this is also a requirement under the USMCA, which specifies that each government party to the agreement is responsible to **conduct** and **guarantee** the fairness and impartiality of labor procedures. Article 23.10 of the trade agreement discusses enforcement through judicial bodies ("tribunals") and then in its paragraph 10 addresses the requirements for non-court proceedings:

Article 23.10 (10). Each Party shall ensure that other types of proceedings within its labor bodies for the implementation of its labor laws:

- (a) are fair and equitable;
- (b) **are conducted by officials who meet appropriate guarantees of impartiality**; [emphasis supplied]

2021, available at:

https://www.centrolaboral.gob.mx/documentos/protocolo_legitimacion_contratoscolectivos.pdf

(c) do not entail unreasonable fees or time limits or unwarranted delay; and

(d) document and communicate decisions to persons directly affected by these proceedings.¹⁶⁹

Given the government staff shortages, a compromise stop-gap measure to manage the risk of conflict of interest would be for the government to select, train and pay the notaries involved in the legitimization votes between now and the May 1, 2023 deadline. The Guidelines for future union democracy procedures are silent on the use of notaries.¹⁷⁰ We emphasize, however, that ultimately it is the government that bears legal and political responsibility for the implementation of the USMCA mechanisms.

- b. A second issue that requires further attention is the relative responsibility placed on workers to complain of irregularities or violations of their rights during the legitimization process. The current protocol covers this in its seventh chapter dealing with irregularities (*inconformidades*) in Articles 37-43. Article 37 states that “Workers covered by a collective bargaining agreement subject to legitimization may complain to the Center due to the existence of irregularities during the procedure” and directs that the Center must analyze the available evidence relating to the worker’s complaint.¹⁷¹ Article 39 lays out the procedure for filing a complaint, including requirements that “The complaint must be accompanied by the greatest amount of evidence that supports it. If no evidence is attached, the description of the disputed facts must be supported by at least two witnesses, attaching a copy of their official identification and autograph signature.”¹⁷² This process imposes an unsupportable burden on workers, given the imbalance of power between them and their employer, the likelihood that documentary evidence is unavailable to them, and the ability of the incumbent union or employer to intimidate suspected complainants and witnesses. The process laid out in these articles is also at odds with the new emphasis in the reformed judicial processes of Mexico and in court proceedings under the reformed labor law on oral testimony and elimination of bureaucratic requirements wherever possible. The Guidelines for union

¹⁶⁹ USMCA Chapter 23 Labor Article 23.10, available at:

<https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

¹⁷⁰ The Guidelines for prospective union democracy procedures establish the role of “union electoral observer” for votes on both CBAs and union officer elections and state that the trade union commission responsible for organizing and carrying out the votes must be made up of active workers affiliated to the union, members of the current union leadership or union representatives. Articles 39-42 of the Guidelines state that the Federal Center will accredit union electoral observers and must revoke accreditation if it “detects any conflict of interest after the issuance of the accreditation”.

¹⁷¹ Protocolo op. cit., available at:

https://www.centrolaboral.gob.mx/documentos/protocolo_legitimacion_contratoscolectivos.pdf

¹⁷² Ibid.

democracy procedures going forward, which as noted can be applied when complaints are filed during the transitional legitimation process, relax the requirements somewhat and create the possibility for government officials to conduct more investigation. The protocol should be revised to mandate greater monitoring and oversight by government, as already mentioned, but also to require more robust investigative procedures when complaints are raised.

- c. A third weakness in the protocol that deserves attention is the requirement that the Federal Center resolve any disagreements over a legitimation vote within 20 days after the event (Article 35). Given the inadequacy of Federal Center staffing this is a tight constraint. As the deadline for legitimation of contracts draws near, there is a likelihood that the number of legitimation events will increase significantly. This could pose further profound challenges to the integrity of the system and the capacity for government oversight¹⁷³. With regard to the 20-day deadline for Federal Center review of cases, the inability to process thousands of votes over a short period could extinguish the possibility of adequate oversight and allow protection contracts to be considered legitimized for the future. To avoid this, the protocol could be amended to include a special extended time period to review legitimation events that are scheduled before August 1, 2023.

Even if the protocol is revised as suggested above, the broader risks entailed in allowing self-interested unions to control the legitimation process would continue to give rise to conflicts and must be corrected. The most effective way to do so would be to require the government, rather than the incumbent union, to conduct the votes to determine whether workers support existing contracts. The Federal Center could revise the protocol to assign to itself the authority to conduct all remaining legitimation votes, although this might require an amendment to Transitional Article 11 of the FLL and would certainly require a significant budget allocation to shoulder the additional burden.¹⁷⁴ It is worth noting that the transitional provisions of the FLL explicitly anticipate that further legal changes may be required during the transition by assigning to the government's oversight body for labor reform, the Coordination Council for the Implementation of the Reform of the Labor Justice System, the power to "[d]esign criteria for the implementation of **legal** [emphasis supplied] and regulatory adjustments necessary to fulfill its purpose."¹⁷⁵ Changes have recently been made to the law to postpone the effective date of Phase 3 of the transition and further proposed amendments have

¹⁷³ This may in fact reflect a strategic choice by some protection unions to delay the scheduling of their legitimation votes to the last minute and opt for oversight by a notary of their choosing.

