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Procedures Adopted in the Rapid Response Labour Mechanism of the United States–Mexico–Canada Agreement: The Case Study Research and Lessons for the European Union

Procedury przyjęte w mechanizmie szybkiego reagowania w sprawach pracowniczych w umowie handlowej pomiędzy Stanami Zjednoczonymi, Meksykiem i Kanadą. Studium przypadków i lekcje dla Unii Europejskiej

INTRODUCTION

The EU–New Zealand free trade agreement (FTA), which entered into force on 1 May 2024, includes some novel solutions such as the possibility of using trade sanctions as a matter of last resort, in cases of serious infringements of the International Labour Organization (ILO) core labour conventions. If it became a permanent part of the EU approach, such a mechanism could help make the commitments on workers' rights protection enforceable. However, something else is deeply rooted in the EU, namely, its model has always involved a promotional approach. It means that labour provisions included in FTAs do not link compliance to economic consequences, and focus on dialogue and cooperation[1]. The ineffectiveness of this model was clearly demonstrated by South Korea's long-term failure to ratify the outstanding ILO conventions, as well as by a disappointing report of the Panel of Experts issued in the dispute between South Korea and the EU. As a consequence, the possibility of sanctions for non-compliance

[1] For more on the issue of conditionality in the EU FTAs, see I. Borchert, P. Conconi, M. Di Ubaldo, C. Herghelegiu, *The Pursuit of Non-Trade Policy Objectives in EU Trade Policy*, "World Trade Review" 2021, vol. 20(5), pp. 636–637.

with fundamental ILO conventions started to be signalled in the EU documents. It seemed that this new and more decisive approach would permanently influence the shape of the new generation of the EU FTAs. However, hopes for a lasting change in the EU's approach faded when the EU concluded new FTAs, e.g. with Mercosur countries, and did not envisage any sanctions for violating fundamental labour rights.

The authors of this article contrast the EU model with the US one. The latter involves FTAs that use a conditional approach. This amounts to the fact that FTAs contain labour provisions that make the conclusion of a FTA conditional upon respect for particular labour standards (pre-ratification conditionality) and/or provisions in the concluded FTAs that authorise sanctions if labour standards are infringed (post-ratification conditionality). The authors of this work put forward the hypothesis that pre-ratification and post-ratification conditionality (sanction--based approach) in the context of FTAs ensure better effectiveness of labour rights. The aim of this article is to provide a research context and to determine whether the EU should follow the example of the US in terms of its approach to the enforceability of labour provisions in FTAs. From a methodological point of view, for discussion of the sanction-based approach, case analysis – involving problem solving and critical thinking – focuses on the United States–Mexico–Canada Agreement (USMCA) cases. In respect of other research methods used in this article, the authors conduct a critical analysis of primary and secondary sources. The former include, in particular, legal acts discussed in this work and official documents published on the US Department of Labor website related to the cases under scrutiny. Secondary sources include the subject literature. Thus, the method of analysis and criticism of literature, as well as the dogmatic-legal method (or analytical method), allowing for the analysis and interpretation of legal acts, are employed. Finally, the hypothetico-deductive methodology is applied in this article. This means that "a causal hypothesis is initially formulated, some observational consequences are predicted on the base of this hypothesis and they are finally confronted with the data"[2].

This article is comprised of four parts. In its second part, the authors provide a background on the history of the USMCA and the labour law reform in Mexico, as well as on the facility-specific rapid response labour mechanism (RRLM) with particular emphasis on its disadvantages. The penultimate part of the article includes a discussion and analysis of the USMCA cases and an attempt to

[2] S. Mateiescu, *The Limits of Interventionism – Causality in the Social Sciences*, [in:] *Probabilities, Laws, and Structures*, eds. D. Dieks, W.J. González, S. Hartmann, M. Stöltzner, M. Weber, Dordrecht 2012, p. 152. For more, see F. Russo, *Causality and Causal Modelling in the Social Sciences: Measuring Variations*, New York 2009, p. 70 ff.

formulate a contribution to the debate regarding the effectiveness of the RRLM. Ultimately, some concluding remarks are formulated.

The authors should like to make a reservation that the three trade partners, namely the US, Mexico and Canada, will have a "joint review" of the USMCA in July 2026, which can result in some changes to the current scheme.

