

December 12, 2024

To the Mexican Section of the USMCA Secretariat:

On June 24, 2024, the Mexican union *Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana* (Mineros), filed a petition with the United States in which it alleged a Denial of Rights to be occurring at the Camino Rojo Mine, located in Zacatecas, Mexico (Covered Facility). The United States reviewed the situation and found a good faith basis to believe that a Denial of Rights was occurring. On August 29, 2024, the United States requested, pursuant to Article 31-A.4.2 of the United States-Mexico-Canada Agreement (USMCA), that Mexico conduct its own review of the situation.

On October 11, 2024, Mexico sent a report to the United States in which it determined a Denial of Rights had occurred at the Covered Facility. Specifically, with respect to the preferential treatment granted by the Covered Facility to the *Sindicato Nacional de Trabajadores de la Exploración, Explotación y Beneficio de Minas en la República Mexicana* (Minas), a Mexican union affiliated with the *Federación Nacional de Sindicatos Independientes* (FNSI), Mexico found: (1) “indications of employer interference in trade union affairs” where Camino Rojo personnel intervened in the process by which mine workers changed from one union affiliation to another.¹ Mexico, however, found: (2) no evidence that the company engaged in an “anti-union and disinformation campaign against the [Mineros union] or threats of dismissals”; (3) no indications that the Covered Facility engaged in an “alleged propaganda campaign in favor of the [Minas union]”; (4) no evidence that “workers were pressured to sign documents for the change of union”; (5) no evidence that “workers were coerced to attend meetings with the purpose of changing unions”; and (6) that regarding the threats of physical or actual violence, the Secretaría del Trabajo y Previsión Social (STPS) “is not empowered to investigate acts that could be considered crimes.”² Mexico’s report also indicates that STPS and the Covered Facility took the following actions, which appear to be remediative in nature: (1) published a letter of commitment to neutrality in union matters and guidelines for conduct by company personnel; (2) trained all staff on the content of the neutrality letter and conduct guidelines; and (3) trained all staff on the rights to freedom of association and collective bargaining in Mexico.³

Following Mexico’s finding of a Denial of Rights, pursuant to Article 31-A.4.6 of the USMCA, the United States consulted with Mexico and endeavored to agree upon a course of remediation.⁴

¹ *Resultados de la investigación de la Secretaría del Trabajo y Previsión Social del Gobierno de México, sobre una presunta denegación de derechos conforme al Anexo 31-A [Mecanismo Laboral de Respuesta Rápida en Instalaciones Específicas, México-Estados Unidos] del Tratado entre los Estados Unidos Mexicanos, los Estados Unidos de América y Canadá [T-MEC]*, 11 Oct. 2024 (Mexico’s Report), p. 27. Mexico’s Report was sent to the United States in Spanish; all quotations refer to translations of Mexico’s Report created by the United States.

² Mexico’s Report, pp. 27-28.

³ Mexico’s Report, p. 28.

⁴ Article 31-A.4.6 of the USMCA provides: “If the respondent Party has determined there is a Denial of Rights, the Parties shall consult in good faith for a period of 10 days and shall endeavor to agree upon a course of remediation that will remediate the Denial of Rights without interrupting trade.” The 10-day period of consultation ended October 21, 2024.

The parties have been unable to agree on a course of remediation, and the United States continues to have a good faith basis to believe that a Denial of Rights is occurring at the Covered Facility.⁵

In addition, the United States disagrees with Mexico's determination that the Denial of Rights at the Covered Facility was limited to the employer activities identified in Mexico's report. The United States also disagrees that the scope of Mexico's obligations under the USMCA Facility-Specific Rapid Response Labor Mechanism (RRM) is limited by the investigative authority of the Mexican Secretary of Labor, as suggested by Mexico in its report to the United States. To the extent that Mexico considers that any actions taken by STPS or the Covered Facility have remediated the Denials of Rights, the United States also disagrees.

Therefore, pursuant to Article 31-A.5.1(a) of the USMCA, the United States is "requesting the establishment of a panel to request that the respondent Party allow the panel an opportunity to verify the Covered Facility's compliance with the law in question and determine whether there has been a Denial of Rights[.]"

As defined in Article 31-A.2 of the USMCA, a "Denial of Rights" occurs when workers at a "Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill a Party's obligations under the USMCA."

A "Covered Facility" is one that is in a sector that produces manufactured goods, supplies services or involves mining, and that (a) produces a good or supplies a service traded between the United States and Mexico or (b) produces a good or supplies a service that competes in the territory of a Party with a good or service of the other party. In this instance, the facility at issue mines gold and other minerals. Due to the significant bilateral trade between Mexico and the United States in gold and other minerals, the Camino Rojo mine facility is a "Covered Facility".

