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The Effectiveness of the USMCA Rapid Response Labour Mechanism: Conclusions from the Analysis of GM Silao, Tridonex, Panasonic, Teksid, VU Manufacturing and Saint Gobain cases

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Summary. On 30 September 2018, the US, Canada and Mexico announced that they had reached a trilateral free trade agreement in the renegotiation of the NAFTA, concluding more than 13 months of negotiations. The USMCA has been ratified by all three countries and has taken effect as of 1 July 2020. One of its crucial characteristics when it comes to workers' rights is a facility-specific rapid response labour mechanism, the purpose of which is to ensure the remediation of a "Denial of Rights" of free association and collective bargaining for workers at a Covered Facility, and to ensure that remedies are lifted immediately once a Denial of Rights is remediated (Annex 31-A "Facility-specific rapid response labor mechanism" between the US and Mexico of the USMCA's Dispute Settlement chapter and separate Annex 31-B between Canada and Mexico). From 2021, the above-mentioned mechanism has been already used by the Department of Labor and the Office of the US Trade Representative on many occasions in order to protect workers' rights under the USMCA. The author of this paper examines six first cases, namely: GM Silao, Tridonex, Panasonic, Teksid, VU Manufacturing and Saint Gobain. On such basis she draws conclusions regarding the effectiveness of the facility-specific rapid response labour mechanism.

Keywords: the United States-Mexico-Canada Agreement, a facility-specific rapid response labour mechanism, labour law

Efektywność mechanizmu szybkiego reagowania w sprawach pracowniczych w umowie o wolnym handlu pomiędzy USA, Meksykiem i Kanadą: Wnioski z analizy spraw GM Silao, Tridonex, Panasonic, Teksid, VU Manufacturing i Saint Gobain

Streszczenie. 30 września 2018 r. USA, Kanada i Meksyk – kończąc trwające ponad 13 miesięcy negocjacje – ogłosiły, że zawarły trójstronną umowę o wolnym handlu w ramach renegocjacji NAFTA. Umowa USMCA została ratyfikowana przez wszystkie trzy państwa i weszła w życie z dniem 1 lipca 2020 r. Jedną z jej kluczowych cech, jeśli chodzi o prawa pracownicze, jest „mechanizm szybkiego reagowania w sprawach pracowniczych w konkretnym obiekcie". Jego celem jest zapewnienie środków

zaradczych w przypadku odmowy praw do swobodnego zrzeszania się i rokowań zbiorowych pracownikom w obiektach podlegających mechanizmowi oraz zapewnienie natychmiastowego zniesienia środków zaradczych, gdy prawa pracowników będą realizowane (Załącznik 31-A pt. „Mechanizm szybkiego reagowania w sprawach pracowniczych w konkretnym obiekcie" pomiędzy USA i Meksykiem i odrębny Załącznik 31-B pomiędzy Kanadą i Meksykiem). Od 2021 r. Departament Pracy i Biuro Przedstawiciela Handlowego USA już wiele razy korzystały z tego mechanizmu w celu ochrony praw pracowniczych zawartych w umowie USMCA. Autorka artykułu analizuje sześć pierwszych spraw, a mianowicie: GM Silao, Tridonex, Panasonic, Teksid, VU Manufacturing i Saint Gobain. Na tej podstawie wyciąga wnioski dotyczące efektywności „mechanizmu szybkiego reagowania w sprawach pracowniczych w konkretnym obiekcie".

Słowa kluczowe: umowa o wolnym handlu pomiędzy USA, Meksykiem i Kanadą, mechanizm szybkiego reagowania w sprawach pracowniczych, prawo pracy

Introduction

On 30 September 2018, concluding more than 13 months of negotiations, the US, Canada and Mexico announced that they had reached a trilateral free trade agreement (USMCA) – a modernisation of the North American Free Trade Agreement (NAFTA). The United States Trade Representative (USTR) Robert Lighthizer has called the USMCA "the gold standard by which all future trade agreements will be judged, and citizens of all three countries will benefit for years to come"[1]. The USMCA has been ratified by all three countries and has taken effect as of 1 July 2020. One of its crucial characteristics when it comes to workers' rights is a facility-specific rapid response labour mechanism (also referred to as RRLM), the purpose of which is to ensure the remediation of a "Denial of Rights" of free association and collective bargaining for workers at a Covered Facility in Mexico or the US, and to ensure that remedies are lifted immediately once a Denial of Rights is remediated (Annex 31-A "Facility-specific rapid response labor mechanism" between the US and Mexico, and separate Annex 31-B between Canada and Mexico)[2].

