

December 18, 2024

To the Mexican Section of the USMCA Secretariat:

On August 15, 2024, a dismissed worker associated with the *Sindicato Industrial de Trabajadores y Empleados del Cuero, Calzado y Comercio del Estado de Guanajuato* (SITECCC-CAT), an independent Mexican union, filed a USMCA Rapid Response Labor Mechanism (RRM) petition alleging a Denial of Rights by Bader de Mexico, S. en C. por A. de C.V. at its facility in León, Guanajuato. The United States reviewed the situation and found a good faith basis to believe that a Denial of Rights was occurring. On September 16, 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 31, 2024, Mexico sent a report to the United States in which it determined a Denial of Rights had occurred at the facility. Specifically, Mexico found (1) “employer interference in trade union affairs” where a trusted employee attended a SITECCC-CAT meeting and frequently discouraged subordinates from joining a union; (2) “indications [...] that the dismissal of a person was allegedly motivated by his or her union activities or preferences;” and (3) “there are indications to presume that there was a CBA for protection between the [SITECCC-CAT] and Bader,” which is prohibited under Mexican law.¹ Mexico, however, found: (4) with respect to other dismissed workers, that “the resolution of differences or conflicts between workers and employers shall be the responsibility of the Judicial Branch;” (5) “insufficient evidence” of threats, harassment, and surveillance; and (6) “with respect to the creation of a labor committee at Bader, [Mexico] did not find sufficient evidence but did find an indication of alleged employer interference, given the objective that the company itself has given to the committee to represent its workers.”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)

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*, 31 Oct. 2024 (Mexico’s Report), pp. 39-40. 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. 29, 39-40.

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 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. 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 produces leather for the automotive industry, including for seats. Due to the significant bilateral trade between Mexico and the United States in leather for the automotive industry, the Bader 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 interfered in the right of workers to engage in freedom of association and collective bargaining activities, such as organizing for SITECCC-CAT, including by dismissing as many as 32 workers as reprisal for their participation in such activities;

³ Mexico's Report, p. 40.

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 November 10, 2024.

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."

- (2) the Covered Facility interfered in the right of workers to engage in freedom of association and collective bargaining activities by means of threats, harassment, and surveillance; and
- (3) the Covered Facility created and dominated a labor committee that discourages workers' legitimate union activities and conducts activities a union would normally conduct, such as addressing working conditions between workers and management.

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):

- Articles 46-55, which set out the rights of wrongfully dismissed workers.
- 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 "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 389, which provides that union representation challenges be carried out through a "personal, free, direct, and secret vote."
- Article 390ter, which requires that collective bargaining agreements be supported by a "majority" of workers through a "personal, free and secret vote."

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.⁶

Sincerely,

Ambassador Katherine Tai
United States Trade Representative

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

cc:

Marcelo Ebrard Causaubón
Secretaria de Economía
Pachuca 189, piso 23
Col. Condesa, Demarcación Territorial Cuauhtémoc
C.P. 06140, Ciudad de México, D.F.

Marath Baruch Bolaños López
Secretario de Trabajo y Previsión Social
Blvd. Adolfo López Mateos 1968
Col. Los Alpes, Alcaldía Álvaro Obregón, Ciudad de México, D.F.
C.P. 01010

Vidya Desai
United States Secretary
USMCA Secretariat, United States Section
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⁶ Article 31-A.5.3 of the USMCA states: "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."

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

December 18, 2024

On September 16, 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 facility of Bader de Mexico, S. en C. por A. de C.V. located in Leon, Guanajuato (Covered Facility).

On October 31, 2024 Mexico sent a report to the United States in which it determined a Denial of Rights had occurred at the facility. Specifically, Mexico found (1) “employer interference in trade union affairs” where a trusted employee attended a *Sindicato Industrial de Trabajadores y Empleados del Calzado y Comercio del Estado de Guanajuato* (SITECCC-CAT) meeting and frequently discouraged subordinates from joining a union; and (2) “indications [...] that the dismissal of a person was allegedly motivated by his or her union activities or preferences.”¹ Mexico, however, found: (3) with respect to other dismissed workers, that “the resolution of differences or conflicts between workers and employers shall be the responsibility of the Judicial Branch;” (4) “insufficient evidence” of threats, harassment, and surveillance; and (5) “with respect to the creation of a labor committee at Bader, [Mexico] did not find sufficient evidence but it would be an indication of alleged employer interference, given the objective that the company itself has given to the committee to represent its workers.”²

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 produces leather for the automotive industry, including for seats. Due to the significant bilateral trade between Mexico and the United States in leather for the automotive industry, the Bader 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:

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- CAT, including by dismissing as many as 32 workers as reprisal for their participation in such activities;
- (2) the Covered Facility interfered in the right of workers to engage in freedom of association and collective bargaining activities by means of threats, harassment, and surveillance; and
 - (3) the Covered Facility created and dominated a labor committee that discourages workers' legitimate union activities and conducts activities a union would normally conduct, such as addressing working conditions between workers and management.

The United States disagrees with Mexico's determination that the Denial of Rights at the Covered Facility was limited to the activities identified in Mexico's report. 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, the situation at the Covered Facility represents an ongoing denial of workers' rights as outlined in the USMCA.³

³ 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."