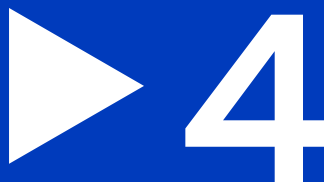


Labour reforms in Mexico and international trade negotiations

From the North American Free Trade Agreement to the United States–Mexico–Canada Agreement

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► Introduction

This chapter analyses the role of the United States-Mexico-Canada Agreement (USMCA) and the related trade negotiations regarding the transformation undergone by Mexico's labour market institutions. The emphasis is on the domestic labour market reforms that occurred during the transition from the North American Free Trade Agreement (NAFTA) of 1994 to the Agreement between the United States of America, the United Mexican States, and Canada (United States–Mexico–Canada Agreement, or USMCA), which took effect on 1 July 2020.

Three interconnected arguments are presented. First, it is posited that the labour-related requirements placed on Mexico by the United States and Canada during the initial phase of the USMCA trade negotiations have served as a trigger for institutional change. These were essential to overcome internal resistance and reduce the political cost of undertaking a far-reaching reform of Mexico's labour model.

Second, during the final stage of the negotiations on the USMCA, the chapter argues, the three Governments converged on the idea of promoting a new labour model in Mexico. Although the momentum originated externally, the overall thrust and key features of the reforms were not foisted on Mexico from outside. They are, rather, a reflection of internal demands from trade unions and of numerous formal and informal exchanges among trade unionists, experts, legislators and trade negotiators from the North American region throughout the period in which NAFTA was in force.

Third, the unilateral labour agenda contained in the USMCA and the various monitoring and complaint mechanisms designed to supervise that agenda's implementation were developed in response to a specific context. These mechanisms aim at supporting the strengthening of labour market institutions, especially the new independent labour justice system, and to ensure that the principles of freedom of association and collective bargaining are upheld in Mexico.

To develop these arguments, this chapter draws on documentary research, archival work, newspapers, official registers and written evaluations by internal and external entities responsible for monitoring implementation of the reform. Section 4.1 describes the transition process from NAFTA and its labour side agreement (the North American Agreement on Labor Cooperation, NAALC) to the USMCA. It thereby focuses on the part played by Mexico's trade partners and highlights the automotive industry's special role in the USMCA negotiations. The chapter then turns its attention to two

key dimensions of the newly negotiated Agreement. Section 4.2 presents the main characteristics of the USMCA's labour provisions, sketches the main features of the new Mexican labour model and points to key developments in the implementation of that model. Next, section 4.3 explores the Rapid Response Labor Mechanism (RRLM), describing its legal functioning and how the first complaints submitted under the Mechanism were handled. The final section offers some concluding observations.

► 4.1 The role of labour issues in the transition from the NAALC to the USMCA

4.1.1 A chronology of the transition

The NAALC, which was adopted in parallel to NAFTA, had only a limited ability to prevent political and economic strategies aimed at attracting investment to Mexico based on low wages.¹ After more than two decades of implementation of NAFTA, exports to the United States had grown by an annual average rate of 7 per cent, meaning that, by 2015, their share in Mexico's total volume of exports was seven times higher than in 1993 (Mexico, Ministry of Economic Affairs n.d.). However, success in trade was not accompanied by improvements in labour conditions in Mexico.

For over three decades, trade unionists and experts from the United States and Canada had been repeatedly questioning Mexico's labour model and their criticisms contributed to the amendment of Article 123 of the Mexican Constitution on 24 February 2017 (Mexico, *Official Gazette* 2017).² The reform was approved in only ten months, whereas similar amendments proposed over the past 20 years had failed to get off the ground, owing to resistance from stakeholders that benefited from the old labour model (Bensusán and Middlebrook 2020).

1 For more information on the design of the NAALC and the reasons for its limited ability to prevent unfair competition with Mexico through salary controls, see Bensusán (1994), Compa and Brooks (2014), and section 4.1.2 of this chapter.

2 These claims for the violation of freedom of association and collective bargaining, among other regulations, resulted in a number of complaints filed under the NAALC throughout the term of NAFTA. See in this regard, Compa and Brooks (2019) and Nolan García (2011).

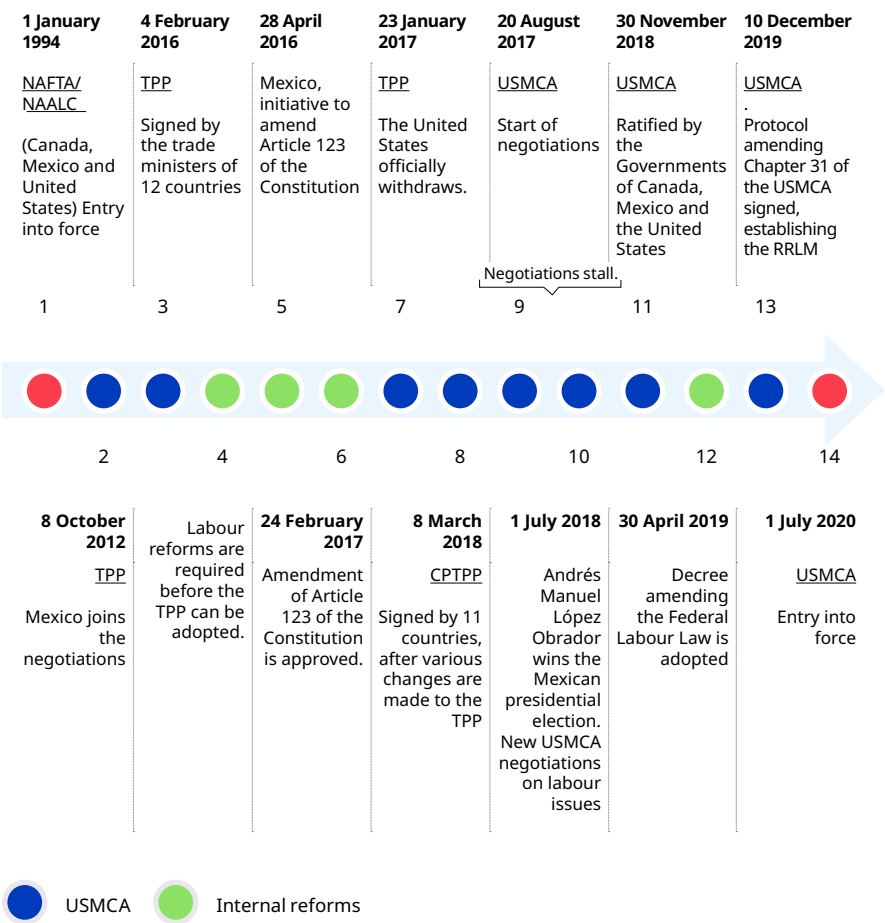
Between February 2017 and July 2018, when the Mexican presidential election took place, the USMCA negotiations ran into difficulties on various fronts, notably regarding the labour agenda and issues related to the automotive industry.³ At the same time, the process of amending the Federal Labour Act stalled in Mexico as a result of domestic resistance to the proposed new constitutional principles; the situation changed, however, with the victory of presidential candidate Andrés Manuel López Obrador in July 2018, who had run for office on a manifesto of trade union democratization and increasing the wages of Mexican workers (Bensusán and Middlebrook 2020).