The aim of the article is to answer the questions whether a facility-specific rapid response labour mechanism established in the USMCA is an effective tool to ensure remediation of a "Denial of Rights" of free association and collective bargaining for workers and whether it could be a model for future trade agreements. Since 2021, this mechanism has been already used by the Department of Labor and the Office of the USTR on several occasions in order to protect workers' rights under

[1] Office of the United States Trade Representative, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/march/ambassador-lighthizer-statement-canadas-approval-usmca, "Ambassador Lighthizer Statement on Canada's Approval of the USMCA" [accessed: February 3, 2024].

[2] A. Tyc, *Global Trade, Labour Rights and International Law: A Multilevel Approach*, Routledge, London, New York 2021, pp. 150, 154.

the USMCA. This paper examines the following: Tridonex, GM Silao, Panasonic, Teksid, VU Manufacturing and Saint Gobain.

The author of this paper puts forward two specific theses, each of which is necessary to assess the RRLM in a broader context. The first one implies that the new, independent trade unions finally start to replace "protection" unions in Mexico. Thus, a facility-specific rapid response labour mechanism under the USMCA shall be perceived as a great milestone in the Mexican trade union movement.

Moreover, the author of this article will confirm or reject the truthfulness of the thesis that the textile and garment industry workers – who are often being denied the right of free association and collective bargaining – may find themselves in a less favourable position than workers employed in sectors mentioned in footnote 4 of Annex-31 ("For greater certainty, manufactured goods include, but are not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement"). Previously, attention had been paid to this problem in the literature, but there had not yet been cases yet under the RRLM to verify this thesis in practice. The six first cases (chronologically from 2021) already provide us with serious research material. Brittany Bates refers to opinions according to which the fact that textile and garment industries are not explicitly included in Annex 31 may suggest that these sectors are not so important to the US and Canada as they do not compete with Canadian or American domestic industries, contrary to sectors such as the automotive parts industry, where the US and Canada compete directly with Mexico. As rightly pointed out by this author, "While the language 'not limited to' leaves open the possibility to include sectors not listed, it remains unclear how expansive the USMCA will make this definition in practice"[3].

The article proceeds in four parts. Part II provides a background on the history of NAFTA and its side agreement, namely the North American Agreement on Labor Cooperation (NAALC) and explains why it had to be renegotiated. Part III discusses the USMCA along with its RRLM and gives an analysis of the above-mentioned six cases. Part IV of the article embraces conclusions and includes an attempt to formulate a contribution to the debate.

1. The NAFTA

The negotiations over the NAFTA in the early nineties of the last century took place during the administrations of US President Republican George Bush, Canadian

[3] B. Bates, *Examining Labour Rights Enforcement Mechanisms in NAFTA and the USMCA and Its Impact on Labour Conditions in Mexico*, "Western Journal of Legal Studies" 2022, Vol. 13, Issue 1, pp. 48-49.

Prime Minister Brian Mulroney, and Mexican President Carlos Salinas. They signed the agreement in August 1992, the US Congress approved it in November 1993 and finally the NAFTA came into effect in 1994. In the meantime, after winning the elections in November 1992, Bill Clinton and his administration began negotiations on the side agreement on labour, and in August 1993, the heads of three states signed the North American Agreement on Labor Cooperation (NAALC). Apart from six obligations, an organisational structure and a complaint mechanism for reviewing compliance, the NAALC includes eleven "Labor Principles":

- freedom of association and protection of the right to organise;
- the right to bargain collectively;
- the right to strike;
- prohibition of forced labour;
- labour protection for children and young persons;
- minimum employment standards, such as minimum wages and overtime pay;
- non-discrimination in employment;
- equal pay for women and men;
- occupational safety and health;
- compensation in cases of occupational injuries and illnesses;
- migrant worker protection.