¹⁷⁴ Any such modification of the Protocol should also specify that a union that fails to legitimate a CBA (requiring 50%+1 of the workers) by the deadline cannot subsequently seek a Certificate of Representativeness for the same unit (requiring only 30% of the workers). Because some union leaders control multiple labor organizations, this prohibition must be extended to prevent a leader from simply substituting unions while maintaining ultimate control.

¹⁷⁵ Gobierno de México. Ley Federal del Trabajo, Transitorios, Transitional Article 17 second paragraph III, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/125_020719.pdf

been submitted to the Mexican legislature, indicating that changing the law is a viable path.

- d. Finally, it is notable and alarming that in every one of the Rapid Response cases discussed above, there are significant and credible reports of violence and threats against workers who attempted to form and join independent unions, with little evidence of prosecution or even investigation by the authorities.¹⁷⁶ It is important to recall the injunction of Article 23.7 of the USMCA:

The Parties recognize that workers and labor organizations must be able to exercise the rights set out in Article 23.3 (Labor Rights) in a climate that is free from violence, threats, and intimidation, and the imperative of governments to effectively address incidents of violence, threats, and intimidation against workers. Accordingly, no Party shall fail to address violence or threats of violence against workers, directly related to exercising or attempting to exercise the rights set out in Article 23.3 (Labor Rights), in a manner affecting trade or investment between the Parties.¹⁷⁷

The accumulation of time and experience, including cases brought under the Rapid Response Labor Mechanism, have now made clear that the arrangement set out in Transitional Article 11 leaves critical gaps in translating the requirements of the Mexican Constitution into law and practice. The Constitution establishes the following rights and obligations in Art. 123:¹⁷⁸

Section XVIII (second paragraph). When it comes to obtaining the conclusion of a collective bargaining agreement, **it must be proven** [emphasis supplied] that it has the representation of the workers.

Section XXII Bis. The procedures and requirements established by law to ensure freedom of collective bargaining and the legitimate interests of workers and employers, **must guarantee**, [emphasis supplied] among others, the following principles:

- a) Representativeness of trade union organizations, and

¹⁷⁶ See footnotes 62-63, 73, 98, 119 and 130 above, and additional materials referenced in the respective RRM petitions.

¹⁷⁷ <https://usmca.com/labor-usmca-chapter-23/>

¹⁷⁸ Constitución Política de los Estados Unidos Mexicanos, as amended February 24, 2017, available at: https://www.gob.mx/cms/uploads/attachment/file/234847/Decreto_DOF_Reforma_CPEUM_24.02.17.pdf; Gobierno de México, STPS, "Labor Justice Reform", available at: <https://www.gob.mx/stps/documentos/reforma-en-materia-de-justicia-laboral?idiom=es>

b) Certainty in the signing, registration and deposit of collective bargaining agreements.

The deficits in the current protocol and Transitional Article 11 of the labor law do not eliminate the responsibility of the STPS and the Federal Center to carry out the constitutional mandate to ensure freedom of collective bargaining and the legitimate interests of workers by guaranteeing the representativeness of trade union organizations and certainty in the signing, registration and deposit of collective bargaining agreements.

This is also required by Annex 23-A of the USMCA, under which Mexico agreed to the following:¹⁷⁹

Paragraph 2(e) Adopt legislation in accordance with Mexico's Constitution (*Constitución Política de los Estados Unidos Mexicanos*) requiring:

(i) verification by the independent entity [Federal Center] that collective bargaining agreements meet legal requirements related to worker support in order for them to be registered and take legal effect; . . .

The obligation is further specified with regard to the transition process for legitimization of existing collective bargaining agreements:

Paragraph 2(f). Adopt legislation in accordance with Mexico's Constitution (*Constitución Política de los Estados Unidos Mexicanos*), which provides that, in future revisions to address salary and work conditions, all existing collective bargaining agreements shall include a requirement for majority support, through the exercise of personal, free, and secret vote of the workers covered by those collective bargaining agreements.

The legislation shall also provide that all existing collective bargaining agreements shall be revised at least once during the four years after the legislation goes into effect. The legislation shall not imply the termination of any existing collective bargaining agreements as a consequence of the expiration of the term indicated in this paragraph, **as long as a majority of the workers covered by the collective bargaining agreement demonstrate support for such agreement through a personal, free, and secret vote** [emphasis supplied].