The USMCA was signed on 30 November 2018, just one day before the end of President Enrique Peña Nieto's term, but its ratification depended on the adoption of two key instruments: a decree amending the Federal Labour Act, which was adopted on 30 April 2019, and a Protocol amending Chapter 31 ("Dispute Settlement") of the USMCA, signed on 10 December 2019, which established the RRLM (see section 4.3 below). The USMCA finally entered into force on 1 July 2020 (Mexico, Ministry of Economic Affairs 2020), becoming one of the most heavily regulated trade agreements as far as labour issues are concerned (Polaski, Nolan García and Rioux 2022).

Figure 4.1 below provides a timeline of the most important events and instruments in the run-up to entry into force of the USMCA.

3 In addition to the pending regulation of the constitutional reform, another important issue that hindered progress in the USMCA negotiations was rules of origin for the automotive industry. Moreover, the negotiations, which had already gone through seven rounds, were suspended between March and August 2018 in connection with the Mexican general election (July 2018). For more information on negotiation rounds and dates, see OAS (n.d.).

►Figure 4.1 The evolution from NAFTA/NAALC to the USMCA and internal labour reforms in Mexico, 1994–2020



CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership;
TPP = Trans-Pacific Partnership.

Source: Bensusán and Middlebrook (2020).

4.1.2 The role of Mexico's trade partners in the transition

A change of strategy adopted by the Obama Administration required Mexico to first undertake labour law reforms before the Trans-Pacific Partnership could be adopted (see step 4 in figure 4.1 above).⁴ This was driven by, among other considerations, the conclusion reached by the Governments of the United States and Canada, as well as by trade unions and experts in both countries, that traditional labour provisions in trade agreements were ineffective at preventing “social dumping” as a means of attracting jobs to Mexico (Nolan García 2014; Compa and Brooks 2019). Although more than 40 complaints had been filed within the framework of the NAALC, many of them relating to violations of freedom of association, none had resulted in action beyond ministerial consultations (ILO 2015). This lack of effective enforcement mechanisms and of actors willing to use them meant that the NAALC achieved very little (Dombois 2006; Compa and Brooks 2019).

Nevertheless, the NAALC did have some positive effects, such as the prohibition in Mexican labour law of pregnancy testing requirements (frequently encountered in the maquila⁵ industry) and greater transparency of information on trade union registers and collective agreements (Bensusán and Middlebrook 2013). In addition, it helped to increase the interactions between trade union organizations and labour experts within North America, notably in the context of jointly filed public submissions.⁶ This dialogue led to greater visibility and a better understanding of Mexican labour dynamics, of their impact on trade and labour relations in the region, and of the possibilities as well as the necessity for change (Graubart 2008; Nolan García 2014).

One result of this enhanced interaction was the publication of a joint statement in 2015 by the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO) and the Mexican National Union of Workers (UNT). This statement concerned the labour reforms that Mexico was expected to adopt before acceding to the Trans-Pacific Partnership.

4 The need to reform Mexican labour legislation and safeguard human rights as prerequisites for joining the Trans-Pacific Partnership was raised by Nancy Pelosi, Minority Leader of the House of Representatives of the US Congress, during her visit to Mexico in May 2016. See Gómez Quintero (2016).

5 An offshore processing or assembly plant on the Mexican side of the US–Mexican border.

6 The filing of complaints within the framework of the NAALC involved transnational collaboration between key labour organizations and actors (Nolan García 2011; Oehri 2017).

The relevant reforms included the proposal to create a decentralized organization for registering collective agreements and trade unions (Bensusán and Middlebrook 2020).⁷ During a visit to Mexico the following year, US representatives raised concerns over these reforms to the Mexican Government, which were reiterated by Nancy Pelosi, Minority Leader of the House of Representatives of the US Congress, at a meeting with the then President, Enrique Peña Nieto (*Excelsior* 2016).⁸ The US Government – echoing demands by trade unions in Canada, Mexico and the United States – also required that Mexico ratify the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which did not occur until September 2018, after the new legislature was sworn in.

In January 2018, more than 180 members of the US Congress sent a letter to the then United States Trade Representative (USTR), Robert Lighthizer, arguing that the successor agreement to NAFTA required “strong, clear, and binding provisions that address Mexico’s labour conditions”; they further emphasized that “[l]ow wages, a lack of independent unions and an inability for workers to collectively bargain in Mexico have hurt American workers and led to the outsourcing of jobs to Mexico” (Pascrell, Levin and DeLauro 2018). In addition, two important members of the Subcommittee on Trade of the Ways and Means Committee of the US House of Representatives, Bill Pascrell and Sander Levin, issued a joint statement the following month emphasizing the significance of labour rights for the successor of NAFTA (Pascrell, 2018).⁹

In March 2018, representatives of Mexican independent trade union organizations, together with activists and members of opposition parties, met with US Democrat legislators in Mexico City.¹⁰ The seventh round of negotiations on the new trade agreement was then taking place and the AFL-CIO submitted a letter, supported by 107 trade union representatives, to the US negotiators. The letter called for respect for constitutional principles.

