



Improving Mexican labour law through Trump's new trade agreement?

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On the last legislative day of 2019, an overwhelming majority in the United States House of Representatives approved the United States-Mexico-Canada Agreement (USMCA) Implementation Act. The Democrats' support for this free trade agreement, renegotiated by the Trump administration, is mainly due to their ability to force the administration to include unprecedented monitoring and enforcement mechanisms for a reform of Mexican labour law. These mechanisms have been welcomed by the AFL-CIO and most, though not all US trade unions. They hope that strengthening the rights of Mexican workers will disincentivize corporations to move jobs to Mexico.

This article describes the labour law deficits in Mexico, the annex on Mexican labour law reform negotiated by the Trump trade representatives, and, most importantly, the enforcement mechanisms which the Democratic-controlled House of Representatives successfully inserted into the Implementation Act.

Labour law in Mexico

According to the International Trade Union Confederation, Mexico belongs to the group of countries which systematically violate the core labour standards of the International Labour Organization. The labour rights indicator of the Center for Global Workers' Rights differentiates between labour legislation and labour law practice, with the latter in a considerably worse state (CGWR, 2019).

Mexican labour law provides for freedom of association and the right to strike, but trade unions can only become collective bargaining partners if they are recognized by the ministry of labour. The close ties between traditional trade unions and the longstanding authoritarian state party *Partido Revolucionario Institucional* led to the exclusion of independent trade unions. The right to strike is thereby reserved only for recognized trade unions. The labour judiciary is based on tripartite arbitration boards, which are dominated by government representatives. Due to the large number of trade unions, company collective agreements are the most prevalent. These often have the character of 'protection contracts' - that is, contracts between company management and management-friendly, self-declared workers' spokespersons, without the participation of workers. Experts estimate that such 'protection agreements' constitute

up to 90% of all officially registered collective agreements (Cisneros, 2019: 2). Only about 2% of Mexican wage earners are members of an independent trade union, and only 1% of those members have a collective agreement that has been reviewed and ratified by the workforce concerned.

US trade unions have long denounced these shortcomings in Mexican labour law. Accordingly, they have demanded that any new free trade agreement with Mexico includes a commitment by the Mexican government for labour law reform.

On 30 November 2018, the heads of government of the three countries signed the USMCA which included an annex on the participation of workers in collective bargaining in Mexico (Annex 23-A). On 1 December 2018, Andrés Manuel López Obrador (commonly called AMLO) assumed the presidency in Mexico. He had campaigned on a platform that promised progressive labour law reform. This promise was largely fulfilled in May 2019 in accordance with Appendix 23-A of the USMCA. Unions representing at least 30% of the workforce of a company can be recognized as exclusive bargaining partners. However, a majority of the workforce represented must ratify the collective agreements. An independent arbitration and registration body has been set up with the ability to verify the legality of votes. The content of collective agreements must be made known to employees. The law also provides for labour courts at state and federal level, including measures to speed up proceedings. In addition, the law contains clear deadlines for the implementation of the planned measures and the establishment of independent labour courts.

However, the AFL-CIO and many Democratic representatives remained sceptical about the Mexican state's ability to implement the reform. Given the current recession in Mexico, the AMLO government has pursued an austerity policy that has also affected the labour ministry. For example, the number of labour inspectors would have to increase from the current 1000 to 5600 in order to reach the ratio of employees to labour inspectors recommended by the ILO (Feingold, 2019). Furthermore, independent Mexican trade unions suspect that both management and the trade unions that have signed the 'protection contracts' will resist at various levels (Cisneros, 2019). In general, the Mexican state's implementation capacities are considered to be low. Therefore, US labour and their Democratic friends have insisted on amendments to the USMCA.

The amendment to USMCA and the Implementation Act

Once the Democrats won a clear majority in the House of Representatives in the November 2018 elections, the Trump administration was forced to consider their concerns to ensure the passage of USMCA. This gave the AFL-CIO influence on the question of ratification due to its political proximity to the Democrats. The US Trade Representative, therefore, approached the Mexican government for an amendment concerning the enforcement of the labour law reforms. The result was an agreement on the Specific Rapid Response Labor Mechanism (Annex 31-A for US-Mexico, 31-B for Canada-Mexico). It was further specified in the Implementation Act.

The Rapid Response Labor Mechanism aims at addressing the denial of the right of freedom of association and collective bargaining as stipulated by the new Mexican labour laws at a specific facility. The focus on a specific facility is unprecedented. Previous labour rights clauses in free trade agreements addressed the failure of a government to effectively enforce labour laws. Concrete violations at a specific factory were outside the purview of these agreements. The amendment foresees the establishment of a rapid response labour panel drawn from a pre-agreed list of labour experts. On receiving a complaint made by workers, the panel can start an investigation if it 'has a good faith basis belief that workers at a Covered Facility are being denied' the rights. The investigation can include a visit to the respective site and all steps in the whole process must be concluded within given time frames. In case the denial of rights is not remedied within about 120 days, the Trade Representative can (but does not have to) direct the Secretary of the Treasury (responsible for US customs) to 'deny entry to goods' or 'apply any duties or penalties' to goods produced by the violating factory. Already at the start of the process, the goods from the incriminated factory can be 'unliquidated' – that is, the duties that have to be paid are not finally determined so that later penalties can still be levied upon the goods. Throughout the process, the appropriate congressional committees should be consulted by the Trade Representative to keep an eye on the administration, which might not be very labour friendly.

Originally, some Democratic senators proposed that US labour inspectors should be able to examine allegations on the spot. The Mexican government, however, resisted this infringement on its sovereignty. The compromise was a mutually constituted panel of experts from both countries.

In addition, the Implementation Act stipulates the establishment of the Interagency Labor Committee for Monitoring and Enforcement. It 'shall assess on a biannual basis the extent to which Mexico is in compliance with its obligations' concerning the agreed-upon labour law reforms, 'including specifically whether Mexico has provided funding consistent with its commitment' (Title VII Sec. 714). The committee should be assisted by the Independent Mexico Labor Expert Board

whose 12 members will be appointed by both parties in Congress and the trade union dominated Labor Advisory Committee to the Trade Representatives' Office. If the committee determines that Mexico has failed to meet its obligations, it shall recommend enforcement action. Furthermore, a hotline open for Mexican workers shall be established and the Department of Labor should hire five labour attachés who are to be tasked to assist the committee 'to monitor and enforce' Mexico's labour obligations. Lastly, the Forced Labor Enforcement Task Force under the secretary of Homeland Security shall address the issues of child and forced labour.

Models for the future?

The comprehensive character of the enforcement mechanisms makes it likely that the Mexican labour law reforms will be implemented and, thereby, will strengthen the rights of workers in Mexico. Therefore, these mechanisms should be considered for other trade agreements. They were made possible by a combination of factors, not the least US leverage, a labour friendly government in Mexico, and Democrats in strong opposition to the president. Whether future circumstances will be as conducive for such a strong contractual language will have to be seen.

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The GLC has been supported in 2019 by the German Trade Union Confederation (DGB), the ICDD at Kassel University and the Center for Global Workers' Rights at Penn State University.