
LABOR DISPUTE SETTLEMENT MECHANISM INTRODUCED IN THE T-MEC / USMCA

On 10 December 2019, the Protocol of Amendment to the T-MEC/USMCA was agreed upon and signed by representatives of Mexico, the United States and Canada. That Protocol, which includes amendments to the provisions on the environment, intellectual property rights, labor and rules of origin for the automotive industry (specifically concerning steel and aluminum), has since been made available to the public by the United States at the following link

[LDSM_TMEC](#)

and by México in the following link

[MLSC_TMEC](#)

This note seeks to shed light on the introduction of new international mechanisms designed to ensure the compliance of businesses with the labor laws in which they are situated. Those mechanisms are found in Annex 31-A, which provides a mechanism exercisable by and between the United States and Mexico, and Annex 31-B, which provides the same, exercisable by and between Canada and Mexico. No such mechanism was entered to enable for this between the U.S. and Canada.

Under the Annexes 31-A and 31-B, each Annex Party is afforded the right to request that the other Party conducts a review of a business in its territory, to assess whether or not that business is denying its workers the right of free association and collective bargaining under the laws of that host State.

Specifically, Canada or the U.S. can request a review by the Mexican State of suspected breaches by a business in Mexico of any rights related to free association and collective bargaining according to Mexican legislation; and conversely Mexico can request that Canada or the U.S. investigates potential breaches within their territory of an enforced order of the Canada Industrial Relations Board, or the U.S. National Labor Relations Board, respectively.

It is not the case that, by default, the complainant State can make a request for review against any business in the territory of the host state. Rather, it must be a Covered Facility in a Priority Sector.

Covered Facility means a facility in the territory of a Party that:

- produces a good or supplies a service that is traded between the Annex States (i.e. between Mexico and the U.S. or between Mexico and Canada); or
- produces a good or supplies a service that competes in the territory of an Annex State with a good or service of the other Annex State.

A Priority Sector is defined as a sector that produces manufactured goods, supplies services, or involves mining.

These requirements are broadly drafted, such that, for instance, any business in Mexico producing goods or supplying services, can be the subject of a request for review from the U.S. Government, if it is in competition with a U.S. business within the territory of Mexico.

The system is envisioned to be underpinned by good faith, cooperation and mutual agreement at all phases between the Annex States, from the making of the complaint (that is to be supported by evidence and made in good faith), to the investigation of the circumstances (which must be done within 45 days of receiving the complaint), to the remediation of any breaches (which the parties are encouraged to mutually agree upon).

If Annex States cannot reach agreements on whether to conduct a review, the determinations reached in a review, or the appropriate course of remediation for any violation, a specialist “Facility-Specific Rapid Response Labor Panel” may be called upon to intervene to make determinations of its own. Panelists are required to be experts in labor law and practice, be independent of and unaffiliated with or take instructions from an Annex State.

When an investigation does lead to the finding that a Denial of Rights was occurring, the Annex States are encouraged to seek to mutually agree upon a remedy – there is no prescribed sanctions regime within the text. However, the default position is that the complainant Annex State may unilaterally opt to impose the remedies that it considers the most appropriate to effectively remedy the Denial of Rights; and the text suggests that such remedies may include the suspension of preferential tariff treatment for goods manufactured by that Covered Facility, or the imposition of penalties on those goods manufactured at, or services provided by, that Covered Facility.

Where the respondent Annex State considers that the complainant Annex State acted in default of good faith, either by initiating the process or by imposing an excessive remedy, however, it can appeal under the State to State dispute settlement mechanism of T-MEC/USMCA (Chapter 31).

Nevertheless, the message for businesses within the Mexican territory to take is that it is likely to become increasingly important for them to ensure that they comply with labour laws and mainly collective regulation to avoid verification procedures, remedies impositions and even commercial difficulties with US and Canada.



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Sincerely,

Von Wobeser y Sierra, S.C.

Mexico City, December 12, 2019.