THE USMCA AND LABOUR RIGHTS

In 2018, the US, Mexico and Canada announced they had reached a free trade agreement (in the US known as the USMCA) in the renegotiation of the North American Free Trade Agreement (NAFTA). The authors of this work adopt the nomenclature used in the US, but it is worth noting that the agreement is called the CUSMA (the Canada–United States–Mexico Agreement) in Canada in English and ACÉUM (L'Accord Canada–États-Unis–Mexique) in French, and T-MEC (Tratado México–Estados Unidos–Canadá) in Mexico in Spanish[3].

The need to conclude a new FTA resulted from many factors. Bad working conditions in "maquiladora" factories, no possibility to impose sanctions for non-compliance with the rights to freedom of association and collective bargaining, ghost unions, protection contracts, and low wages in Mexico are only some of them. As R.G. Finbow rightly argues, "Fair-trade arguments, undervalued by supporters of liberalisation, were marginalised in many free trade agreements, including the North American Free Trade Agreement (…). NAFTA's labour, environmental, and social dimensions were ineffectively implemented and contributed to dissatisfaction with free trade in these countries"[4]. Under the NAFTA, some workers and industries confronted painful disruptions due to increased competition, while others have benefited from new market opportunities. In seeking to support growth and higher-paying jobs, the parties had to create a new quality agreement – the USMCA[5].

Nor is it meaningless that after 25 years of economic integration within NAFTA, Mexico does not wish to withdraw from the cooperation with the US. In the

[3] See R.A. Blecker, *The Rebranded NAFTA: Will the USMCA Achieve the Goals of the Trump Administration for North American Trade?*, "Norteamérica: Revista Académica del CISAN-UNAM" 2021, vol. 16(2), p. 290.

[4] R.G. Finbow, *Populist Backlash and Trade Agreements in North America: The Prospects for Progressive Trade*, "Politics and Governance" 2023, vol. 11(1), p. 238.

[5] M.E. Burfisher, F. Lambert, T. Matheson, *NAFTA To USMCA: What Is Gained?*, "IMF Working Papers" 2019, no. 73, p. 4. On how USMCA remedies some NAFTA deficits, see C. Scherrer, *Novel Labour-Related Clauses in a Trade Agreement: From NAFTA to USMCA*, "Global Labour Journal" 2020, vol. 11(3), p. 294.

time frame between 1993 and 2019, the share of trade in Mexican GDP grew from 28% to 78%, of which the US accounts for about 80%[6].

Besides, the US–Guatemala CAFTA labour arbitration ruling of 2017, in which an arbitral panel under the CAFTA-DR found that Guatemala's alleged failure to enforce domestic labour legislation was not done in a manner affecting trade, had influenced the USMCA labour chapter. As rightly indicated by F.E. Campos Ortiz, "the USMCA makes clarifications directly related to – and derived from – the decision in the U.S.–Guatemala labor dispute"[7]. The author asks two crucial questions: would the outcome of a case such as the US–Guatemala have been different under the provisions of the USMCA, and whether there would be an increase in the number of labour disputes under the USMCA rules. Affirmative answers show the importance of changing the enforcement regime.

In fact, the new USMCA requirements and the creation of the RRLM have not only given hope for preventing the formation of protection or yellow unions in Mexico[8], but also for better enforcement of labour rights, in particular collective bargaining rights[9]. There are indeed several important provisions in the USMCA that strongly influence the situation of workers. These include Annex 23-A "Worker Representation in Collective Bargaining in Mexico" (Chapter 23 "Labor") and Annex 31-A "Facility-Specific Rapid Response Labor Mechanism" (Chapter 31 "Dispute Settlement"). In the light of the new Annex 23-A, "Mexico shall adopt and maintain the measures (…), which are necessary for the effective recognition of the right to collective bargaining". Mexico has been obliged, i.a., to provide in its labour laws the right of workers to engage in concerted activities for collective bargaining or protection and to organise, form, and join the union of their choice, and prohibit, in its labour laws, employer domination or interference in union activities, discrimination, or coercion against workers for union activity or support, and refusal to bargain collectively with the duly recognised union. Under the new Annex, Mexico has been supposed to establish and maintain impartial and independent bodies authorised to register union elections and

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[6] L. Arnaud, *From NAFTA to USMCA: Revisiting the Market Access – Policy Space Trade-Off*, "New Political Economy" 2024, vol. 29(3), p. 361.

[7] F.E. Campos Ortiz, *Labor Regimes and Free Trade in North America: From the North American Free Trade Agreement to the United States–Mexico–Canada Agreement*, "Latin American Policy" 2019, vol. 10(2), p. 282.

[8] Yellow unions are formed and controlled by the employers, and cooperate with the employers to compete with and deprive independent and democratic trade unions of their rights.