The legislation shall also provide that the revisions must be deposited with the independent entity [the Federal Center]. In order to deposit the future revisions, the independent entity shall **effectively verify** [emphasis supplied] through, as justified under the circumstances, documentary evidence (physical or electronic),

¹⁷⁹ USMCA Chapter 23, Labor Annex 23-A, available at:
<https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

direct consultation with workers, or on-site inspections [emphasis supplied] that:

- (i) a copy of the revised collective bargaining agreement was made readily accessible to the workers covered by the collective bargaining agreement prior to the vote, and
- (ii) a majority of workers covered by the revised agreement demonstrated support for that agreement through a personal, free, and secret vote.¹⁸⁰

Under the current trajectory, there is a serious risk that at the end of the four-year transition period large numbers of existing CBAs that are in fact protection contracts could be deemed to be legitimated without fulfilling these prerequisites—whether due to shortcomings of the protocol or the transitional provisions of the labor law reform or to insufficient government oversight. This would signal a failure of the legitimation process and a denial of rights to freedom of association and collective bargaining, and it would increase the risk of ongoing labor conflicts within the country and disputes arising under the Rapid Response Labor Mechanism, potentially leading to a determination that Mexico is not in compliance with its labor obligations under the USMCA. We offer recommendations to the Interagency Labor Committee and the committees of jurisdiction of the US Congress in Section IV of this report to avoid these risks and denials of rights through engagement with the Mexican government to urge revisions to the protocol and union democracy processes.

If the Federal Center takes responsibility for conducting *all* of the verification votes, it will need a strategy to accomplish this within the remaining transition period to May 2023. IMLEB's earlier reports sketched out one illustrative approach, which would involve organizing the votes by sector. As noted in those reports, the Federal Center could establish a calendar under which each sector would be assigned a time period when all contracts in that sector would be voted. In advance of the vote the Federal Center, supported by STPS, the Federal Prosecutor for the Defense of Labor (PROFEDET) and the State Prosecutor's Offices for the Defense of Labor and perhaps by academia, civil society and media, should provide wide public education for workers in that sector on the nature and purpose of the legitimation process and the range of terms in existing contracts within that sector on key issues such as wages and benefits. Perhaps most importantly, the worker education could make very clear that if the vote on the contract is negative, there are options available to the workers: the union that formerly represented the workers could seek a new Certificate of Representativeness by showing support of 30 percent of the workers,¹⁸¹ or the workers could choose another union to represent them. Based on

¹⁸⁰ Ibid.

¹⁸¹ But see note 161, *supra*.

this foundational preparation the workers would be in a position to exercise their vote with adequate information and thus genuine freedom of association and collective bargaining.

Under any of the plausible scenarios for the legitimization process during its remaining months, the Federal Center and labor inspectorate will need additional staffing, through additional hiring and also perhaps through selection, training and payment of notaries, as suggested above. One potential source of funds to adequately staff the transitional process could be found in the \$800,000,000 policy-based loan from the Inter-American Development Bank (IDB) to Mexico approved on May 15, 2020. The purpose of the loan is to improve the quality of employment by supporting implementation of the labor law reform.¹⁸² Given the importance of a successful transition from the old labor law regime to the new one and the limited time to complete the transition by May 2023, this would seem to be an effective use of part of those funds. The US government should use its voice and oversight role at the IDB to ensure that these funds or new funds approved to support the implementation of labor law reform in Mexico are used for that purpose.

Finally, there have been calls and proposals within Mexico for further reforms to the labor law.¹⁸³ At this time it is not possible to assess the prospects for such changes. However, should labor law reform again be on the agenda in Mexico, it will be critical to ensure that changes strengthen labor rights and correct weaknesses of the May 2019 reform. In some cases, for example a proposal by CTM and some other traditional unions to extend the four-year transition period for legitimization of existing agreements, the changes would likely be inconsistent with obligations under USMCA Chapter 23 and Annex 23-A. In other cases, suggested reforms could enhance the prospect for realization of the rights of Mexican workers included in the Mexican constitution, reformed labor law and USMCA, for example by strengthening the oversight role of the Federal Center.

The US would have to agree to any changes that are inconsistent with the current USMCA text and should use that leverage to ensure that any modifications contribute to achieving the spirit and intent of the Mexican labor reform and the labor provisions of the trade agreement. One illustration can be found in the proposal to extend the period for legitimization of existing CBAs. Should that move forward, the required changes to the labor law and USMCA should correct the fundamental flaw in the transitional provisions

¹⁸² Inter-American Development Bank, ME-L1289:Program to Improve the Quality of Employment in Mexico, May 15, 2020, available at: <https://www.iadb.org/en/project/ME-L1289>

¹⁸³ Maria Del Pilar Martinez, "They seek to reform the Federal Labor Law to 'close gaps'", El Economista, May 8, 2022, available at:

<https://www.eleconomista.com.mx/empresas/Sindicalistas-proponen-reformar-de-nueva-cuenta-la-Ley-Federal-del-Trabajo-para-cerrar-huecos-20220508-0013.html>; María Del Pilar Martínez, "Unions ask to extend the period to legitimize contracts", El Economista, May 3, 2022, available at: <https://www.eleconomista.com.mx/empresas/Centrales-obreras-piden-ampliar-el-periodo-para-legitimar-contratos-colectivos-de-trabajo-20220503-0085.html>; María Del Pilar Martínez, "Proposal advances in the Chamber of Deputies to strengthen minority unions", May 26, 2022, available at: <https://www.eleconomista.com.mx/empresas/Avanza-propuesta-en-la-Camara-de-Diputados-para-fortalecer-a-sindicatos-minoritarios-20220526-0067.html>

of the May 2019 reform that assigned incumbent unions the responsibility for conducting legitimization votes. Instead, revisions to the law should require that the government conduct these votes. We have already suggested an approach that could enable the Federal Center, related public institutions and concerned civil society to do so through coordinated voting by sector, with widespread education and clear information provided to workers before the votes.