7 For more information on the labour reform initiatives presented to the Mexican Congress, see Bensusán and Middlebrook (2013).

8 Cf. an interview by the author with a high-level US Department of Labor official in Mexico City (4 September 2017); and an interview by Kevin Middlebrook, a professor at the Institute of the Americas, University College London, with a former high-level official from the Office of the USTR (30 April 2018), both cited in Bensusán and Middlebrook (2020). See also Gómez Quintero (2016).

9 The letter can be understood as a response to the Minister of Labour and Social Security of Mexico, Roberto Campa, who had questioned the importance of labour issues during the renegotiation of NAFTA. For the context of this statement see Levin and Shaiken (2019); Covarrubias Valdenebro (2019); Muñoz Ríos (2018) and Tijerina (2017).

10 Interactions between trade unionists and experts from these two countries and Canada eventually led to a shared understanding of the reforms required in Mexico (see also Valencia 2017).

It was disseminated widely across Mexico at the same time as the proposed amendments to the Federal Labour Act were being discussed in the Senate.¹¹ In addition, US negotiators and legislators sought dialogue with Mexican labour experts to identify the best institutional channels for reforming the old labour model.¹²

Finally, when representatives of the new Mexican presidential administration joined the negotiations, they cleared the way for the adoption of a trade agreement with some of the most far-reaching requirements related to workers' rights (Levin and Shaiken 2019). Indeed, labour reform was one of the key issues on which President-elect López Obrador had run for office.¹³

4.1.3 The role of the Mexican automotive industry in the USMCA negotiations

During the USMCA negotiations, the three Governments and other stakeholders directed their attention, in particular, to the Mexican automotive industry and its export success, which was based on control of trade unions and low wages combined with increasing productivity. Indeed, even in the most successful sector under NAFTA, Mexican workers were not seeing an improvement in working conditions (see also Moreno Brid et al. in Volume 1; Moreno Brid et al. 2021; Isidore 2017).

Job growth in the Mexican automotive industry was steady during the NAFTA years, with employment reaching similar levels to those in the United States. Nevertheless, fewer than 10 per cent of these jobs were in the assembly sector where salaries are higher (compared with 22 per cent in the United States). According to the Mexican Economic Census of 2019, around one quarter of jobs in the Mexican automotive industry were subcontracted. Moreover, these jobs were concentrated in the automotive parts sector, which is characterized by low salaries, high job instability and great obstacles to unionization (Bensusán and Florez 2022). The difference between wages in the assembly sector and those in the automotive parts

11 Interview by Kevin Middlebrook with a US trade union representative in Washington, DC, on 25 June 2018; cited in Bensusán and Middlebrook (2020, 1021).

12 The author participated in several such meetings before, during, and after the adoption of the USMCA, at which participants explored various options for reforming corporatism in Mexico. See also Bensusán and Middlebrook (2020, footnote 63).

13 Possibly as a way of justifying the labour demands of the USMCA, it is explicitly noted in Para. 1 of Annex 23-A that "Mexico shall adopt and maintain the measures ... necessary for the effective recognition of the right to collective bargaining". See further Morales (2020).

sector in Mexico was already as high as 60 per cent in 2019 (US\$4 per hour versus US\$2.5 per hour).¹⁴

The average hourly wage in the assembly sector in the United States (including labourers and employees) was more than five times that in Mexico in 1994. By 2019 the ratio had increased to more than 7:1. If Canada and Mexico are compared, the gap between labourers is even greater. Over the same period, the ratio of the average hourly wage in the automotive parts sector in Canada to that in Mexico increased from 6:1 to almost 8:1. Moreover, average wages in the three countries dropped between 1994 and 2019.¹⁵

Overall, differences in productivity alone cannot account for the wage gap among these countries during the years of NAFTA (Covarrubias Valdenebro 2020). In relation to this, US and Canadian trade unions, as well as legislators and negotiators from those countries, consistently called for the institutional factors that were artificially keeping down salaries in the Mexican automotive industry to be addressed.

In addition to changes to the rules of origin for the automotive industry in the USMCA, which raised the threshold of the regional value component from 62.5 to 75 per cent, another commitment with an impact on labour markets is the adoption of a fledgling regional-level wage policy related to manufacturing costs.¹⁶ In particular, passenger vehicles imported from one party to another are only eligible for preferential tariff treatment if 40 per cent (45 per cent for trucks) of the total manufacturing cost of the vehicle is produced by workers earning at least US\$16 per hour.¹⁷

Given the complexity of wage rules, the impact of this policy over wages may be difficult to gauge. In addition, in the automotive industry, the policy applies to average rather than minimum wages. The requirement can thus be met if some workers, such as managers or those employed in research and development, receive high salaries (Scherrer 2020, 299).

14 Data from official sources, cited in Bensusán and Florez (2022); see specifically figure 2 and table 7.

15 For details on the wages of labourers on production lines, see Covarrubias Valdenebro (2020, 7).

16 For a discussion of rules of origin and labour provisions in the USMCA in the context of the Mexican automotive industry, see Moreno Brid et al. in Volume 1.

17 See Art. 7 of the Appendix to Annex 4-B ("Product-Specific Rules of Origin") to the USMCA.

► 4.2 Overview of the new Mexican labour model and its links to Annex 23-A to the USMCA

4.2.1 Main features of the labour provisions in the USMCA

The USMCA presents several novel features in comparison to the NAALC. First of all, labour issues are addressed in a dedicated chapter (Chapter 23, headed “Labor”) following the model that was originally developed for the Trans-Pacific Partnership Agreement. In addition, the labour provisions contained in Chapter 23 are enforceable through the general mechanisms provided in Chapter 31 (“Dispute Settlement”), with violations being subject to trade sanctions. Furthermore, Chapter 31 was expanded after ratification of the Agreement to incorporate the RRLM, a dispute settlement mechanism applicable exclusively to violations of freedom of association and the right to collective bargaining (see section 4.3 below).