The three states commit themselves to "promoting" these principles, indicating at the same time that they "do not establish common minimum standards for their domestic law", which is one of the main features of the NAALC. When it comes to the complaint mechanism, no new supranational labour law enforcement system with remedies is established under the NAALC. As highlighted by Lance Compa, the cross-border complaint system means that human rights groups, trade unions and other civil society groups have to cooperate with the aim of finding new ways of communication, collaboration and solidarity. This mechanism is triggered by advocates in the country where violations took place, who join with their counterparts in the country where the complaint was filed. The complaint goes to the labour department, which performs an initial review. There are then three steps to be taken in the framework of the complaint mechanism:

- consultations between National Administrative Officers or government ministers, and "cooperation" steps taken with the aim of addressing problems;
- a committee of independent experts' evaluation and recommendations;
- dispute resolution – a remedial plan, and trade sanctions, which depend on decisions of an arbitral panel[4].

[4] L. Compa, *Trump, Trade, and Trabajo: Renegotiating NAFTA's Labor Accord in a Fraught Political Climate*, "Indiana Journal of Global Legal Studies" 2019, Vol. 26, Issue 1, pp. 263, 269-270.

Importantly, only three of the "Labor Principles" – namely child labour, minimum wage standards, and workplace health and safety – are susceptible to dispute resolution. If a government fails to adopt an action plan recommended by an arbitral panel after the panel finds a persistent pattern of failure to effectively enforce its laws related to one of these three principles, a fine of up to 0.007% of the volume of trade between two disputing countries can be imposed. It means that the NAALC is the first international labour agreement which provides for the possibility of imposing trade sanctions as a means of enforcing labour rights[5].

Unfortunately, the first two Labour Principles – freedom of association and protection of the right to organise and the right to bargain collectively – were not protected by sanctions, and these rights were plagued by violations. As mentioned by Walter Bonne, infringements of freedom of association were only subject to ministerial consultations, with no possibility of arbitration or penalties[6].

Lance Compa has pointed out that none of the complaints filed by civil society advocates ever moved beyond the "first cut" review phase and the consultation step. Going further, no evaluation committee of experts was ever established, and no arbitral panel ever took up a case[7]. Thus, the enforcement mechanism under the NAALC is neither regarded as having the potential for ensuring the states' compliance with domestic standards, nor as preventing a "race to the bottom" of labour standards[8].

Debate continues over the legacy of NAFTA in terms of employment and wages for some workers and industries have faced disruptions when confronted with increased competition, whereas others have benefited from new market opportunities. The impact of NAFTA, more than a quarter of a century later, remains a permanent topic of discussion in the wider debate on the benefits of free trade[9].

It was indeed crucial under new negotiations that decision-makers put pressure on labour agreements that raise wages in Mexico and strengthen protection of labour rights not only in Mexico but also in Canada and the US. Besides, specific problems concerning ghost unions or protection contracts, namely contractual

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[5] L. Compa and T. Brooks, *NAFTA and the NAALC: Twenty Years of North American Trade-Labour Linkage*, Kluwer Law International, Alphen aan den Rijn 2015, pp. 20-21, 26.

[6] W. Bonne, *Unresolved Labor Disputes under the USMCA's Rapid Response Mechanism: Probing the Applicability of the ATS in Light of Nestle v. Doe*, "New York University Journal of Law and Business" 2022, Vol. 19, Issue 1, p. 201. See the cited literature.

[7] L. Compa, *Trump*…, p. 270.

[8] J.A. VanDuzer, P. Simons and G. Mayeda, *Integrating Sustainable Development into International Investment Agreements: A Guide for Developing Country Negotiators*, Commonwealth Secretariat, London 2013, p. 369.