2. Evaluating use of the Rapid Response Labor Mechanism to date

The Rapid Response Labor Mechanism cases to date have provided clear illustrations of problems inherent in the transitional process. In some cases the lessons were reflected in the new Guidelines, although we have observed that those changes did not eliminate fundamental weaknesses of the existing procedures. The availability of the RRLM did provide Mexican workers with an additional avenue to challenge violations of their rights and the US and Mexican governments demonstrated the political will to use the new mechanism in a spirit of cooperation and on a rapid timeline.

The mechanism has proved effective in enabling workers who are aware of the reformed law and procedures to exercise their rights under the USMCA and Mexican law to form independent unions and win the right to collective bargaining. In 6 of 7 cases (GM, Tridonex, Panasonic, Teksid, Saint-Gobain, VU), workers have won the right to representation by democratically-elected, independent unions, and in three of these cases (GM, Panasonic and Teksid), independent unions have negotiated significant improvements in rights, wages and benefits. But there have been significant setbacks as well: many workers fired in these campaigns were not reinstated; in every case workers have faced threats and violence with no consequences for the perpetrators; and workers at some of these facilities continue to face strong resistance from employers and protection unions.

The RRLM cases that were accepted for action led to outcomes that were generally considered successful by the two governments but sometimes criticized by the actors directly involved. The Mexican government ordered new elections or facilitated negotiations between the parties, but it was often left to the unions and workers whose rights had been denied to try to achieve remedies such as reinstatement of fired workers and back wages, and they have been only partly successful.

The limited number of cases is also a cause for concern. While predictions of thousands of Rapid Response complaints may have been unwarranted, it is clear that the small number of cases actually filed is not proportional to the number of labor rights violations reported daily in the Mexican press and on social media. Nor does it reflect any lack of effort on the part of U.S. Labor Attaches, who have been energetic and professional in investigating reports of violations, or the Department of Labor's partner organizations, which are working assiduously to build Mexican workers' capacity to exercise their rights.

In practice, the process of filing a Rapid Response case has required far more than a simple complaint. Each of the cases accepted so far has required hundreds of hours of work by Mexican labor activists, their legal advisors, and US trade union and NGO supporters, as well as Labor Attaches and other US government personnel. While the process may become easier as all of these actors gain experience, the demand for skills will continue – particularly legal skills, given the small number of union-side labor lawyers in Mexico, especially outside the capital.

Given the USMCA objective of promoting freedom of association and collective bargaining in Mexico, DOL should take account of the historical imbalances in power and resources between employers and employer-supported unions on one hand and independent unions on the other and should not place an unreasonable evidentiary burden on petitioners in Rapid Response cases. The techniques and criteria developed by the National Labor Relations Board provide a useful framework for building investigatory capacity.¹⁸⁴ It is also important not to close RRLM cases prematurely, before workers have been able not only to organize independent unions but also to negotiate and implement collective bargaining agreements.

¹⁸⁴ Given the USMCA objective of promoting freedom of association and collective bargaining in Mexico, DOL should recognize the historical imbalances in power and resources between employers and employer-supported unions on one hand and independent unions on the other and not place an unreasonable evidentiary burden on petitioners in Rapid Response cases.

- To establish a Denial of Rights in a Covered Facility, there is no requirement to prove that the employer committed, or even knew of, the DOR. For example, threats by an incumbent protection union constitute a denial of rights and are therefore actionable.
- Where an employer Denial of Rights is alleged, there is no requirement for the petitioners to show that the employer acted willfully or that its actions were directed exclusively against supporters of the independent union.
- A logical approach here would be to use the NLRB's *Wright Line* test for violations turning on employer motivation: (1) first, DOL should be required to make a *prima facie* showing sufficient to make the inference that the protected conduct was a "motivating factor" in the employer's decision; (2) Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. *Wright Line*, 251 NLRB 150 (1980), p. 189.
- It is important to document violations with signed affidavits of witnesses. See NLRB, Unfair Labor Practice Manual, August 2022, at 10060 ('The face-to-face affidavit taken by a Board agent is the "keystone" of the investigation and is the preferred method of taking evidence from witnesses, particularly in category II and III cases. Affidavits set forth exactly what each witness recalls and provide a permanent record of the testimony, which can be relied upon in making a decision regarding the case. In taking an affidavit, the Board agent should record the testimony of the witness as accurately and in as much detail as is possible and appropriate.').
- It is also important not to close cases prematurely. An election victory or a contract ratification by an independent union is an important achievement, but it by no means remediates the impact of decades of employer and protection union domination.
- A clear exposition of the evidentiary standards and investigatory criteria employed by the USG will strengthen any case that may come before a Panel.