In terms of normative content, Article 23.2 refers to the ILO Declaration on Fundamental Principles and Rights at Work (1998) and the ILO Declaration on Social Justice for a Fair Globalization (2008). Article 23.3 requires each party to incorporate into its statutes and regulations, and into the practices governed by these, the rights laid down in the 1998 ILO Declaration, and to provide for acceptable conditions of work with regard to minimum wages, working hours and occupational safety and health. Article 23.5 prohibits Parties from failing to effectively enforce their labour laws “through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties”. It also sets out government action that parties should take to promote compliance with their labour laws. Chapter 23 further includes commitments to promote public awareness of labour laws and procedures and to ensure access to such procedures (Art. 23.10), along with provisions on cooperation and cooperative labour dialogue (Arts 23.12 and 23.13).

Applicable only to Mexico, Annex 23-A (“Worker Representation in Collective Bargaining in Mexico”) contains provisions designed to strengthen the principles related to freedom of association and the right to collective bargaining that were introduced as part of the 2017 constitutional reform. Its goal is to ensure that these rights, and the entities and procedures required

to uphold them, are regulated in the law. Notably, Annex 23-A required the Federal Labour Act to be amended to include an obligation to revise all existing collective agreements at least once during the four years after entry into force of the new legislation. This ultimately led to the adoption of a new process, referred to as “legitimization” of collective agreements, which is further discussed below.

By tying labour commitments in the USMCA to the reform of the Federal Labour Act, the negotiators paved the way for new principles and rules, monitoring mechanisms, time limits and resources. This increased the visibility of labour violations and the likelihood of effective implementation of the new safeguards (Bensusán and Middlebrook 2020; Bensusán 2020).

4.2.2 Overview of the new labour model

The amendment of Article 123 of the Mexican Constitution, adopted on 24 February 2017, and its incorporation into the Federal Labour Act, approved on 30 April 2019, led to an important transformation of the old labour model. The new model focuses on genuine representation of workers and workers’ organizations in collective bargaining, and on free, direct and secret voting in trade union democratic processes, thereby fostering union freedom, autonomy and democracy (Mexico, Ministry of Labour and Social Security 2019).

This process of institutional transformation, grounded in the constitutional reforms adopted since 2017, should be viewed within the wider context of policy interventions on labour issues undertaken by the López Obrador Administration. For example, as a result of the aforementioned labour reforms in 2017 and 2019, workers were able to enjoy more genuine representation. Workers also benefited from the new minimum wage policy introduced in December 2018, which enabled a recovery of purchasing power for the minimum wage of more than 60 per cent between 2018 and 2021 without affecting employment. The value of the minimum wage was even doubled in the cities on the US–Mexico border, where the *maquila* industry has a strong presence (Campos-Vazquez and Esquivel 2021).

Furthermore, the 2021 reform on outsourcing rules (Mexico, *Official Gazette* 2021), which received support both within Mexico and from US trade unions and experts,¹⁸ in principle precluded companies from making

¹⁸ In its preliminary report published on 15 December 2020, the US Independent Mexico Labour Expert Board, drawing on views expressed by US trade unions, questioned the abuse of outsourcing arrangements in Mexico, which were preventing workers from exercising their rights. See Pérez de Acha (2021).

available their employees for the benefit of third parties. According to data from the Mexican Economic Census (INEGI 2019), more than 4 million individuals in Mexico were working under outsourcing arrangements, which are associated with precarious employment and greater obstacles to the organization of workers.¹⁹

The 2019 amendment of the Federal Labour Law reflects the constitutional principles incorporated into Article 123 of the Mexican Constitution in 2017 and/or ties in with the commitments set out in Annex 23A to the USMCA. Several features in the 2017 and 2019 reforms are meant to correct practices under the old labour model that were keeping wages artificially low (Bensusán and Middlebrook 2013; Bensusán 2020). A key aspect pertains to establishing the Federal Centre for Labour Conciliation and Registration²⁰ and creating independent labour courts.²¹

Other aspects of the reforms related to the strengthening of the principles of freedom of association and collective bargaining. This included guaranteeing trade unions' full autonomy from the Government and employers (as required by the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)) and guaranteeing unlimited scope of activity for trade unions.²² In addition, trade unions' statutory regulations were to be brought into line with new constitutional principles and the provisions of the Federal Labour Act with respect to free, direct and secret voting.²³ Further aspects concerned the protection of democratic political rights of trade union members²⁴ and guaranteeing trade union representativeness as a condition for collective bargaining.²⁵ Moreover, the new rules require initial collective agreements and all successive revisions to

19 Since the 2021 reform, officially registered subcontractors may provide specialized services or carry out specialized works for an outsourcing company only in areas not connected to the latter's corporate purpose or main area of activity (see Art. 13 of the Federal Labour Law).

20 See Paras 2(a), 2(b)(i) and 2(g)(ii) of Annex 23-A to the USMCA (referring to the establishment of a centralized website such as that provided by the Centre); Federal Labour Law (provisional Art. 3 of the Decree of 30 April 2019 amending the Federal Labour Law).

21 Paras 2(a), 2(b)(ii) and 2(d) of Annex 23-A to the USMCA; Federal Labour Law (provisional Art. 5 y 6, of the Decree of 30 April 2019 amending the Federal Labour Law).

22 See in particular, Arts 357 and 360 of the Federal Labour Law.

23 Provisional Art. 23 of the Decree of 30 April 2019 amending the Federal Labour Law.

24 See Art. 358 of the Federal Labour Law and Para. 2(c) of Annex 23-A to the USMCA.

25 See Art. 390 *bis* of the Federal Labour Law, Para. 2(e) of Annex 23-A to the USMCA and provisional Art. 22 of the Decree of 30 April 2019 amending the Federal Labour Law.

be approved every two years by a majority of the workers covered²⁶ and, as mentioned above, the legitimization of the collective agreements that were already in existence as of 1 May 2019.²⁷ Finally, also measures to promote the accountability and transparency in the management of trade union assets were introduced.²⁸

4.2.3 The implementation of the new labour model

The expected effects of the implementation of the labour reforms adopted between 2017 and 2019 are related to two main areas. The first one concerns the construction of a new labour justice system, which dispensed with the old conciliation and arbitration Boards and created new conciliation centres and labour courts, with a view to ensuring impartiality of judicial decision-making and facilitating swift conflict resolution.²⁹ The second area is related to the promotion of trade union democracy based on a secret, free, and direct vote. This is intended to give workers a voice in the exercise of their collective rights, which was previously controlled by the union leadership.