The United States considers that workers at the Covered Facility are being denied the right of free association and collective bargaining. Specifically, the United States considers that:

- (1) the Covered Facility is interfering in the rights of workers to engage in organizing activity by supporting and offering preferential treatment to Minas, a labor organization not authorized to represent workers for collective bargaining at the time the Denial of Rights began, including by offering preferential treatment to workers and coercing or pressuring workers to support Minas; and by discouraging worker support for Mineros, including through threats of dismissals and reprisals;
- (2) Minas, in coordination with the Covered Facility, is discriminating against, and discouraging worker support for, Mineros; and is obtaining benefits from the employer outside of a collective bargaining agreement;

⁵ Article 31-A.4.9 of the USMCA provides: "If the Parties cannot agree on a course of remediation at the end of the 10-day period, the complainant Party may request a panel verification and determination pursuant to Article 31-A.5."

(3) with the knowledge or acquiescence of company officials and Minas representatives, workers at the covered facility experienced threats of violence and actual violence based on their organizing efforts, violating their right to join organizations of their choosing and to enjoy adequate protection against any act of interference; and

(4) actions by the Covered Facility and Minas led to a vote on the Certificate of Representation at the Covered Facility that was supported by coerced worker affiliations.⁶

The United States also considers that these Denials of Rights have not been remediated by the actions described in Mexico's report and are ongoing.

The Denials of Rights described above appear to be the result of noncompliance with several provisions of Mexican law, including the following sections of the Federal Labor Law (FLL):

- Article 2, which finds that “[w]ork standards are intended for achieving balance between the factors of production and social justice, as well for providing dignified or decent work in all labor relations.” Article 2 defines “[d]ignified or decent work” as that which “includes unrestricted respect for the collective rights of workers, such as the freedom of association, autonomy . . . and collective contracting.”
- Article 133.IV, under which, employers and their representatives are prohibited from, “[o]bligating workers by coercion or by any other means, to join or withdraw from the union or group to which they belong, or to vote for a certain candidacy, as well as any act or omission that violates their right to decide who should represent them in the collective bargaining.”
- Article 133.V, which prohibits actions by employers or their representatives that “interven[e] in any way in the internal affairs of the union, impeding its formation or the carrying out union activity, through implicit or explicit reprisals against workers.”
- Article 133.VII, which prohibits employers or their representatives from “[t]aking any action that restricts the rights of the workers granted to them by the laws.”
- Article 133.XVII, which prohibits employers from “[c]arrying out any act for the purpose of exercising control over the union to which their workers belong.”
- Article 357, which provides that “workers . . . without any distinction and without prior authorization, establish the organizations they deem appropriate, as well as to join them, , with the sole condition of observing the statutes of the same.”
- Article 357, which establishes “the organizations of workers of employers must enjoy adequate protection against any act of interference by some with respect to the others,

⁶ A vote for the Certificate of Representation was held at the Covered Facility on November 22, 2024.

either directly or through their representatives in their constitution, operation or administration.”

- Article 357, which provides that “[a]cts of interference are considered acts or measures tending to encourage the constitution of organizations of workers dominated by an employer or an organization of employers, or to support in any way organizations of workers in order to place them under their control.”
- Article 378.IV, which forbids unions from “performing acts of violence, [or] discrimination...against their members, the employer, their representatives or their property, or against third parties.”
- Article 378.V, which forbids unions from “assuming the character of employer, so that the true employer may evade their responsibilities.”
- Article 378.VIII, which forbids unions from “committing acts of extortion or obtaining gifts from the employer, outside the collective bargaining agreement.”

Therefore, the United States is requesting the establishment of a panel pursuant to Article 31-A.5.1(a) of the USMCA. In accordance with Article 31-A.5.3, within three business days of the date of this request, the Secretariat shall select the panelists for this panel and transmit the request to the selected panelists.⁷

Sincerely,

Ambassador Katherine Tai

Annex A: U.S. Communication to Mexico Providing Its Reasons for Disagreement with Mexico’s Determination of No Denial of Rights

cc:

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Secretaría de Economía
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⁷ Article 31-A.5.3 of the USMCA provides: “The Secretariat shall within three business days from the date of the request for the establishment of a panel select by lot one panelist from the complainant Party list, one from the respondent Party list, and one from the Joint list. The Secretariat shall immediately transmit the petition to the selected panelists.”

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U.S. Communication to Mexico Providing Its Reasons for Disagreement
with Mexico's Determination of No Denial of Rights

December 12, 2024

On August 29, 2024, the United States requested, pursuant to Article 31-A.4.2 of the United States-Mexico-Canada Agreement (USMCA), that Mexico conduct a review of an ongoing denial of rights at the mining facility known as the Camino Rojo mine, located in Zacatecas, Mexico (Covered Facility).

