

CLIENT ALERT

Looking Ahead: Enforcement of the USMCA Labor Provisions

Dec.18.2020

The United States-Mexico-Canada Agreement (USMCA) came into force on July 1, 2020. Included in the USMCA are stronger labor provisions Congressional Democrats demanded, with the support of the Trump Administration, that were approved on a bipartisan basis during consideration of the USMCA implementing legislation in late 2019. The stronger labor provisions helped secure the support of key labor groups for the USMCA. Together with overall support from business groups, the USMCA set a framework for more extensive labor commitments in U.S. trade agreements. This is expected to lead to more aggressive enforcement.

While no case has been brought on the labor provisions of the USMCA so far,¹ the groundwork has been in place for anticipated enforcement actions on labor violations to begin at any time. Notably, the Department of Labor's Bureau of International Labor Affairs (ILAB), with the Office of the U.S. Trade Representative as co-chairs, has established the Interagency Labor Committee for Monitoring and Enforcement (Committee). One of the responsibilities of the Committee is to review public submissions on potential violations of the USMCA labor provisions and to initiate the domestic process for the Rapid Response Labor Mechanism.

The Rapid Response Labor Mechanism is an innovative enforcement tool under the USMCA that can be triggered when workers at a "Covered Facility" in a "Priority Sector" in Mexico are being denied the right of free association and collective bargaining. A "Denial of Right," if found, can lead to the suspension of preferential tariff treatment of goods manufactured at the Covered Facility or the imposition of unspecified penalties. Two prior Denial of Right determinations can lead to the denial of entry of goods manufactured at the Covered Facility after the third determination. The USTR has named the U.S. nationals to the list of Rapid Response Labor Panelists who can serve as panelists to verify a Covered Facility's compliance.

Additionally, the ILAB has set up a hotline where interested public in USMCA countries can provide confidential information about alleged labor violations under the USMCA. The ILAB also worked with the U.S. Department of State to establish three labor attaché positions at the U.S. Embassy in Mexico City to oversee and monitor Mexico's compliance with the labor provisions of the USMCA.

The Trump Administration signaled throughout 2019 that enforcement of the USMCA can be done through the dispute settlement mechanism under the USMCA, including the Rapid Response Labor Mechanism, or, if the USMCA's state-to-state dispute settlement process is delayed, through the use of Section 301 of the Trade Act of 1974. Under Section 301, the U.S. Government would theoretically be able to take action on its own initiative against Mexico for any violation of the USMCA, including the labor provisions. Section 301 has most notably been applied against China for unreasonable and discriminatory practices related to intellectual property rights that burden or restrict U.S. commerce. The actual use of Section 301 as an enforcement tool by the U.S. will likely depend on the effectiveness of the USMCA dispute settlement mechanism and the Rapid Response Labor Mechanism.

¹ On December 9, the first USMCA enforcement action was filed by the U.S. against Canada on Canada's allocation of dairy tariff-rate quotas.

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