While the initial cases offer some hope, the unfortunate truth is that little has changed in the overwhelming majority of Mexican workplaces, including key manufacturing industries in critical supply chains. There is little indication that workers feel empowered by the new legislation or are even aware of it. As the US seeks to enhance economic and environmental security by regaining control of critical supply chains, the experience to date shows that companies that locate in Mexico to enjoy low wages and proximity to US markets have continued to violate Mexican workers' rights, while increasingly sourcing from China.¹⁸⁵ Unless the Mexican government strengthens its enforcement regime and imposes penalties that are sufficient to deter future violations, it is likely that Mexican and U.S. workers will continue to be denied a fair share of the wealth they produce. The fundamental promise of the USMCA – narrowing the vast wage gap between U.S. and Mexican workers by raising Mexican wages up rather than driving U.S. wages down – will remain out of reach, as it was for 25 years under NAFTA.¹⁸⁶

The RRLM cases to date have been resolved without proceeding to establishment of a labor panel or imposition of sanctions. Therefore, important aspects of the mechanism remain untested. While it does appear that the potential for firm-specific restriction of trade benefits under the USMCA has had an effect on some of the companies directly involved in complaints, leading them to remedy or minimize their denials of workers' rights, it is not yet possible to assess whether the RRLM has created broader deterrent effects on other firms.

IV. CONCLUSION AND RECOMMENDATIONS

Mexico continues to take steps to implement the May 1, 2019 labor law reform. The efforts of the López Obrador administration and the leadership of the STPS and Federal Center to realize the transformation called for in the law and the USMCA deserve recognition.

However, with less than six months of the four-year transition to the new labor justice system remaining, many of the changes promised to improve the lives of workers in terms of union democracy, freedom of association and collective bargaining remain to be fully implemented. Some of the mechanisms adopted and utilized by the STPS and Federal

¹⁸⁵ See Max de Haldevang, "Chinese Manufacturers Get Around US Tariffs With Some Help From Mexico," Bloomberg, September 13, 2022, available at: <https://www.bloomberg.com/news/articles/2022-09-13/chinese-companies-get-around-us-tariffs-with-some-help-from-mexico?sref=DoKwwkyq>. Since the enactment of NAFTA, the share of Mexico's imports from the United States has dropped from over 70% to below 50%, while the share of its imports from China has risen from near zero to almost 20%, raising significant concerns about the labor conditions in critical USMCA supply chains. See Enrique Dussel Peters, "Trade opportunities for Mexico in the context of tensions between the United States and China since 2017," Boletín Informativo Techint, October 2021, p. 84, available at: https://www.researchgate.net/publication/355152273_TRADE_OPPORTUNITIES_FOR_MEXICO_IN_THE_CONTEXT_OF_THE_TENSIONS_BETWEEN_THE_UNITED_STATES_AND_CHINA_SINCE_2017

¹⁸⁶ As noted in previous reports, even if the wage gap were in fact closing, we have no accurate means to compare real wages in manufacturing and other sectors since the elimination of the U.S. Department of Labor's International Labor Comparisons program in 2013.

Center allow potential conflicts of interest to persist or fail to require adequate supervision by the government. Workers who attempt to challenge protection contracts and demand union democracy, higher wages, or even protective equipment have been harassed, fired, and threatened. In the first three and a half years of the USMCA the US has brought five cases under the Rapid Response Labor Mechanism after identifying credible allegations of denials of workers' rights. Evidence suggests that the problems seen in those cases are widespread.

The Independent Mexico Labor Expert Board is authorized by statute to make "a determination that Mexico is not in compliance with its labor obligations" under the USMCA.¹⁸⁷ We do not make such a determination at this time, but we are increasingly concerned that the transition period for full implementation of Mexico's labor reform will end next May with large segments of the old protection contract system still intact, including in critical manufacturing sectors and their suppliers. In order to mitigate that risk and accelerate progress on establishing the new labor justice system, we offer the following recommendations to the Inter-Agency Labor Committee and the Congress to address the legal, institutional, procedural, and practical obstacles to the exercise of fundamental worker rights in Mexico that this report identifies.

RECOMMENDATIONS

■ End violence against workers

We again urgently call on the ILC and Congress to make every effort to assist Mexico in stopping surveillance, harassment, threats, arrest, physical violence, and assassination of workers exercising their protected rights, at both Federal and state level, and ensuring that those responsible are brought to justice. We reiterate this call in light of the credible threats of violence reported in nearly every Rapid Response case so far, not one of which has led to an arrest, prosecution or detention. This impunity has a chilling effect on efforts to democratize labor relations.