[9] M.E. Burfisher, F. Lambert and T. Matheson, *NAFTA to USMCA: What Is Gained?*, International Monetary Fund, Washington, D.C. 2019, p. 4.

agreements between corrupt unions and employers, as well as "*maquiladora*" factories[10] in Mexico are very often raised in the literature[11]. Against that background, the US launched new trade negotiations with Canada and Mexico, and on November 30, 2018 a new trade agreement – USMCA – was signed by US President Trump, Canadian Prime Minister Trudeau, and Mexican President Peña Nieto[12].

2. The USMCA

Following the original USMCA negotiations of 2018, the American trade unions and the Democrats of Congress complained about shortcomings regarding the enforceability of labour provisions, in particular collective bargaining rights. Robert Lighthizer returned to the negotiating table, won stronger enforcement mechanism, and convinced many trade unions and Democrats to support the final agreement. That was when the parties agreed to create a facility-specific rapid response labour mechanism in the hope it might hinder the formation of protection unions or yellow unions in Mexico, i.e. unions sponsored by the company, not chosen by workers and that do not represent them[13]. Such a regulation seems to constitute a significant improvement over the NAALC. Consequently, there exists a dichotomy of enforcement actions: petitions under the Labour Chapter and an innovative RRLM protecting the right of freedom of association and collective bargaining[14].

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[10] More on maquiladora' factories see: W. Bonne, *Unresolved…*, pp. 195-198; and on the labour reform in Mexico: R.E. Ocampo Merlo, *Reforma laboral en México: una reconstrucción de su negociación y sus potencialidades prácticas*, "Espiral" 2023, Vol. 29, Issue 84.

[11] A. Tyc, *Global…*, p. 150. On the current situation in Mexico see: M. Crossa and J.M. Cypher, *Behind the Virtuous Façade: The USMCA's Restructuring of Mexico's Labor Relations*, "Dollars & Sense" May/June 2021, Issue 354; J.M. Cypher and M. Crossa, *Beyond the Myth and Through the Mexican Labyrinth: Labor under the "New NAFTA," the U.S.–Mexico–Canada Agreement*, "Dollars & Sense", May/June 2019, Issue 342.

[12] M.E. Burfisher, F. Lambert and T. Matheson, *NAFTA…*, p. 4. On how USMCA remedies some NAFTA deficits see: Ch. Scherrer, *Novel Labour-related Clauses in a Trade Agreement: From NAFTA to USMCA*, "Global Labour Journal" 2020, Vol. 11, Issue 3, p. 294.

[13] R.A. Blecker, *The Rebranded NAFTA: Will the usmca Achieve The Goals of the Trump Administration For North American Trade?*, "Norteamérica: Revista Académica del CISAN-UNAM" 2021, Vol. 16, Issue 2, p. 304. DOI: 10.22201/cisan.24487228e.2021.2.516. For an interesting analysis of scenarios for assessing whether expectations placed in the USMCA's labour provisions will be met see: A.V. Covarrubias, *El T-MEC y la tercera generación de arreglos laborales. Los escenarios probables para el trabajo y la industria regional*, "Norteamérica, revista académica del CISAN-UNAM" 2021, Vol. 16, Issue 1. More on Mexico's labour reform see: M. de Lourdes Castellanos Villalobos, *Libertad sindical en México. Aplicación de los convenios 87 y 98 de la OIT en relación con las obligaciones derivadas del T-mec*, "Revista Vox Juris" 2023, Vol. 41, Issue 1. DOI: 10.24265/VOXJURIS.2023.v41n1.09.

[14] See also: M.A. Corvaglia, *Labour Rights Protection and Its Enforcement under the USMCA: Insights from a Comparative Legal Analysis*, "World Trade Review" 2021, Vol. 20, Issue 5, pp. 666-667. DOI:10.1017/S1474745621000239.

