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FEATURED Q&A

Do New Labor Suits Mean Changes for Mexico Employers?

The recent actions taken by the U.S. trade representative under USMCA's labor provisions should be a warning bell to Mexican businesses, Desiree LeClercq writes below. A factory in Mexico is pictured. // File Photo: GEF via Creative Commons License.

Q U.S. labor unions in May filed the first labor complaint against Mexico under the United States-Mexico-Canada Agreement, or USMCA, with the AFL-CIO union federation accusing an auto parts factory in the state of Tamaulipas of violating labor provisions outlined in the trade accord. Soon after, the Office of the U.S. Trade Representative said it had asked the Mexican government to probe what it described as "serious violations" of labor rights at a separate auto facility in Guanajuato. Both cases seek to enforce the new Rapid Response Mechanism, a state-to-state tool that adds an additional layer of trade and labor regulation between the United States and Mexico, included in the USCMA. How does the mechanism work exactly, and what comes next in the process? How important are such claims in terms of setting a precedent for the enforcement of labor rights outlined in the trade deal? To what extent, and in what ways, have businesses in Mexico prepared over the past year to meet labor provisions under the USMCA?

A Kimberly A. Nolan García, assistant professor at FLACSO México, and Tamara Kay, professor of global affairs and sociology at the University of Notre Dame: "The U.S. government will decide whether or not to review the Tridonex filing and formally request a report on allegations from Mexican authorities. The GM case was not based on a formal petition; rather, the USTR queried the Mexican government over voting irregularities at the Silao, Guanajuato plant. The Rapid Response Labor Mechanism (RRLM) panel

Continued on page 3

TODAY'S NEWS

POLITICAL

Blinken Pledges More Vaccines in Visit to Costa Rica

In his first visit to Latin America, U.S. Secretary of State Antony Blinken said the United States is days away from announcing plans to deliver millions of doses of the coronavirus vaccine globally.

Page 2

ECONOMIC

Chile's Economy Grows More Than Expected in April

Chile's economy grew 14.1 percent in April as compared to the same month last year, a higher figure than the 10.4 percent economists had forecast.

Page 2

POLITICAL

Prosecutors Seek to Bar Nicaraguan Opposition Leader

Nicaraguan prosecutors on Tuesday filed money laundering charges against opposition figure Cristiana Chamorro, a potential candidate to challenge President Daniel Ortega in elections this November.

Page 2

Chamorro // File Photo: @chamorrocris via Twitter.

POLITICAL NEWS

Blinken Pledges More Vaccines in First Visit to Central America

In his first visit to Latin America, U.S. Secretary of State Antony Blinken on Tuesday said the United States is preparing to deliver doses of the coronavirus vaccine to Central American countries, The Washington Post reported. "We will be making available globally about 80 million vaccine doses that we have access to between now and the end of June," Blinken said, adding that more details will be available about the process "sometime in the next week to two weeks." Arriving in San José yesterday, Blinken is scheduled for meetings today with

Blinken and Alvarado (L-R) // Photo: Costa Rican Gov't.

leaders from Central America, Mexico and the Dominican Republic, as well as civil society figures from around the region. In a joint press briefing with Blinken, Costa Rican President Carlos Alvarado responded to a question about whether he would accept vaccines from China considering delays from the United States, stating that his country would accept safe coronavirus vaccines from abroad but only with "no strings attached." Blinken said the United States was concerned about an erosion of judicial independence generally in the region, as well as crackdowns on independent media and NGOs, and the suppression of anti-corruption efforts. He added that the United States had also suffered its own setbacks in those areas, Reuters reported. In related news, the administration of U.S. President Joe Biden on Tuesday formally nixed the "Remain in Mexico" program, The Hill reported. The program, known formally as the Migrant Protection Protocols, was a cornerstone of former President Donald Trump's border management policy, forcing potential asylum seekers to stay in Mexico to wait out the result of their case in infamously slow and understaffed U.S. immigration courts. [Editor's note: See **Q&A** on vaccine diplomacy in the April 20 issue of the Advisor.]

ECONOMIC NEWS

Banks Raise Outlook for Brazil Economy

Several of the largest global investment banks on Tuesday raised their forecast for economic growth in Brazil, Reuters reported. In a client note, Goldman Sachs economist Alberto Ramos said the bank increased its real GDP growth forecast for Brazil to 5.5 percent from 4.6 percent, "assuming no energy supply shortages, easing of supply-chain limitations, and a controlled covid picture" in the second half of this year. Meanwhile, economists at Citigroup raised their growth projection for South America's largest economy to 5.1 percent from 3.6 percent, while others also increased their projections above 5 percent growth. Official figures released Tuesday showed that Brazil's GDP expanded by 1.2 percent in the first quarter, a faster rise than economists had expected.

