

USMCA



TOWARDS A NEW ERA OF INTEGRATION
OF THE **NORTH AMERICA MARKET**

**FACILITY-SPECIFIC RAPID
RESPONSE LABOR MECHANISM**

GOODRICH



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ASOCIADOS



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On July 1, 2020, the United States-Mexico-Canada Agreement (USMCA) entered into force and, through the Protocol of Amendment to said treaty, a Facility-Specific Rapid Response Labor Mechanism was established. The purpose of said mechanism is to exclusively solve labor controversies in any Priority Sector¹, which must be related to denial of rights in matters of freedom of association and collective bargaining.

Companies that could be subject to this type of procedure are known as Covered Facilities and must satisfy any of the following conditions, provided that they form part of a Priority Sector:

- The Covered Facility produces a commodity or provides a service traded between the Parties.
- That the Covered Facility produces a commodity or provides a service that competes in the territory of a Party with a commodity or service of another Party.

The procedure will be initiated when a Party, in good faith, requests and

inspection of a Covered Facility for an alleged Denial of Rights, through the Mexican Ministry for Economy, which in turn must notify the Mexican Ministry of Labor and Social Welfare, which must internally verify the alleged company has failed to comply with its obligations alongside the local labor authorities.

Subsequently, the obtained information will be integrated and a Panel of Analysis and Reparation Measures will be convened, which will issue an advisory opinion and may suggest a course of reparation; taking into consideration the foregoing, the Ministry of Labor and Social Welfare will prepare a written report and the Ministry for Economy, in its capacity as contact point, will send it to the complaining Party.

Said report will establish if the Mexican authorities found any Denial of Rights derived from their investigation. If no evidence of non-compliance was found, it will be submitted to the consideration of the complaining party, and, if said party accepts it, the procedure will end. If, on the contrary, the complaining Party

¹ Produce manufactured goods (including aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings and cement), supply services or involve mining.

disagrees and maintain its position regarding the existence of a Denial of Rights, the next stage -known as good-faith consultations- will take place, in which representatives of both Parties will participate.

Within the good faith consultations, any one of the following three scenarios may occur:

- An agreement on a course of reparation is reached to, which will be implemented to the satisfaction of the complaining Party, thus ending the respective procedure.
- A reparation course is agreed upon, but the complaining Party is not satisfied with its implementation. In this case, the affected Party may notify Mexico fifteen days in advance about the imposition of sanctions and, in writing, its intention to impose trade sanctions. Mexico, in this case, may request the implementation of a Panel within ten days prior to the imposition of sanctions, in order to determine whether the Denial of Rights persists. It is important to mention that until the Panel decides on the case, no trade sanctions can be imposed.
- If no agreement on a reparation course is reached to, the complaining Party may request the intervention of a Panel to determine the alleged Denial of Rights.

The Panels will be integrated by independent specialists and will be the last mechanism for resolving the conflict between the United States of America and Mexico or between Canada and Mexico. The Panel will be also empowered to carry out inspections at the companies to which the denial of labor rights is imputed and, from such verifications, issuing their considerations.

In the event of a favorable ruling by the Panel, the complaining Party shall proceed to the imposition of trade sanctions, which may consist in any the following ones:

- Suspension of preferential tariff treatment for the goods manufactured at the Covered Facility.
- Imposition of sanctions on the manufactured goods.
- Imposition of sanctions on the services provided by the Covered Facility.

It should be noted that this procedure is planned to be completed in

approximately eighty-five days; therefore, considering its international nature, it is a rather swift procedure in which immediate attention will be given to any Complaint and a prompt resolution will be issued.

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For further information please contact:

Enrique Díaz
ediaz@gra.com.mx

David Enríquez
denriquez@gra.com.mx

Luis Pérez
lperezdelgado@gra.com.mx

www.goodrichriquelme.com