When it comes to the facility-specific rapid response labour mechanism, it allows the complainant Party to request the formation of a "Rapid Response Labor Panel". Its competences include conducting on-site verifications at the facility in question, provided that the respondent Party agrees to the verification. Based on the findings of this panel, the complainant Party may impose remedies that are the most appropriate to remedy the Denial of Rights. Remedies may include suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination, remedies may include suspension of preferential tariff treatment for such goods or the imposition of penalties on such goods or services. If the Covered Facility has received at least two prior Denial of Rights determinations, remedies may include suspension of preferential tariff treatment for such goods; the imposition of penalties on such goods or services; or the denial of entry of such goods. It must be acknowledged that when comparing the mechanism concerned with previous trade agreements, a novel pattern emerges, which consists of on-site verifications at a given facility. In comparison, labour law clauses included in trade agreements to date provided an opportunity to address the failure of a government to ensure effective enforcement of labour laws[15]. In the next part of the article the author analyses a couple of recent USMCA cases in order to verify the effectiveness of the RRLM[16].

2.1. GM Silao

General Motors facility in Silao (Mexico) case of 2021 is definitely one of the cases, analysis of which will help us achieve the goal set in this article. It is in relation to this facility that the RRLM under the USMCA was used for the first time. More specifically, it was about violating fundamental labour rights, namely the right of free association and collective bargaining, with regard to a worker vote organised in order to express approval of their collective bargaining agreement. The US asked Mexico to review whether the denial of rights took place at a General Motors

[15] A. Tyc, *Global…*, pp. 154-155. On the Annex see also: G. Bensusán Areous and L.P. Briseño Fabián, *The USMCA between the US and Mexico: A Step Towards More Sustainable Trade?*, Friedrich Ebert Stiftung, Berlin 2022, pp. 5-6; B. Bates, *Examining…*, pp. 46-47; Ch. Scherrer, *Novel…*, pp. 297-298.

[16] The cases were analysed on the basis of the materials contained on the website: Bureau of International Labor Affairs, https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca-cases, "USMCA Cases" [accessed: February 3, 2024].

facility. Importantly, "[i]n connection with the U.S. request, Ambassador Tai has directed the Secretary of the Treasury to suspend the final settlement of customs accounts related to entries of goods from GM's Silao facility"[17]. The first phase of remediation under the USMCA involved the establishment of a "comprehensive plan" announced on 8 July 2021 by both the US and Mexico, aiming at enforcing international labour standards at the facility. To put it more accurately, the objective of this document was to provide the workers with the opportunity to vote on whether to legitimise their collective bargaining agreement in free and democratic ways, as well as to remediate the denial of the right of free association and collective bargaining. Mexico has committed itself to, among other things:

- ensure that a new legitimisation vote is held at the GM facility by 20 August 2021,
- allow the presence of federal inspectors from the Secretariat of Labor and Social Welfare,
- allow the presence of international observers from the International Labour Organization, as well as domestic observers from a Mexican autonomous institution.

That is exactly what happened. Mexican labour inspectors and International Labour Organization observers visited the plant of GM in Silao and were present there from two weeks before the vote until the vote itself, which took place on 18 August 2021. Workers were able to vote in an atmosphere free from interference of any kind and, as a consequence, rejected a collective agreement, which ended on 3 November 2021. In the next step (1-2 February 2022), they were able to vote in order to decide which of the four unions will exercise collective bargaining rights. The turnout was huge, with approximately 5,400 workers (nearly 90 percent of eligible workers) showing up. A new union, namely the National Independent Union for Workers in the Automotive Industry (*Sindicato independiente nacional de trabajadores trabajadoras de la industria automotriz*, SINTTIA), received more than 4,000 votes. Thus, the RRLM included in the USMCA fulfilled its role and proved to be effective.