■ Reform the processes for legitimization of collective bargaining agreements and union recognition

The ILC and Congress should urge Mexico to further modify the Protocol for legitimization of existing CBAs to (1) require that all legitimization votes be conducted by government representatives—not incumbent unions or notaries—in order to ensure protection of workers' rights; (2) organize legitimization votes by sector, following a schedule determined by the government and providing meaningful education about the process and options to workers in that sector in advance; (3) ensure active monitoring and prompt and effective investigation of all complaints filed by workers regarding violations of rights and legitimization processes; (4) mandate the Federal Center and STPS to conduct monitoring that is adequate to detect violations and impose sanctions sufficient to deter them; (5) where evidence of serious violations by the incumbent union during or prior to the vote is

¹⁸⁷ USMCA Implementation Act, Sec. 734.

observed or received, the union's ownership of the contract should be revoked rather than simply rescheduling the vote.

In the more than 100,000 workplaces where CBAs are likely to be nullified, Mexico must insure that employers fulfill their obligation to incorporate the economic provisions of CBAs into individual employment contracts.

With regard to votes to determine union representation of workers when more than one union claims worker support, the ILC and Congress should urge Mexico to ensure that the Federal Center provides meaningful oversight and verification of such claims. Recent experience in the election at GM Silao indicates that the Federal Center has not fulfilled its obligation to verify claims of worker support, allowing unrepresentative unions to appear on union representation ballots. The US should offer a program of collaboration between the NLRB and the Federal Center and STPS to share best practices on investigation and enforcement of workers' rights in representation and collective bargaining processes.

■ Promote transparency

As long as workers do not have effective access to key documents that define their rights – their collective bargaining agreements and the statutes and financial reports of their unions – it will be difficult to establish effective union democracy. Putting these documents on the internet is an important step forward, but it does not ensure access: every worker should timely receive a printed copy of his or her contract, union statutes and financial reports. The authorities responsible for monitoring union democracy processes, including contract legitimization votes, votes to determine title to CBAs, and contract ratifications by union members, must ensure that workers have adequate opportunities to read and understand these documents and provide regular reports indicating what measures were taken to guarantee these opportunities.¹⁸⁸

The ILC and Congress should also carefully monitor Mexico's enforcement of the labor law, including by requesting relevant information on the number, nature, geographical and sectoral distribution of labor inspections and worker complaints.

■ Increase staffing for the labor reform

The ILC and Congress should urge Mexico to hire additional labor inspectors and Federal Center verifiers and improve salaries, civil service protections and career paths to retain talented staff.

¹⁸⁸ Given the historical lack of transparency and the strong public interest in access to CBAs, the Board supports the initiative to establish a Public Repository of the CFCRL Labor Registry that integrates the information and documents in registration matters from available sources and makes them searchable through a simple and powerful interface for users and thus make them available to the public for consultation and Download via the Center's website.

The US government should use its voice and oversight role at the Inter-American Development Bank to ensure that funds approved to support the implementation of labor law reform in Mexico are used for that purpose and that additional funds are allocated if needed. The Board requests an updated report from the Treasury Department on this issue.

■ Monitor prospective amendments to the Mexican labor law

As the May 1, 2023 deadline to complete the transition to the new labor justice system approaches, there have been proposals to extend the deadline or to make other changes. We strongly encourage the congressional committees of jurisdiction and the ILC to monitor proposals and legislative debates to ensure that any amendments to the law support the objectives of the labor law reform, expand and reinforce workers' access to labor justice, reform judicial and administrative processes to make them more effective, transparent and accessible, and that they conform to the letter and the spirit of the obligations contained in USMCA Chapter 23 and Annex 23-A.

■ Increase and focus USG funding to build worker capacity

Institutional reforms to improve the supply of labor justice will have little impact without an increase in demand by workers who have the knowledge and security to effectively exercise their rights. Given the shortcomings in implementation of the reforms addressed in this report, it is even more important that the delivery of USMCA funds be focused on building worker capacity, front-loaded in light of the approaching end to the transition, and streamlined to reduce bureaucratic obstacles. To this end, as previously recommended, ILAB should promptly direct additional unallocated USMCA funding to building worker capacity for organizing and bargaining, including legal and research support. Congress should consider appropriating additional funds as needed.

■ Message to Mexican workers and employers

The US Government and its representatives in Mexico should take every opportunity to send a strong message to companies producing goods and services in Mexico for export to the US market that there will be no more “business as usual” when it comes to respecting workers' rights to organize and bargain. This is particularly important in light of the increased investment in Mexico resulting from the Inflation Reduction Act and other measures to strengthen critical supply chains. The actions of the ILC in advancing cases under the Rapid Response Labor Mechanism are important steps in the right direction but will require ongoing and consistent reinforcement. As noted above, the investigation and prosecution of persons responsible for violence, intimidation, and other interference with the democratic processes established in Mexico's 2019 labor law reforms is necessary to ensure the effectiveness of these reforms.