When amendments to the Federal Labour Law were approved in 2019, trade unions affiliated with the Confederation of Mexican Workers (CTM), which together with other organizations had historically opposed reforms to the old labour model, pushed back. They filed more than 500 *amparo* proceedings (legal petitions for relief under the Constitution), seeking to have the new rules declared unconstitutional. By March 2021, the Mexican Supreme Court of Justice had rejected all lawsuits, declaring the reforms were constitutional and legitimate.³⁰ Members of state conciliation and arbitration boards also

26 Paras 2(e) and (f) of Annex 23-A to the USMCA, Arts 390 *ter* and 400 *bis* of the Federal Labour Law and provisional Art. 22 of the Decree of 30 April 2019.

27 Para. 2(f) of Annex 23-A to the USMCA; provisional Art. 11 of the Decree of 30 April 2019 amending the Federal Labour Law.

28 Art. 373 of the Federal Labour Law.

29 With the reform, 105 local conciliation centres were created; 43 assistance and representation offices for the Federal Center for Conciliation and Labor Registration; 102 local labour courts, and 41 federal labour courts. The conciliation rate for labour disputes reached 75 per cent, with an average duration per conciliation of 30 days. The average resolution time for cases that went into trial was 6.5 months, about 95 per cent less than under the old system (Mexico, Ministry of Labour and Social Security 2023).

30 The Mexican Supreme Court quashed these challenges in 12 rulings expressing support for the principles of trade union democracy, collective bargaining, transparency and accountability. See Factor Capital Humano (2021). The rulings from the Second Chamber of the Mexican Supreme Court were 8/2021, 1547; 9/2021, 1653; 10/2021, 1651; 11/2021, 12/2021, 1554; 13/2021, 1536; 14/2021, 1545; 15/2021, 1541; 16/2021, 1539; 17/2021, 1543; 18/2021, 1550; 19/2021, 1552.

expressed doubt, as they lost the authority to register trade unions and collective agreements and to settle labour disputes (Maquila Solidarity Network 2019). Nevertheless, these doubts faded away when the labour reform began to be implemented, which occurred between May of 2019 and May of 2023, involving relatively few delays despite the ongoing COVID-19 pandemic.

With regard to the process of legitimization of the collective agreement – which can be seen as a bridge between the old corporate labour model and the new democratic, participatory model – an extension was required. While the presentation of applications by the trade unions finished on 1 May 2023, the consultations with workers through secret ballot have been extended to 31 July 2023 given the overwhelming number of requests submitted towards the end of the four-year term.³¹

To avoid financial obstacles for the implementation of the labour reform as in other cases (Pérez 2019), the United States required the Mexican Government to advance the necessary funding (Corona 2019). About US\$70 million were allocated to that end in the 2020 budget authorized by the Mexican Congress, which was doubled the following year. In 2022, the amount allocated was 10 billion pesos (about US\$550 million at the time of writing).³² Subsidies of about US\$25 million, paid from the Federal budget, were also allocated to States to fund the second stage of implementation, which involved setting up 132 offices for the new institutions created in 13 States (about US\$550 million at the time of writing).³³ Large sums were also provided by Canada and the United States, in accordance with their respective implementation laws related to the USMCA.³⁴ These were intended to support various technical assistance projects conducted by civil society organizations and consultancy firms, which illustrates the importance attached by Mexico's trade partners to the labour reform.³⁵

31 According to officials of the Federal Centre for Labour Conciliation and Registration, only 244 collective contracts have been concluded, and it is estimated that between 40 and 45 per cent of the procedures in progress will be discarded (Martínez 2023a, 2023b).

32 For more information on the budgetary resources earmarked for the labour reform, see Hernández (2021).

33 For more information on the resources allocated to the federal authorities to implement the labour reform, see Mexico, *Official Gazette* (2020) and Gascón (2021b).

34 See, for example, the [USMCA Implementation Act](#), introduced and enacted during the 116th US Congress (2019–20).

35 See United States, Bureau of International Labor Affairs (n.d.) and Gascón (2021a). A list of the projects undertaken and funding earmarked by the US Department of Labor to support the labour reform and strengthen labour laws in Mexico is available at <https://www.dol.gov/agencies/ilab/ilab-project-page-search>.

Canada and the United States have closely monitored the labour reform. This involves the labour attachés posted to the US Embassy and the Canadian Embassy in Mexico City, and the creation by the US Department of Labor of an online tool for the reception of anonymous complaints on labour rights violations.³⁶ In addition, a high-level body was established in the United States in order to monitor its trade partners' compliance with labour commitments. The Interagency Labor Committee for Monitoring and Enforcement is co-chaired by the USTR and the Secretary of Labor. Representatives of other departments also sit on the Committee, which is advised by the Independent Mexico Labour Expert Board (IMLEB).³⁷ Some of their recommendations have already been acted upon, such as the improvement of the Protocol to Legitimize Existing Collective Bargaining Agreements, including by setting clearer rules on how to handle irregularities.³⁸

In its reports, the IMLEB frequently questioned the legitimization process for collective agreements signed before the reform. To remain valid, these agreements had to be validated before 1 May 2023 by a majority vote of the workers covered. Requested by the United States, this step was included in both Annex 23-A (USMCA) and in provisional Article 11 (Decree of 30 April 2019) amending the Federal Labour Act. The goal of such legitimization was to eliminate the notorious practice of “employer protection contracts”.³⁹

Finally, questions regarding transparency have arisen in light of the limited public access to trade union documents and collective agreements. Such access should be provided by the new Federal Centre for Labour Conciliation and Registration in accordance with the amended Federal Labour Act.

36 This online tool (available in English, French and Spanish) can be accessed at <https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca/hotline>.