2.2. Tridonex

The Tridonex case of 2021 was another one in which the novel RRLM was successfully used. On May 10, 2021, the Interagency Labor Committee for Monitoring

[17] According to Article 31-A.4 "Requests for Review and Remediation": "3. Upon delivering the request to the respondent Party, the complainant Party may delay final settlement of customs accounts related to entries of goods from the Covered Facility. Settlement of such accounts must resume immediately upon an agreement by the Parties that there is no Denial of Rights or a finding by a panel that there is no Denial of Rights".

and Enforcement received a RRLM petition regarding the Tridonex automotive parts facility in Matamoros (Mexico) owned by the US company Cardone Industries. According to the petition filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and other groups, the facility's workers were being denied the right of free association and collective bargaining. Having established the existence of a sufficient credible evidence of a denial of rights enabling the good-faith invocation of a dispute settlement mechanism, the Interagency Labor Committee for Monitoring and Enforcement gave the green light to the USTR to request Mexico to review whether a denial of rights occurred at the Tridonex facility. As a result of these actions, an agreement was concluded between the Office of the USTR and Tridonex and a special Action Plan divided into three groups of commitments was issued. These groups included: 1) "Company's Support for a Personal, Free, and Secret Vote", 2) "Additional Steps to Ensure Respect for Workers' Rights of Collective Bargaining and Freedom of Association", 3) "Company Commitments regarding Certain Employees Lawfully Terminated prior to the Entry into Force of the USMCA". Thus, Tridonex committed itself to address allegations regarding the denial of rights and, in particular, agreed to:

- support the right of workers to determine their union representation without coercion;
- welcome and fully cooperate with any inspectors and observers sent to the facility;
- fully cooperate with the Government of Mexico's efforts to keep the vote safe, including by welcoming all security personnel, if necessary;
- provide training to all workers on their rights to collective bargaining and freedom of association;
- be neutral in any election for union representation;
- provide full severance to the former employees and offer six months of back pay to each of them (at least 154 workers who were dismissed from the facility).

In fact, thanks to the labour enforcement provision in USMCA, Tridonex workers managed to organise fair elections in which they voted for an independent union: the National Independent Union of Industry and Service Workers (*Sindicato Nacional Independiente de Trabajadores de Industrias y de Servicios*, SNITIS).

2.3. Panasonic

On April 18, 2022, a petition for review of the denial of rights was also filed by Rethink Trade and SNITIS in the case of Panasonic Automotive Systems electronic parts facility in Reynosa, Tamaulipas, Mexico. Panasonic was accused of violating rights of association by signing a collective agreement contrary to the procedure established by the Mexican labour reform aiming at ensuring worker representation

in their unions. In fact, the Interagency Labor Committee for Monitoring and Enforcement found credible and sufficient evidence of a denial of rights which resulted in the good faith application of the USMCA's RRLM. It was the third time in the history that the US Department of Labor and the USTR used the instrument in question. On May 18, 2022, the government of Mexico was requested by the Interagency Labor Committee to conduct a review at the Panasonic plant. The former had 45 days to investigate the claims and formulate findings, and after that period was able to facilitate a resolution on actions by Panasonic to remediate workers' claims. The remediation included:

- recognition of the independent union, namely SNITIS, as the workers' sole bargaining representative;
- the possibility of negotiation of a new collective agreement that significantly increased workers' wages;
- reinstatement with full back pay of workers allegedly dismissed for participating in trade union activities;
- reimbursement of wage deductions for persons who participated in a work stoppage at the Panasonic plant.

2.4. Teksid

A very similar scenario was found in the analysis of the case of the Teksid Hierro de México automotive parts manufacturing facility, State of Coahuila. In response to a petition filed[18] under the USMCA Implementation Act, the US asked Mexico to review whether workers at that facility were being denied the rights of free association and collective bargaining. According the request for review of the allegations at the Teksid Hierro facility: "The United States is concerned that workers at the Facility are being denied the right of free association and collective bargaining, including in relation to union representation at the Facility, the collective bargaining agreement (CBA) registered with federal authorities and held by the *Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúgicos y Similares de la República Mexicana* (SNTMMSSRM), and the invalid CBA registered with state authorities and held by *the Sindicato de Trabajadores de la Industria Metal Mecánica del Estado, C.T.M.* (STIMME)". Following the US request, the Secretary of the Treasury was directed to suspend the liquidation for all unliquidated entries of goods from the plant, pursuant to section 752(a) of the USMCA Implementation Act. The Interagency Labor Committee found out that