V. ANNEX A. Key provisions of Mexico's May 1, 2019 Labor Law Reform

Mexico's reform of the Federal Labor Law (FLL), enacted on May 1, 2019,¹⁸⁹ implemented reforms to Article 123 of the Constitution effected in 2017¹⁹⁰ and additional provisions to comply with Article 23 and Annex 23-A of the USMCA.¹⁹¹ The following are among the key provisions of the legislation:

- Union statutes must provide that officers be elected by personal, free, secret and direct vote of the members and following gender proportionality.¹⁹² These provisions were required to be included in all union statutes within 240 days,¹⁹³ but deadlines have been extended due to the pandemic.¹⁹⁴
- The labor authorities may verify the results of union elections based on a request from the union leadership or 30 per cent of the workers.¹⁹⁵
- Union statutes must provide for disclosure of financial reports to the members, in writing, every six months.¹⁹⁶

¹⁸⁹ DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Federal de la Defensoría Pública, de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores y de la Ley del Seguro Social, en materia de Justicia Laboral, Libertad Sindical y Negociación Colectiva, May 1, 2019, available at https://www.dof.gob.mx/nota_detalle.php?codigo=5559130&fecha=01/05/2019

¹⁹⁰ DECRETO por el que se declaran reformadas y adicionadas diversas disposiciones de los artículos 107 y 123 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Justicia Laboral, available at http://www.dof.gob.mx/nota_detalle.php?codigo=5472965&fecha=24/02/2017

¹⁹¹ See USMCA, Chapter 23, available at <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

¹⁹² FLL Articles 371.IX and 371.IX Bis. These provisions were upheld in A.R. 1109/2019, p. 40, A.R. 18/2020, p. 40 and A.R. 28/2020, p. 41, adopted by the Second Chamber of the Supreme Court on Nov. 25, 2020.

¹⁹³ FLL Transitional Article 23

¹⁹⁴ The most recent data provided by Mexico indicate that in the Federal jurisdiction 1,966 unions out of 2,090 (90.4%) have revised their statutes to comply with the 2019 Reform, while in the Local (State) jurisdiction 3,851 out of 10,574 unions have done so. See <https://reforma laboral.stps.gob.mx/> (consulted June 26, 2021).

¹⁹⁵ FLL Article 371 Bis, upheld in A.R. 1109/2019, p. 46, A.R. 18/2020, p. 46 and A.R. 28/2020, p. 47.

¹⁹⁶ FLL Article 373; also Article 358.IV, upheld in A.R. 30/2020, p. 39, adopted by the Second Chamber of the Supreme Court on Nov. 25, 2020.

■ Employers must give all workers covered by a collective bargaining agreement a printed copy of that agreement.¹⁹⁷

■ All collective bargaining agreements¹⁹⁸ and union statutes¹⁹⁹ must be made available online.

■ All initial collective bargaining agreements and all existing collective bargaining agreements that are renegotiated must be ratified by a personal, free and secret vote of the covered workers.²⁰⁰

■ All existing collective bargaining agreements must be submitted to a personal, free and secret vote by May 1, 2023.²⁰¹

■ Where a union seeks to represent workers for the first time, it must demonstrate support of at least 30% of the workers in order to negotiate a collective bargaining agreement.²⁰²

■ New procedures apply where one union challenges another for control (*titularidad*) of a collective bargaining agreement.²⁰³

To safeguard these rights, the reform establishes a new independent Federal Center for Conciliation and Labor Registration (Federal Center),²⁰⁴ charged with verifying democratic union procedures and where all union statutes and CBAs will be deposited and made publicly accessible online; and a new system of labor courts, replacing the tripartite Conciliation and Arbitration Boards (CABs).

¹⁹⁷ FLL Article 132.XXX.

¹⁹⁸ FLL Article 391

¹⁹⁹ FLL Article 365 Bis

²⁰⁰ FLL Articles 390 Ter and 400 Bis, upheld in A.R. 1109/2019, p. 58, A.R. 18/2020, pp. 55, 58 and A.R. 28-2020, p. 59.

²⁰¹ FLL Transitional Article 11, upheld in A.R. 1109/2019, p. 67, A.R. 18/2020, p. 67 and A.R. 28/2020, p. 75).

²⁰² FLL Article 390 Bis.

²⁰³ FLL Articles 389 and 897 through 897-G.

²⁰⁴ <https://centrolaboral.gob.mx/>. Currently union registration is still handled by the Labor Secretariat, <https://registrodeasociaciones.stps.gob.mx/>, and CBAs by the Federal and state CABs.

VI. SEPARATE STATEMENT OF BOARD MEMBERS STEFAN MARCULEWICZ, PHILIP MISCIMARRA AND CHARLOTTE PONTICELLI

The United States-Mexico-Canada Agreement (“USMCA”) reflects a consensus that structural labor reforms and meaningful labor law enforcement in Mexico were critical parts of the agreement to have free trade between the United States, Mexico and Canada. To assist Congress, the Independent Mexico Labor Expert Board (“IMLEB” or “Board”) – created by the United States-Mexico-Canada Agreement Implementation Act (“Implementation Act”)²⁰⁵ – is vested with authority to prepare and submit an annual report that “contains an assessment” of “the efforts of Mexico to implement Mexico’s labor reform” and “the manner and extent to which labor laws are generally enforced in Mexico.”²⁰⁶ The Board’s report “may also include a determination that Mexico is not in compliance with its labor obligations.”²⁰⁷

We agree with our colleagues regarding the Board’s two most important findings set forth in this Report. First, the present circumstances do not warrant a determination that Mexico has failed to be “in compliance with its labor obligations” under the USMCA. Second, it is nonetheless clear that Mexico’s labor reform efforts pursuant to the USMCA remain substantially incomplete.