37 Sections 711 and 731 of the USMCA Implementation Act (see footnote 34 above) provided for the establishment of the Committee and the Board, respectively. For the Board's reports from December 2020 and July 2021, see United States, IMLEB (2020, 2021). The last report was issued on 20 March 2023; see [IMLEB Report-2023 03 20 FINAL](#).

38 See Maquila Solidarity Network (2021, 5).

39 Concerns about this process can be found in IMLEB (2023, 47–48). For a definition and discussion of *contratos colectivos de protección patronal*, see de Buen Unna (2011).

► 4.3 The Rapid Response Labor Mechanism (RRLM)

4.3.1 Functioning of the mechanism

On 11 December 2019, Annex 23-A to the USMCA was further strengthened by the signing of a new Protocol amending Chapter 31 (“Dispute Settlement”). The Protocol added two identical annexes,⁴⁰ which establish a “Facility-Specific, Rapid Response Labor Mechanism”. This mechanism provides for the expedited enforcement of workers’ freedom of association and right to collective bargaining at the facility level. Its goal is to ensure that the parties’ commitments on freedom of association and the right to collective bargaining are upheld in all the facilities covered.⁴¹ When a dispute involves a “covered facility” located in Mexico, the good faith belief of a party that a “Denial of Rights”⁴² has taken or is taking place at the facility is sufficient to trigger the Mechanism. By contrast, when a dispute involves a covered facility located in Canada or the United States, the facility in question must already be subject to an order from the labour relations board of the respective party (Arts 31-A.2 and 31-B.2 of the USMCA). The three parties to the Agreement are hence not subject to the same arrangements.⁴³

Once the complaining party issues a request of review to the Mexican Government, the latter has 10 days to agree to conduct a review, and if it agrees, it will have 45 days to remediate the denial of rights. At this stage, the complainant party “may delay final settlement of customs accounts related to entries of goods from the Covered Facility”, thereby barring the goods from entering its markets (Arts 31-A.4 and 31-B.4 of the USMCA).

40 Annex 31-A (applicable between Mexico and the United States) and Annex 31-B (applicable between Mexico and Canada).

41 A “covered facility” is a place in the territory of a party that “produces a good or supplies a service traded between the Parties; or produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party; and is a facility in a Priority Sector”. “Priority Sector” refers to “a sector that produces manufactured goods, supplies services, or involves mining” (Art. 31-A.15, Annex 31-A to the USMCA).

42 A “Denial of rights” means that “a Covered Facility is being denied the right of free association and collective bargaining under laws necessary to fulfil the obligations of the other Party (the “respondent Party”) under this Agreement” (Art. 31-A.2, Annex 31-A).

43 The first footnote in Annex 31-A to the USMCA explains when a claim can be brought in the case of the United States and Mexico. Corresponding criteria are established for Canada in the first footnote in Annex 31-B to the USMCA.

If the respondent party fails to agree with the complainant party on the existence of a Denial of Rights or a course of remediation, or if the facility in question fails to comply with the agreed course of remediation, a panel of independent experts may be established. The so-called “Rapid Response Labor Panel” is authorized, among others, to conduct inspections in situ. Should the panel determine that a Denial of Rights has occurred, the complainant party can impose remedies. This includes the “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” (Arts 31-A.10(2) and 31-B.10(2) of the USMCA). If the same facility “has received a prior Denial of Rights determination on at least two occasions”, the complainant party may also deny entry to goods manufactured at the facility (Arts 31-A.4 to 31-A.10 and 31-B.4 to 31-B.10 of the USMCA).

Under the RRLM, the burden of proof is reversed: it is incumbent on the respondent party to disprove a Denial of Rights, as well as to demonstrate that the reported violations do not affect trade or investment between the parties (Mexico, Ministry of Labour and Social Security and Ministry of Economic Affairs 2021). Arguably, this approach stems from the desire of the United States to avoid outcomes like that of the labour dispute with Guatemala under the CAFTA–DR. While this case involved serious allegations on violations of workers’ freedom of association, the panel did not find a breach of the relevant provisions due to what its members perceived as an insufficient link with international trade.⁴⁴ The same appears to apply to the short time frames provided for in the RRLM – for a party to respond to a complaint and agree on a course of remediation (45 days), or for the panel of independent experts to make a determination (4 months). These time frames are significantly shorter than those laid down in the CAFTA–DR and in other trade agreements: indeed, the US–Guatemala labour dispute lasted a total of nine years (2008–17) (Corley-Coulibaly et al. 2023).

4.3.2 Early experiences under the RRLM

By 31 May 2023, nine complaints had arisen under the RRLM, eight in the automotive industry and one in the rubber industry (Goodyear, San Luis Potosí (2023)). The first complaint accepted by Mexico in the automotive industry, General Motors/ Silao, Guanajuato (2021), concerned an assembly plant while the other seven arose in the automotive parts sector: Tridonex/

⁴⁴ See Arbitral Panel Established Pursuant to Chapter Twenty, “In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA–DR”, adopted 14 June 2017, Para 594.

Matamoros, Tamaulipas (2021); Panasonic/ Reynosa, Tamaulipas (2022); Teksid Hierro/ Frontera, Coahuila (2022); Manufacturas VU/ Piedras Negras, Coahuila (2022) (two complaints); Unique Fabricating Santiago de Querétaro, Querétaro (2023); and Draxton/ Irapuato, Guanajuato (2023).

In the following, three already concluded cases, General Motors, Tridonex and Panasonic, are discussed in detail. This allows the further examination of the types of complaints and reparation courses agreed between the Mexican and US authorities.