[18] The petition was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America, the American Federation of Labor and Congress of Industrial Organizations, and *Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúgicos y Similares de la República Mexicana*, a Mexican union.

there was credible and sufficient evidence of a denial of rights and the USTR submitted a request to Mexico for review, pursuant to Article 31-A.4.2 of the USMCA, whether or not workers were being denied the right of free association and collective bargaining. A review of the allegations induced the government of Mexico to acknowledge the denial of rights, as well as to facilitate an agreement between an independent labour trade union *Los Mineros* and Teksid Hierro. The effects of these actions are threefold:

- recognition of the independent trade union as the workers' sole bargaining representative;
- repayment of dues owed to Los Mineros for multiple years;
- reinstatement with full back pay of 36 workers terminated reportedly for participating in trade union activity and a peaceful protest at the plant.

2.5. VU Manufacturing

On June 21, 2022, the fifth USMCA RRLM petition was filed by a Mexican labour union, namely *Liga Sindical Obrera Mexicana* and a worker advocacy group, namely the *Comité Fronterizo de Obreras* in case concerning VU Manufacturing auto parts facility in Piedras Negras, State of Coahuila. The Interagency Labor Committee found credible and sufficient evidence of denial of rights, which enabled the good faith use of the USMCA's RRLM. On July 21, 2022, the US government requested the government of Mexico to review whether the rights of free association and collective bargaining were denied to workers at the VU Manufacturing. The government of Mexico took action to ensure a free and fair election in order to choose union representation for workers at the VU Manufacturing. It tried to educate workers, as well as provide training to the human resources and supervisory personnel at the facility. Moreover, it received the company's commitment to remain neutral in the vote, which was communicated to workers at the facility. Before and during the vote officials from Mexico's Federal Center for Conciliation and Labor Registration paid site visits to inquire into misconduct allegations and supervise the vote itself. Officials from the International Labor Organization and Mexico's National Electoral Institute exercised the role of observers during elections at the request of the Mexican government. On September 9, 2022, the Federal Center for Conciliation and Labor Registration issued *Liga Sindical Obrera Mexicana* a certificate of representation, which authorised the latter to bargain collectively on behalf of VU Manufacturing workers.

Unfortunately, these actions did not improve the situation in the facility and the 6th request under the USMCA's RRLM was made. It was a direct consequence of a new petition, filed on December 29, 2022, by the *Liga Sindical Obrera Mexicana* and the *Comité Fronterizo de Obreras*, that claimed the VU Manufacturing

continued to deny workers the rights of freedom of association and collective bargaining. In particular, it was about illegal discrimination against the fairly elected representative union (*Liga Sindical Obrera Mexicana*) by favouring the minority company union, as well as the fact that VU Manufacturing denied access rights to *Liga Sindical Obrera Mexicana* organisers, and allowed members of the company union to threaten and intimidate *Liga Sindical Obrera Mexicana* members. Indeed, the Interagency Labor Committee for Monitoring and Enforcement pointed out the existence of sufficient and credible evidence of a new denial of rights at VU Manufacturing, which permitted the good faith use of the RRLM and started the 3rd course of remediation under the USMCA's RRLM. It might have been considered good news in that on March 31, 2023, the US and Mexico announced an agreement on a course of remediation in order to address the second petition. VU Manufacturing committed itself to the following points:

- creating an environment that promotes respect for workers' choice of union representation;
- refraining from interference in union activities to the detriment of the most representative union;
- imposing sanctions against company employees responsible for undermining workers' rights (e.g. dismissals);
- cooperating with labour authorities in order to detect and sanction violations of freedom of association and collective bargaining rights in accordance with Mexican law.

When the case was settled with such an agreement on a course of remediation, it boded well for the future. However, on October 10, 2023, the Deputy Undersecretary for International Labor Affairs at the Department of Labor, Thea Lee, announced that: "Today, the U.S. Department of Labor notes the regrettable decision by Manufacturas VU Auto Components to close its facility in Piedras Negras. This marks the end of implementation of a course of remediation that sought to remedy egregious denial of freedom of association rights. Unfortunately, the company undermined the majority union's ability to represent workers in collective bargaining negotiations and their right to strike".

