

December 18, 2024

To the Mexican Section of the USMCA Secretariat:

On May 23, 2024, the Mexican union *Sindicato Independiente de Trabajadores y Empleados, Transporte, Carga y Descarga, Exploración y Explotación de Minerales Básicos, Productos Metálicos, Similares y Conexos de la República Mexicana* (Sindicato Metálico) filed a petition with the United States in which it alleged a Denial of Rights to be occurring at Industrias Tecnos, S.A. de C.V. in Cuernavaca, Morelos, 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 June 24, 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 August 8, 2024, Mexico sent a report to the United States in which it determined no Denial of Rights to exist. Specifically, regarding alleged interference by the employer in trade union affairs, Mexico found: (1) no evidence that “Tecnos carried out actions aimed at promoting the constitution of a trade union or a worker’s organization, with the aim of placing it under its control and/or any other action referred to in the third paragraph of Article 357 of the Federal Labor Law”; (2) no evidence that “TECNOS workers who decided to join a union other than [*Sindicato Único de Trabajadores de la Industria Química, Plástica, Metálica y Transformadora de toda clase de Productos, Derivados, Similares y Conexos de la República Mexicana* (Sindicato Químico or the incumbent union)], holder of the CBA, have been subjected to discrimination by the Company”; (3) no evidence that workers have been “subjected to discrimination, inequality in working conditions, neglect or violations of their labor human rights by the company, in complicity with the [*Sindicato Químico*]”; (4) no evidence that “members of [*Sindicato Metálico*] have been subjected to discrimination and harassment by the company to prevent them from exercising their functions as trade union delegates, pressuring them to resign or rejoin the [*Sindicato Químico*]”; and (5) no evidence “that the members of the [*Sindicato Metálico*] had requested the cessation of the deduction of union dues in favor of [*Sindicato Químico*].”¹ Regarding the termination of employment of Tecnos workers, Mexico found: (6) no evidence that workers “have been dismissed for their union activities and preferences.”²

The United States disagrees with Mexico’s determination³ and continues to have a good faith basis to believe that a Denial of Rights is occurring at a “Covered Facility”. 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

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]*, 08 Aug 2024 (Mexico’s Report), p. 34. Mexico’s Report was sent to the United States in Spanish, and all quotations refer to translations of Mexico’s Report created by the United States.

² Mexico’s Report, p. 34.

³ USMCA Article 31-A.4.5 provides: “If the respondent Party has determined that there is no Denial of Rights, the complainant Party may agree that the issue is resolved or it may communicate in writing its reasons for disagreement with the respondent Party’s determination and immediately may request a panel verification and determination pursuant to Article 31-A.5.” The United States has communicated to Mexico in writing its reasons for disagreement with Mexico’s determination. The U.S. communication is attached as Annex A to this request.

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 (i) produces a good or supplies a service traded between the United States and Mexico or (ii) 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 manufactures ammunition products. Due to the significant bilateral trade between Mexico and the United States in ammunition products, Industrias Tecnos 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 wrongfully dismissed workers as reprisal for their participation or perceived participation in union organizing activities, or for their support for or sympathy with a union; and
- (2) The Covered Facility, including through coordination with Sindicato Químico, coerced or pressured workers to support Sindicato Químico or to refrain from supporting another union.

The Denials of Rights described above appears to be the result of noncompliance with several provisions of Mexican law, including the following sections of the Federal Labor Law (FLL), operating separately or in conjunction:

- 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.”
- Articles 46-55, inclusive, which set out the rights of wrongfully dismissed workers.
- 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, 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 . . . 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.”

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.⁴

Sincerely,

Ambassador Katherine C. Tai

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

⁴ USMCA Article 31-A.5.3 states: “The Secretariat shall within three business days from the date of the request for 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.”

cc:

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

December 18, 2024

On June 24, 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 Industrias Tecnos, S.A. de C.V. in Cuernavaca, Morelos, Mexico (Covered Facility).

On August 8, 2024, Mexico sent a report to the United States in which it determined no Denial of Rights to exist. Specifically, regarding alleged interference by employers in trade union affairs, Mexico found: (1) no evidence that “Tecnos carried out actions aimed at promoting the constitution of a trade union or a worker’s organization, with the aim of placing it under its control and/or any other action referred to in the third paragraph of Article 357 of the Federal Labor Law”; (2) no evidence that “TECNOS workers who decided to join a union other than [*Sindicato Único de Trabajadores de la Industria Química, Plástica, Metálica y Transformadora de toda clase de Productos, Derivados, Similares y Conexos de la República Mexicana* (Sindicato Químico or the incumbent union)], holder of the CBA, have been subjected to discrimination by the Company”; (3) no evidence that workers have been “subjected to discrimination, inequality in working conditions, neglect or violations of their labor human rights by the company, in complicity with the [*Sindicato Químico*]; (4) no evidence that “members of [*Sindicato Metálico*] have been subjected to discrimination and harassment by the company to prevent them from exercising their functions as trade union delegates, pressuring them to resign or rejoin the [*Sindicato Químico*]”; and (5) no evidence “that the members of the [*Sindicato Metálico*] had requested the cessation of the deduction of union dues in favor of [*Sindicato Químico*].”⁵ Regarding the termination of employment of Tecnos workers, Mexico found: (6) no evidence that workers “have been dismissed for their union activities and preferences.”⁶

As defined in Article 31-A.2, 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 (i) produces a good or supplies a service traded between the United States and Mexico or (ii) 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 manufactures ammunition products. Due to the significant bilateral trade between Mexico and the United States in ammunition products, Industrias Tecnos is a “Covered Facility”.

⁵ *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]*, 08 Aug 2024 (Mexico’s Report), p. 34. Mexico’s Report was sent to the United States in Spanish, and all quotations refer to translations of Mexico’s Report created by the United States.

⁶ Mexico’s Report, p. 34.

The United States disagrees with Mexico's determination there is no evidence of a Denial of Rights at the 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 wrongfully dismissed workers as reprisal for their participation or perceived participation in union organizing activities, or for their support for or sympathy with a union; and
- (2) The Covered Facility, including through coordination with Sindicato Químico, coerced or pressured workers to support Sindicato Químico or to refrain from supporting another union.

Therefore, the situation at the Covered Facility represents an ongoing Denial of Rights as outlined in the USMCA.⁷

⁷ 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.”