Chile's Economy Grows More Than Expected in April

Chile's economy grew a better-than-expected 14.1 percent in April as compared to the same month last year, the central bank said on Tuesday, Reuters reported. A Bloomberg consensus survey expected only a 10.4 percent expansion. In April last year, economic activity had plunged nearly 14 percent year-on-year as the Chilean government moved early to stave off the fast-spreading coronavirus. Finance Minister Rodrigo Cerda said demand had

NEWS BRIEFS

Remittances to Mexico Rise 20 Percent in First Four Months of the Year

Mexican workers living abroad sent home $14.66 billion in remittances between January and April this year, an increase of 19 percent as compared to the same period in 2020, EFE reported Tuesday, citing new data released by Banxico. The remittances, which mainly come from Mexican migrants living in the United States, represents Mexico's second source of foreign exchange, after automotive exports. Record-high remittance flows have been adding support to low-income families suffering the economic fallout of the pandemic.

Panama Selects AES, InterEnergy to Build $1 Billion Power Plant

Panama's government announced Tuesday it will build a 670 megawatt, natural gas-fired power plant on Telfers Island in Colón, EFE reported. U.S.-based companies InterEnergy Group and AES will lead the construction and operation of the $1 billion project, called Gatún. In its peak construction phase, the project will generate more than 3,000 jobs, InterEnergy said in a statement.

Nicaraguan Prosecutors Seek to Bar Opposition Leader From Running

Nicaraguan prosecutors on Tuesday filed money laundering charges against opposition figure Cristiana Chamorro, a potential candidate to challenge President Daniel Ortega in elections this November, the Associated Press reported. Prosecutors asked the country's electoral tribunal to bar Chamorro from running or holding public office for alleged financial irregularities and money laundering related to a foundation her family runs. [Editor's note: See related **Q&A** in Tuesday's edition of the Advisor.]

recovered well since then despite the lingering pandemic, and he also highlighted other signs of a longer-term uptick in growth, such as rising imports of capital goods. Central bankers will continue to monitor the services sector for signals of vitality in making decisions on interest rates, according to the report.

BUSINESS NEWS

U.S. Extends Waiver for Oil Companies to Work in Venezuela

The administration of U.S. President Joe Biden on Tuesday announced it is renewing a license that allows several U.S. companies to operate in Venezuela's oil sector despite sanctions. The Office of Foreign Assets Control said it was renewing the permit by six months for Chevron, Halliburton, Schlumberger, Baker Hughes and Weatherford International. The companies have been allowed to work in the Andean nation despite sanctions that former President Donald Trump slapped on Venezuelan state oil firm PDVSA. The move led many international companies to exit the country, where crude output has plunged by nearly two-thirds since the sanctions took effect in 2019. PDVSA is now reportedly turning to local partnerships in a bid to reactivate upstream contracts and avoid a further decline in its crude output, Reuters reported, citing interviews with industry executives. However, despite contracts with more than two dozen local companies, PDVSA's output is unlikely to increase without more legal safeguards and political assurances, an unnamed government official told Argus Media last week. PDVSA reportedly began signing the productive services agreements, or ASPs, last year. The ASPs would give partners operational and financial control of joint ventures as well as establish a mechanism that would recover past debts. In exchange, the partners would cover capital and operational spending. Such ventures technically do not violate U.S. sanctions, but it is unclear whether the Biden administration would turn a blind eye to them, according to the report.

FEATURED Q&A / Continued from page 1

is one tool that governments can use to promote compliance with new labor laws on freedom of association and collective bargaining rights at the firm level prior to levying trade sanctions. Although the RRLM process has the most developed enforcement mechanisms of all trade-based labor rights mechanisms in U.S. policy, the point of RRLM is to promote change at the plant level without having to resort to sanctions. The governments will try to resolve the Tridonex and GM cases through an action plan, before moving to higher levels in the process such as independent panel evaluation. The GM case underscores some of the difficulties employers face in implementing labor law down the supply chain and monitoring suppliers that jeopardize firms' investments in Mexico: Mexican authorities uncovered voting irregularities at Silao and collusion between the company union and GM human resources managers at the plant to prevent workers from voting freely. The GM case sends a strong signal that the U.S. administration is watching events closely and is willing to use its power to review assertively. This may embolden Mexican workers to register complaints through the violations hotline designed for that purpose."