All Board members also agree that the reforms required by the USMCA involve immense challenges and important rights. Among these rights are fundamental protections involving requirements that union officers be elected based on a “personal, free, and secret vote of union members,”²⁰⁸ that “union representation challenges are carried out . . . through a secret ballot vote,”²⁰⁹ and that initial and subsequent labor contracts have “majority support” among employees, which must be proven “through exercise of a personal, free, and secret vote of workers covered by the agreement,” with additional “effective verification” by an “independent entity” that “a majority of workers . . . demonstrated support . . . through a personal, free, and secret vote.”²¹⁰ In short, Mexico has committed to the overhaul of many labor relations practices, the manner in which unions function, the nature of employee representation, and other important aspects of collective bargaining and labor-management relations in Mexico.

²⁰⁵ Public Law 116-113, 134 Stat. 11 (codified at 19 U.S.C. §§ 4501 et seq.).

²⁰⁶ 19 U.S.C. § 4674(1)(A), (B).

²⁰⁷ *Id.* at § 4674(1)(2). The Implementation Act separately provides that the Board shall “advise the Interagency Labor Committee with respect to capacity-building activities needed to support [Mexico’s] implementation and compliance.” *Id.* at § 4671.

²⁰⁸ USMCA Chapter 23, Annex 23-A, § 2(c).

²⁰⁹ *Id.* § 2(d).

²¹⁰ *Id.*, §§ 2(e)(ii)(C), 2(f)(ii).

Significant progress has been made, even though Mexico's labor reform efforts were complicated by the COVID-19 pandemic. Yet, we agree that implementation of many reforms remain at an early stage, and many of the most important steps – upon which the success of these initiatives will depend – have yet to occur. We do not join in Parts III and IV of this Report based on differences regarding the scope of the Board's authority,²¹¹ and we believe the Board's evaluation of Mexico's labor reform efforts should involve greater access to reliable data regarding elections and case-processing, among other things.²¹²

We share our colleagues' commitment to the policies and objectives incorporated into the USMCA and Implementation Act, and the Board remains unanimous regarding the importance of discharging our responsibility to monitor and evaluate Mexico's implementation of labor reforms and the manner and extent of labor law enforcement in Mexico.²¹³

²¹¹ We do not address or join in our colleagues' recommendations based on our view that the Implementation Act does not authorize the inclusion of recommendations in Board's annual report. The Implementation Act vests the Board with authority to submit an annual report containing an "assessment" (regarding efforts of Mexico to implement Mexico's labor reform and the manner and extent to which labor laws are generally enforced in Mexico) and the report may also contain a "determination" (that Mexico is not in compliance with its labor obligations). *Id.* § 4674(1), (2). Based on the specificity with which the Board's charter and the annual report are described in the Implementation Act, we do not share our colleagues' view that the report may include recommendations. Separately, the Implementation Act provides for the Board to "advise the Interagency Labor Committee with respect to capacity-building activities needed to support such implementation and compliance." 19 U.S.C. § 4671. However, this advice is specific to the Interagency Labor Committee and to "capacity-building activities." *Id.* See also 19 U.S.C. § 4642(4), (5)(B). In our view, it does not vest authority in the Board to make recommendations in the Board's annual report or to make broad-based recommendations regarding labor reform and labor law enforcement in Mexico, or U.S. legislation or other U.S. initiatives that may relate to such issues. We also believe, for similar reasons, that the Board lacks authority to make recommendations and other observations regarding cases being processed pursuant to the USMCA's Facility-Specific Rapid Response Labor Mechanism. USMCA, Chapter 31, Annex 31-A. Accordingly, we do not address or join in our colleagues' discussion of Rapid Response cases and related issues.

²¹² For example, it would be helpful for the Board to obtain and evaluate more expansive data regarding (i) the number of cases (federal and state) that have been adjudicated in the past, (ii) the number of union officer elections conducted (and the number of union officer election outcomes that have been verified by labor authorities), (iii) the number of CBAs ratified by secret ballot elections, (iv) the number of new cases filed and handled by the Federal Center, (v) the number of cases filed with the new system of labor courts (which replaced the former system consisting of tripartite Conciliation and Arbitration Boards), (vi) the track record of the Federal Center and labor courts in processing and resolving past and pending cases, and (vii) the outcomes of both sets of cases; among other things.

²¹³ 19 U.S.C. § 4671 (noting the Board is "responsible for monitoring and evaluating the implementation of Mexico's labor reform and compliance with its labor obligations").