[9] R.A. Blecker, *op. cit.*, p. 304. For an interesting analysis of scenarios for assessing whether expectations placed in the USMCA's labour provisions will be met, see V.A. Covarrubias, *El T-MEC y la tercera generación de arreglos laborales. Los escenarios probables para el trabajo y la industria regional*, "Norteamérica, revista académica del CISAN-UNAM" 2021, vol. 16(1). More on Mexico's labour reform, see M. Castellanos Villalobos, *Libertad sindical en México. Aplicación de los convenios 87 y 98 de la OIT en relación con las obligaciones derivadas del T-mec*, "Revista Vox Juris" 2023, vol. 41(1).

resolve disputes relating to collective bargaining agreements and the recognition of unions. Importantly, in order to achieve compliance with the Annex 23-A, in 2019, Mexico introduced a serious labour law reform. Moreover, in 2018, Mexico ratified the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98). This example clearly shows that the pre-ratification conditionality mechanism works in practice. Unfortunately, the same cannot be said about the EU's model, even if we consider a FTA with the strongest enforcement mechanism, namely the EU–New Zealand FTA. At the time of writing, namely on 18 September 2025, New Zealand has not yet ratified the following ILO fundamental conventions: Freedom of Association and Protection of the Right to Organise Convention (1948, No. 87), Minimum Age Convention (1973, No. 138), and Promotional Framework for Occupational Safety and Health Convention (2006, No. 187).

As indicated above, one of the key characteristics of the USMCA is the RRLM, which purpose is to ensure remediation of a "Denial of Rights" of free association and collective bargaining for workers at a Covered Facility in Mexico or the US, and to ensure that remedies are lifted immediately once a "Denial of Rights" is remediated. The mechanism allows the complainant Party to request the formation of a "Rapid Response Labor Panel". Its competences include conducting on-site verifications at the facility in question. Based on the findings of the panel, the complainant Party may impose remedies that are the most appropriate to remedy the "Denial of Rights". Remedies may include 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". Remarkably, Title VII "Labor Monitoring and Enforcement" of the USMCA Implementation Act of 2020 required the US President to establish "the Interagency Labor Committee for Monitoring and Enforcement" to, i.a., request enforcement actions with respect to a USMCA country that is not in compliance with labour obligations. Thus, the Interagency Labour Committee for Monitoring and Enforcement is required to recommend enforcement actions to the Trade Representative when it determines that a USMCA country has failed to meet its labour obligations, including with respect to obligations under Annex 23-A of the USMCA. More specifically, the Committee may recommend that the Trade Representative initiate enforcement actions relating to cooperative labour dialogue and labour consultations, dispute settlement consultations, or the RRLM[10].

Taking all this into account, it should be added that a dualism of dispute settlement mechanisms has been adopted in the USMCA. On the one hand, there is the RRLM concerning freedom of association and collective bargaining (Annex 23-A), and on the other hand, it is possible to enforce other labour law obligations

[10] A. Tyc, *Global Trade, Labour Rights and International Law: A Multilevel Approach*, London 2021, pp. 153–156.

arising from Chapter 23 "Labor" via Chapter 31 "Dispute Settlement", but outside the RRLM[11].

Significantly, some part of the debate now seems to be more about limitations of the USMCA's new mechanism than about its potentials. For example, W. Bonne admits that the RRLM "represents a historic win for labor rights", but at the same time is concerned that it "was designed to remediate a specific facility's labor issues at a macro level, as opposed to remedying labor violations directed toward individual workers"[12]. Moreover, the author points out that despite the violations of temporary migrant workers' rights[13] in the US, the RRLM has a limitation for use in the US because "with respect to the United States, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the National Labor Relations Board" (footnote 2 of Annex 31-A). There is also another limitation: the facilities must fulfil the conditions of the "Covered Facility", namely a facility 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. The USMCA defines a "Priority Sector" as a sector that produces manufactured goods, supplies services, or involves mining. According to footnote 4, manufactured goods include, but are not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement. Interestingly, Bonne informs that for the period between 2016 to 2020, "of the approximately 164 U.S. facilities subject to an NLRB enforced order, approximately five constituted a 'priority sector'."[14] Last but not least, the author expresses concern that "it is simply impossible for the RRM to successfully remediate every labor rights infringement" for "there are simply too many serious labor violations happening in Mexico for the RRM to facilitate real, permanent change as it stands. From 2008 to 2012, after conducting twenty-seven independent external monitoring and verification visits in Mexico, the Fair Labor Association (FLA) found that 41% of the audits cited Freedom of Association noncompliance. As of December 2021, Mexican labor officials and experts estimated that of the over 500,000 registered

[11] For more, see M.A. Corvaglia, *Labour Rights Protection and Its Enforcement under the USMCA: Insights from a Comparative Legal Analysis*, "World Trade Review" 2021, vol. 20(5), pp. 666–667.