On October 11, Mexico returned a report to the United States. Specifically, Mexico found, with respect to the preferential treatment granted by the Covered Facility to the *Sindicato Nacional de Trabajadores de la Exploración, Explotación y Beneficio de Minas en la República Mexicana* (Minas), a Mexican union affiliated with the *Federación Nacional de Sindicatos Independientes* (FNSI): (1) “indications of employer interference in trade union affairs” where Camino Rojo personnel intervened in the process by which mine workers changed from one union affiliation to another.⁸ Mexico, however, found: (2) no evidence that the company engaged in an “anti-union and disinformation campaign against the [Mineros union] or threats of dismissals”; (3) no indications that the Covered Facility engaged in an “alleged propaganda campaign in favor of the [Minas union]”; (4) no evidence that “workers were pressured to sign documents for the change of union”; (5) no evidence that “workers were coerced to attend meetings with the purpose of changing unions”; and (6) that regarding the threats of physical or actual violence, the Secretaría del Trabajo y Previsión Social (STPS) “is not empowered to investigate acts that could be considered crimes.”⁹

As defined in Article 31-A.2 of the USMCA, a “Denial of Rights” occurs when workers at a “Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill a Party’s obligations under the USMCA.”

A “Covered Facility” is one that is in a sector that produces manufactured goods, supplies services or involves mining, and that (a) produces a good or supplies a service traded between the United States and Mexico or (b) produces a good or supplies a service that competes in the territory of a Party with a good or service of the other party. In this instance, the facility at issue mines gold and other minerals. Due to the significant bilateral trade between Mexico and the United States in gold and other minerals, the Camino Rojo mine facility is a “Covered Facility”.

The United States considers that workers at the Covered Facility are being denied the right of free association and collective bargaining. Specifically, the United States considers that:

- (1) the Covered Facility is interfering in the rights of workers to engage in organizing activity by supporting and offering preferential treatment to Minas, a labor organization

⁸ *Resultados de la investigación de la Secretaría del Trabajo y Previsión Social del Gobierno de México, sobre una presunta denegación de derechos conforme al Anexo 31-A [Mecanismo Laboral de Respuesta Rápida en Instalaciones Específicas, México-Estados Unidos] del Tratado entre los Estados Unidos Mexicanos, los Estados Unidos de América y Canadá [T-MEC]*, 11 Oct. 2024 (Mexico’s Report), p. 27. Mexico’s Report was sent to the United States in Spanish; all quotations refer to translations of Mexico’s Report created by the United States.

⁹ Mexico’s Report, pp. 27-28.

not authorized to represent workers for collective bargaining at the time the Denial of Rights began, including by offering preferential treatment to workers and coercing or pressuring workers to support Minas; and by discouraging worker support for Mineros, including through threats of dismissals and reprisals;

(2) Minas, in coordination with the Covered Facility, is discriminating against, and discouraging worker support for, Mineros; and is obtaining benefits from the employer outside of a collective bargaining agreement;

(3) with the knowledge or acquiescence of company officials and Minas representatives, workers at the covered facility experienced threats of violence and actual violence based on their organizing efforts, violating their right to join organizations of their choosing and to enjoy adequate protection against any act of interference; and

(4) actions by the Covered Facility and Minas led to a vote on the Certificate of Representation at the Covered Facility that was supported by coerced worker affiliations.¹⁰

The United States disagrees with Mexico's determination that the Denial of Rights at the Covered Facility was limited to the employer activities identified in Mexico's report. The United States also disagrees that the scope of Mexico's obligations under the USMCA Facility-Specific Rapid Response Labor Mechanism (RRM) is limited by the investigative authority of the Mexican Secretary of Labor, as suggested by Mexico in its report to the United States. To the extent that Mexico considers that any actions taken by STPS or the Covered Facility have remediated the Denials of Rights, the United States also disagrees.¹¹

Therefore, the situation at the Covered Facility represents an ongoing denial of worker's rights as outlined in the USMCA.¹²

¹⁰ A vote for the Certificate of Representation was held at the Covered Facility on November 22, 2024.

¹¹ Mexico's Report, p. 28

¹² USMCA Article 23-A.2(a) requires Mexico, among other things, to "provide in its labor laws the right of workers to engage in concerted activities for collective bargaining or protection and to organize, form, and join the union of their choice, and prohibit, in its labor laws, employer domination or interference in union activities, discrimination, or coercion against workers for union activity or support, and refusal to bargain collectively with the duly recognized union."