4.3.2.1 General Motors

As part of the legitimization process, the vote on the collective agreement covering workers at the General Motors factory (Silao, Guanajuato), was scheduled to take place on 20 and 21 April 2021. When a partial vote tally was incorrectly carried out on the morning of 21 April (votes should have been tallied only at the end of the electoral process), the CTM-affiliated union party to the collective agreement, known as the Miguel Trujillo López Union, became aware that most workers were voting against the agreement.⁴⁵ As voting resumed, the labour authorities discovered that voting equipment had been damaged, which the union then used as a pretext for suspending the voting process. On the basis of the irregularities identified, the Ministry of Labour and Social Security declared the partially completed election invalid and set a period of 30 days for the legitimization process to resume, with new guarantees. However, this deadline was not met. On 12 May 2021, the day after the process was declared invalid, the Office of the USTR filed the first complaint against Mexico under the RRLM, on the grounds that labour rights had been denied during the vote on the General Motors collective agreement. The Government of Mexico immediately accepted the request for review of the allegations and, after a period of negotiations between the two countries, a highly detailed settlement agreement was swiftly reached and signed on 13 July 2021. The agreement set a new deadline of 20 August 2021 for conducting the vote and laid down commitments for all parties: in addition to obliging General Motors to disseminate the text of the collective agreement among its workers in good time, the agreement specified that the Ministry of Labour and Social Security would monitor the process, and that observers from the ILO and the Mexican National Electoral Institute would be present (Mexico, Ministry of Labour and Social Security 2021b).

⁴⁵ At the time when the tally was carried out, the result was 51.94 per cent opposed to maintaining the agreement versus 47.39 per cent in favour. An account of the dispute is provided in Maquila Solidarity Network (2021) and Giménez Cacho (2021).

The new vote took place on 17 and 18 August 2021 over a 30-hour period. It was the most closely monitored trade union election process in the history of Mexico. The result was a vote to reject the collective agreement,⁴⁶ which was terminated by the labour authorities with effect from 3 November 2021 (Mexico, Ministry of Labour and Social Security 2021a). Shortly after this decision, the Office of the USTR withdrew its complaint (*Reuters* and de la Rosa 2021).

Defeating the powerful CTM-affiliated union would not have been possible if the workers opposed to the agreement had not organized themselves before the vote. Workers at the facility began to organize following a dispute over the dismissal of some of their colleagues two years before the start of the legitimization process. This led to the creation of Generating Movement, a group that opposed the CTM-affiliated dominant trade union, on the grounds that it was not democratic and that its leadership was completely out of touch with the general membership.⁴⁷

Domestic and international solidarity with the group also played an important role. The leaders of Generating Movement repeatedly held informal meetings with Unifor, a Canadian trade union, and with trade unions from the United States (Gomez Zuppa 2022). They also received support from the Mexican Federation of Independent Trade Unions in the Automotive, Automotive Parts, Aerospace and Tyre Industries. The solidarity expressed in the form of both material support and advice became evident when the time came to vote on the collective agreement in April 2021. Thanks to this, opponents of the agreement were able to distribute relevant information in advance of the vote, including information about irregularities committed by the Miguel Trujillo López Union.

46 About 55 per cent of votes were against the agreement while 45 per cent were in favour, reflecting a larger difference than in the first vote. More workers also participated in the second vote, with the participation rate reaching almost 92 per cent. As mandated, the vote took place in the presence of various officials from national and international organizations in addition to representatives of the trade union that was party to the agreement (Giménez Cacho 2021).

47 Furthermore, during the COVID-19 pandemic, ill workers were left without support, which highlighted further the weaknesses of the collective agreement. Workers, then, agreed to the legitimization process, which allowed them to disapprove the union that had signed the agreement (interview by the author with a consultant from the Federation of Independent Trade Unions in the Automotive, Automotive Parts, Aerospace and Tyre Industries, who was also a member of Generating Movement and served as an observer during the first union vote, and interview with a representative of the Friedrich Ebert Foundation, both conducted on 21 April 2021).

Once the agreement had been terminated, the workers who had set up Generating Movement in opposition to the Miguel Trujillo López Union registered a new union, the National Union of Automotive Industry Workers. This new union swiftly achieved recognition from the registering authority (the Federal Centre for Labour Conciliation and Registration) – a process that would have been very difficult under the old labour model (Gomez Zuppa 2022). In addition to the new union, three other unions (two affiliated with the CTM) submitted their candidature to become the representative authorized to negotiate the new collective agreement with General Motors. The National Union of Automotive Industry Workers ultimately won the election, securing the right to negotiate the new agreement. Negotiators from the new trade union reached an agreement with the company,⁴⁸ which included improvements to wages and working conditions. This was approved by the majority of workers (84 per cent) during the vote held on 25 and 26 May 2022 (Mexico, Federal Centre for Labour Conciliation and Registration 2022).

In summary, the unprecedented outcome achieved at the General Motors facility – in which workers' voices were freely expressed and respected – was made possible by the new institutional framework overseen by impartial authorities, internal and external supervision of the voting process, the organization of workers opposed to the existing arrangements, and acts of solidarity across the labour movement from both within and outside the country. While most concerns during the USMCA negotiations had been raised in relation to the automotive industry, it is precisely in this sector that the new trade union democratic processes have achieved the greatest visibility, the effect of which could well radiate out to other sectors in the years to come.

4.3.2.2 Tridonex

At the request of the AFL-CIO and other organizations,⁴⁹ the United States filed a complaint against Mexico on the grounds that different aspects of freedom of association and the right to collective bargaining had been violated by Tridonex, an automotive parts company with headquarters in the State of Tamaulipas. The dominant trade union was affiliated with the CTM

⁴⁸ The election was held on 1 and 2 February 2022. For details, see Martínez (2022). Negotiations with the company on a new collective agreement began on 10 May 2022 (Grupo Reforma 2022).

⁴⁹ These included Public Citizen's Global Trade Watch, the Service Employees International Union and the Mexican National Independent Union of Industry and Service Workers (also known as Movement 20/32).

and was the union party to the collective agreement covering workers at the company. Workers who opposed the dominant union had been dismissed after downing their tools in a work stoppage to demand compliance with the collective agreement and the release of their lawyer, who had been imprisoned by the state authorities.⁵⁰

Mexico did not accept the complaint as the events in question had taken place before 1 July 2020, the date of the USMCA's entry into force. Nonetheless, the Office of the US Trade Representative managed to conclude a seven-point agreement directly with the company in less than three months. Among other measures, Tridonex agreed to pay lost wages to the 154 workers who had been dismissed, amounting to US\$600,000. The company also committed to respecting its workers' right to choose their own union representative, free from any form of coercion or interference, and in the presence of electoral observers before and during the vote. Furthermore, Tridonex agreed to introduce health and security measures and support for workers who contracted COVID-19, in addition to providing training for managers to ensure that all readjustment procedures were fair. Finally, a company hotline was set up for receiving and responding to complaints concerning violations of workers' rights (Flores 2021; Forbes 2021; IMCO 2021).