A **Tequila Brooks, attorney and former labor law advisor to the North American Commission on Labor Cooperation:** "Implementation of constitutional and labor law reforms adopted by Mexico in 2019 and 2020 will require fundamental changes to human resources and labor relations culture in Mexico. For decades the hallmark of labor relations in Mexico has been the protection contract, a collective labor contract signed by the employer and a representative of an 'official' union at the opening of a manufacturing facility without the consent or participation of workers. Little progress was made in eliminating the use of protection contracts by employers and 'official' unions during the NAFTA era, despite the fact that almost all of the 20 petitions filed against Mexico under NAFTA's labor side agreement over the 27-year period related to workers' attempts to replace protection contracts with genuinely representative unions and collectively bargained agreements. Unlike NAFTA's labor side agreement, the Rapid Response Mechanism under USMCA formally engages companies and employers in the enforcement of obligations under Mexico's labor law and USMCA. Real world consequences in the form of exclusion of exports from particular facilities in Mexico is likely to spur U.S., Canadian and other companies to include labor law in export, corporate (including anti-bribery) and human resources compliance and due diligence programs. While the GM and Tridonex cases in the Mexican states of Guanajuato and Tamaulipas show that employers and some unions are not yet prepared for the cultural changes required by reforms to Mexican labor law and the USMCA, recent USTR and AFL-CIO actions are likely to get them up to speed quickly. A question remains as to whether Mexican unions that engage in the practice of signing protection contracts are ready and willing to adapt to a transparent and representative labor relations culture. Mexican news reports indicate that 600 workers fired as a result of the independent union campaign at Tridonex are certainly hoping to get their jobs back or reference letters so they can find new jobs."

A **Tapen Sinha, professor of risk management at the Instituto Tecnológico Autónomo de México and professor at the University of Nottingham Business School:** "Most of the labor unions in Mexico have a cozy symbiotic relationship with the government. The petition was filed by the AFL-CIO, the Service Employees International Union, Mexico's Independent National Union of Industry and Service Workers (SNITIS) and D.C. watchdog group Public Citizen against Mexico's Tridonex over the alleged

Continued on page 4

FEATURED Q&A / Continued from page 2

harassment, beating and firing of hundreds of workers at its Matamoros factory, for trying to organize with SNITIS. Usually, these kinds of labor disputes are handled through generic tripartite agreement; this one was brought in through the novel Rapid Response Mechanism (RRM). This case will test whether Mexico's labor reforms denied the fundamental right to organize and bargain for better wages and working conditions of Mexican workers. The RRM is a U.S.-Mexico bilateral agreement covering certain priority sectors such as automotive and aerospace, industrial food operations and electronics, among others. Canada and Mexico have an identical agreement. Such an agreement does not exist between the United States and Canada. Unlike the broader claims available through state-to-state dispute settlement under Chapter 31 of the USMCA, the RRM focuses on the denial of specific labor rights and establishes strong remedies that quickly penalize (or even prohibit) certain imports. Tridonex was accused of trying to organize with SNITIS instead of the corrupt, company-sponsored protection union. Moreover, the Tamaulipas state government has been accused of acting on Tridonex's behalf to block the workers' demand for an election before arresting the border maquiladora labor lawyer who had been organizing protests at the plant. The Office of Trade and Labor Affairs (OTLA) has 30 days to review the petition. During that period, it will determine whether to bring the complaints to the Mexican government for further action. The Mexican government has two choices: 1.) agree with the complaint and take action to impose sanctions or 2.) refer the matter to a panel for further review and determination. All of the actions have to be taken within 90 days."

A **Desiree LeClercq, assistant professor of international and comparative law at Cornell's ILR School:** "The recent actions taken by USTR under USMCA's labor provisions, including its recent self-initiated request under the new Rapid Response Mechanism, should be a warning bell to Mexican businesses. The U.S. government has made it clear that it will enforce international labor standards against local Mexican factories, even when those factories face simultaneous investigations by the Mexican government. The resulting overlap in domestic and international interpretations and enforcement activities are bound to cause legal uncertainty and high litigation costs. Mexican businesses will need to consult regularly with the ILO, or those familiar with the ILO's standards concerning freedom of association and collective bargaining, to avoid landing in USMCA's crosshairs in the first place."

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