

To the Mexican Section of the USMCA Secretariat:

On December 18, 2023, the *Sindicato de Telefonistas de la República Mexicana* (STRM) filed a petition with the United States in which it alleged a Denial of Rights to be occurring at Atento Servicios, S.A. de C.V. in Pachuca, Hidalgo, 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 January 19, 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 March 4, 2024, Mexico sent a report to the United States in which it determined a Denial of Rights had occurred at the Covered Facility, but in which it also determined that the Covered Facility had taken the necessary measures to remediate the Denial of Rights. Specifically, Mexico found “the presumptive existence of action that constitutes violations of Mexican labor law and a denial of the rights of freedom of association and collective bargaining by ATENTO [. . .] on the basis of”¹ acts of employer inference, which included (1) encouraging and organizing a union committee for the *Sindicato Nacional Presidente Benito Juárez de la Industria de la Comunicación de la República Mexicana*, belonging to the Federation of Trade Union Workers of the Mexican Republic (FORSM);² (2) conducting elections on its intranet of worker representatives (or delegates) for FORSM;³ (3) denying access to the petitioner, STRM, to carry out trade union activities within the company;⁴ and (4) “allegedly offering a bonus to the workers, prior to the vote for the Certificate of Representation, if FORSM won the election.”⁵ The report also found that Atento “conducted activism through attorneys and facility managers to inhibit STRM membership” and “hinder the process for obtaining the Certificate of Representation.”⁶ In addition, the report found that Atento had engaged in anti-union discrimination and unjustified dismissals of workers.⁷

Mexico’s report concludes by finding that the Denial of Rights has been fully remediated by Atento, in coordination with the *Secretaría del Trabajo y Previsión Social* (STPS), through the following actions: (1) publication and dissemination of a neutrality statement; (2) the publication and dissemination of guidelines of conduct; (3) trainings of workers at the Covered Facility by Atento on the contents of the neutrality statement and guidelines of conduct; (4) training of all workers at the Covered Facility by STPS on the rights of freedom of association and collective bargaining; (5) training of twelve former workers, on the rights to freedom of association and

¹Atento Servicios, S.A. de C.V. Pachuca de Soto, Hidalgo, México, 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) (Mexico’s Report) at 45. Mexico’s Report contains findings that the Covered Facility engaged in actions that violate the right to freedom of association and collective bargaining in contravention of Articles 2, 133(V). 133(VII), and 357 of the Federal Labor Law of Mexico (FLL); Articles 1 and 123 of the Political Constitution of the United Mexican States; and ILO Convention No. 98 and Convention No 135. Mexico’s Report at 36-41.

² Mexico’s Report at 27-29, 39, 45.

³ Mexico’s Report at 27, 45.

⁴ Mexico’s Report at 9, 16, 19, 37-38, 45.

⁵ Mexico’s Report at 28, 45. 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. Here, Mexico’s Report states, “Presuntamente ofrecer un bono a los trabajadores, previo a la votación por la constancia de representatividad, en caso de que la FOSRM ganara la elección.” Mexico’s Report at 45.

⁶ Mexico’s Report at 39.

⁷ Mexico’s Report at 40-41.

collective bargaining in Mexico conducted by STPS; (6) a written commitment to STPS to reinstate a worker (7) liquidation payments to five workers ; (8) the written commitment to STPS to provide liquidation payments to two workers; (9) the reinstatement of three workers who previously received liquidation payments; and (10) a written commitment to STPS to provide supplementary liquidation payments to two workers.

The United States disagrees with Mexico’s determination that the Denial of Rights at the Covered Facility has been remediated.⁸ 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[.]”⁹

As defined in USMCA 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. Atento operates a call center providing business services, including collection services, and handles calls originating in Mexico. Companies in the United States are consumers of business services provided by call centers operating in Mexico, such that the services supplied by Atento constitute “a service traded” between Mexico and the United States within the meaning of prong (i). Therefore, because Atento satisfies prong (i) of Article 31-A.15 and is in a Priority Sector (services), Atento 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. The United States considers that the Covered Facility: (1) wrongfully dismissed workers as reprisal for their participation in union organizing activities; (2) actively supported the formation and operation of the FORSM union; and (3) discouraged worker support for STRM, including by denying STRM access to the facility. The United States considers that these Denials of Rights were not fully remediated by the actions described in Mexico’s report, including because certain of the wrongfully dismissed workers may not have received the full remediation owed to them under Mexican law, and because the Report did not address the impact of the Covered Facility’s illegal activity on the vote for the Certificate of Representation, held on December 6, 2023.

⁸ 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.

⁹ USMCA Article 31-A.7. provides “In cases in which the respondent Party has determined under Article 31-A.4.6 that there is a Denial of Rights by the Covered Facility, and the respondent Party alleges that the Covered Facility has taken the necessary measures to remediate the Denial of Rights, but the complainant Party disagrees with the conclusions and actions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request, a document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party’s submission.”

The Denial of Rights described above appears to be the result of noncompliance with several provisions of the Federal Labor Law of Mexico (FLL), including:

- 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, 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 “intervene in any way in the internal regime of the trade union, to prevent its formation or the development of trade union activity, by means of implicit or explicit reprisals against workers.”
- Article 133.VII, which prohibits employers or their representatives from “taking any action that restricts the rights of the workers granted to them by the laws.”
- Article 357, which provides that “workers . . . without distinction and without prior authorization, have the right to form and join organizations of their own choosing, on the sole condition that they observe their statutes.”
- 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 guarantees “[a]ny undue interference will be sanctioned under the terms of the Law.”
- Article 390bis, which governs consultations with workers regarding the Certificate of Representation.

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.¹⁰

Sincerely,

Ambassador Katherine Tai

¹⁰ 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.”

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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