2.6. Saint Gobain

On September 27, 2022, the AFL-CIO, United Steelworkers, and a Mexican union, namely *Sindicato Independiente de las y los Trabajadores Libres y Democráticos de Saint Gobain México*, filed a petition concerning the Saint Gobain México facility in Cuautla, Mexico, exporting automotive glass. The petition alleged that workers were denied free association and collective bargaining rights in connection with the July 2022 collective bargaining agreement approval vote and the upcoming

vote to determine which union would represent workers in collective bargaining negotiations. While the US was reviewing the case the situation at the plant improved from the workers' perspective because the Mexican union petitioners won the representational vote. This was the sixth time a democratic, independent union won a representational vote under the USMCA's RRLM. The USTR, Ambassador Katherine Tai, commented on this as follows: "This resolution is another historic win for workers, who will now be represented by the union of their choice as they negotiate better working conditions".

Conclusion

At the beginning of this article, the author provides a background on the history of the side agreement to NAFTA, namely the NAALC, and lists the reasons why it had to be renegotiated. As emphasised above, only three out of eleven "Labor Principles" were susceptible to dispute resolution under the NAALC. Neither systematically violated freedom of association nor the right to bargain collectively was protected by sanctions. The other flashpoints – from the workers' point of view – concerned, *inter alia*, ghost unions, protection contracts and poor working conditions in "maquiladora" factories. A new trade agreement – USMCA – was hoped to correct all these irregularities.

The aim of this article was to answer the questions whether the RRLM under the USMCA is an effective tool to ensure remediation of a "Denial of Rights" and whether it could be a model for future trade agreements. The specific objectives of the paper were to critically examine two theses:

- the thesis that the new, independent trade unions finally begin to replace "protection" unions in Mexico so the RRLM is a good start of the trade union movement in this country;
- the thesis that the textile and garment industry workers may find themselves in a less favourable position than workers employed in sectors mentioned in footnote 4 of Annex-31.

Each part of the article, in particular the analysis of Tridonex, GM Silao, Panasonic, Teksid, VU Manufacturing and Saint Gobain cases gets us closer to our objective. The results of this study confirm the first thesis. In each of the cases discussed, we note the activity of independent trade unions: *Sindicato independiente nacional de trabajadores trabajadoras de la industria automotriz* (GM Silao), *Sindicato Nacional Independiente de Trabajadores de Industrias y de Servicios* (Tridonex and Panasonic), *Los Mineros* (Teksid), *Liga Sindical Obrera Mexicana* (VU Manufacturing) and *Sindicato Independiente de las y los Trabajadores Libres y Democráticos de Saint Gobain México* (Saint Gobain). Undoubtedly, the USMCA and the discussed

enforcement mechanism have significantly contributed to the emergence of the trade union movement in Mexico.

The research findings also positively verified the second thesis. The first six cases in which the RRLM was triggered concern the automotive sector. We have no examples of cases involving the textile and garment industry. Therefore, the concerns expressed earlier in the literature have been confirmed in practice.

Having regard to the above and taking in consideration VU Manufacturing case which did not end successfully because the facility in Piedras Negras was closed, we can anyway draw a general conclusion that the RRLM established in the US-MCA has a great deterrence effect and is an effective tool to ensure remediation of a "Denial of Rights" of free association and collective bargaining for workers. It could serve as a model when concluding new trade agreements. The EU, which still seems to be looking for enforcement solutions, should look at mechanisms that work in other countries and should learn a lesson from the analysis of the USMCA cases. Of course, one should remember that the provisions in question cannot be just blindly and uncritically copied into another trade agreement because it may simply bring unexpected results. Instead, when taking into account a "copying" method, one shall first assess all contextual differences[19].

Future work might focus on the subsequent USMCA cases and might consider how to help workers employed in sectors other than those *expressis verbis* listed in footnote 4 of Annex-31.

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