The union Movement 20/32, which was established by the company's dissenting workers, subsequently demanded to take over the Tridonex collective agreement. A vote was held, and Movement 20/32 won ownership of the collective agreement, receiving 1,126 of the 1,313 votes cast (out of a total of 1,632 workers at the company). The CTM-affiliated union received only 176 votes, confirming that it was no longer the workers' legitimate representative (Flores 2021; Forbes 2021; IMCO 2021). As in the case of General Motors in Silao, the Tridonex case demonstrates the importance of worker organization, domestic and international solidarity, and an institutional environment that supports the exercise of trade union democracy as part of the new labour model.

4.3.2.3 Panasonic

The Panasonic Automotive Systems de México (Panasonic, Reynosa, Tamaulipas) case was one of the most complex, because the enterprise (albeit

⁵⁰ The lawyer in question was detained following a complaint by the Special Conciliation and Arbitration Board of Matamoros, in Tamaulipas, on which the Confederation of Mexican Workers is represented. In the arrest warrant, the Board alleged that the lawyer had committed crimes against public servants, including making threats, coercing individuals and inciting rebellion. She remained in prison for some three weeks. See *La Verdad* (2020). For more about her release, see de la Fuente (2020).

unsuccessfully) cast doubt on the competence of the new Federal Centre for Labour Conciliation and Registration to register collective agreements at the national level, and because it involved the successful calling of a strike. Previously, during the legitimization process for the collective agreement for this company, a majority of workers (888 to 643) had voted against the agreement, as a result of which it was deemed to have been terminated. The union that had controlled the agreement was the Trade Union of Workers at Panasonic Automotive Systems, Inc., which is affiliated to the CTM. The enterprise then signed a new collective agreement with another CTM-affiliated union, without the required workers' vote under the Federal Labour Act, and deposited it with the local conciliation and arbitration board. This board lacked the competence to act as depositary for the agreement because the Federal Centre for Labour Conciliation and Registration had taken over responsibility for registration at the national level as from November 2021. This violation was denounced in a complaint by the United States on 18 April 2022 under the RRLM on behalf of the Mexican National Independent Union of Industry and Service Workers (SNITIS) and the Rethink Trade – American Economic Liberties Project, a US non-profit civil society organization. In parallel, the Federal Centre for Labour Conciliation and Registration organized a vote among workers to determine which union would be authorized to negotiate the collective agreement, with SNITIS winning by 1,200 votes to the 390 cast for the CTM-affiliated union. The complaint was accepted by Mexico on 22 May, and on 10 June workers began a strike to call for signature of the collective agreement, which was achieved in only four hours. This secured a pay rise of 9.5 per cent, an increase of 3.5 per cent in benefits and the reinstatement of dismissed workers, who then became SNITIS delegates at Panasonic (*Reuters* 2022; Mexico, Ministry of Economic Affairs 2022).

► 4.4 Conclusions

This chapter has analysed the driving forces behind, and the scope and anticipated effects of, the transformation undergone by Mexico's labour market institutions, focusing on their ability to prevent and, as appropriate, redress violations of workers' collective rights. It has argued that the conditions put forward by Mexico's trade partners during the USMCA negotiations, which led to wide-scale institutional reforms in Mexico before the agreement was adopted, should be seen within the specific context of the Mexican automotive industry. By 2018, Mexico had become the fourth largest exporter of automotive products worldwide, but wages in that sector continued to fall. It is no coincidence that eight of nine complaints filed by May 2023 under the RRLM involve or are related to the automotive sector.

The chapter also showed how the interests of the three Governments converged during the final stage of the negotiations. Following the 2018 presidential election, the Government of Mexico agreed, by signing the USMCA, to unequal labour obligations (contained in Annex 23-A) and to permanent external monitoring (Annexes 31-A and 31-B). Mexico accepted this arrangement not only because of the importance of exports for its economy, but also because of the historical aspirations of the country's independent trade unions. In this regard, the decision was also driven by the exchanges that had taken place between trade unions, organizations and experts from Canada, Mexico and the United States throughout the NAFTA period and during the USMCA negotiations, with additional momentum generated by the campaign promises of the newly elected President López Obrador.

The examination of the main features of the institutional transformation, the progress in implementing the labour reform, and the first nine complaints concerning violations of freedom of association and the right to collective bargaining by companies in the automotive sector suggests that the changes encouraged by the USMCA have the potential to support in identifying and correcting violations of Mexican workers' collective rights. That being said, maximizing this potential will require further action by the national government and capacity-building for employers and workers and their respective organizations.

In view of the scale of the institutional transformation, it is necessary to temper expectations and give all actors involved time to overcome obstacles such as those related to the inertia and practices linked to the old labour model or those related to insufficient resources to monitor full respect

for individual and collective rights.⁵¹ Crucially, the success of Mexico's constitutional and legal reforms will depend on whether workers are able to exercise their right to vote freely and without any form of coercion. However, this will require a cultural change that must involve all the actors in the world of work.

In summary, institutional transformation remains a complex process, during which all the actors involved – public authorities, trade unions, employers and workers – must learn new ways of interacting with a firm basis on social dialogue that requires strengthening in the country. This can help to bring about a fairer distribution of the benefits of trade integration within each of the three parties to the USMCA and in North America as a whole.

51 A key aspect of the institutional transformation, namely the period for submitting applications for the legitimization of collective agreements, ended on 1 May 2023. Processing these was almost fully concluded in October of that year. Of a total of about 139,000 registered collective contracts, a total of 30,511 contracts were approved by the majority vote of the workers (Flores Hernández 2023). Furthermore, the third and final phase of implementation of the new labour justice system began on 3 October 2022.

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