[12] W. Bonne, *Unresolved Labor Disputes under the USMCA's Rapid Response Mechanism: Probing the Applicability of the ATS in Light of Nestlé v. Doe*, "New York University Journal of Law and Business" 2022, vol. 19(1), p. 210.

[13] For a broader background, see K. Karski, *Migration*, [in:] *International Law from a Central European Perspective*, ed. A. Raisz, Miskolc–Budapest 2022, pp. 219–238.

[14] *Ibidem*, p. 214 and the literature cited therein.

collective bargaining agreements in Mexico, 80–90% were 'protection contracts'."[15] That is why the aim of this work is to shed light on the USMCA cases, for they show in practice whether or not the RRLM is effective.

THE USMCA CASES: DISCUSSION AND ANALYSIS

In the period between 2021 and 2024 (until September 2024), there have been 25 USMCA cases, namely 25 requests under the USMCA's RRLM[16]. Some of them were still pending, so they are excluded from the analysis. This applies to Yazaki, Tecnología Modificada, Autoliv, Fujikura, Atento, RV Fresh, Servicios Industriales González, Industrias Tecnos, and Impro Industries. Given that it has been pointed out in the literature that positive changes concern mostly strategic transnational industries, e.g. the automotive industry[17], it is interesting to note that three of the above-mentioned factories indeed represent the automotive sector (Yazaki, Autoliv, Fujikura). Further, Servicios Industriales González manufactures steel components, the Tecnología Modificada facility in Nuevo Laredo refurbishes electronic mechanical parts used in Caterpillar tractors, earth movers and other heavy equipment, Impro Industries subsidiary facility in San Luis Potosí produces cast and machined parts for the energy, medical, automotive and agricultural industries, Industrias Tecnos produces ammunition for the sport shooting industry, government, military, and law enforcement institutions, Atento is a call center in Hidalgo and RV Fresh manufactures guacamole and salsa and cold pack these products for export.

The analysis of the cases shows that there have been several, in the majority successful, courses of remediation under USMCA's RRLM: GM Silao, Tridonex, Panasonic, Teksid, VU Manufacturing, Goodyear, Draxton Volkswagen, and INISA 2000, while the stage of an arbitration panel was reached on one occasion – in the San Martín mine in Zacatecas case.

Interestingly, almost all agreements on a course of remediation reached between Mexico and the US concerned denial of rights of free association and collective bargaining in autos and auto parts sectors. In GM Silao case, Mexico successfully committed itself, i.a., to ensure that a worker vote is organised in order to express (dis)approval of their collective bargaining agreement by 20 August 2021 (it was held on 18 August 2021), as well as to allow the presence of Mexican

[15] *Ibidem*, pp. 216–217, footnotes omitted.

[16] Bureau of International Labor Affairs, *USMCA Cases*, https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca-cases (access: 19.9.2025).

[17] V.A. Covarrubias, M. Dufour-Poirier, *El T-MEC y la tercera generación de arreglos laborales: De las experiencias previas en Latinoamérica al futuro previsible para las relaciones industriales mexicanas*, "Norteamérica: Revista Académica del CISAN-UNAM" 2023, vol. 18(1), passim.

labour inspectors and ILO observers before and during the vote. Moreover, the workers were able to decide that an independent trade union – Sindicato Independiente Nacional de Trabajadores y Trabajadoras de la Industria Automotriz (SINTTIA) – will exercise collective bargaining rights.

In Tridonex case, this automotive parts facility in Matamoros agreed to a course of remediation and committed itself, among other things, to support the right of workers to organise free and secret vote, thus determining their union representation without coercion. In fair elections, votes were cast for an independent trade union, namely Sindicato Nacional Independiente de Trabajadores de Industrias y de Servicios (SNITIS).

In Panasonic case, the remediation included, in particular, the recognition of the independent union (SNITIS) as the workers' sole bargaining representative, and the negotiation of a new, more favourable to workers, collective bargaining agreement.

A similar turn of events took place in Teksid Hierro de México automotive parts manufacturing facility, in which the US and Mexico agreed to implement a course of remediation. According to an agreement between an independent labour trade union Los Mineros and Teksid, the former was recognised as the workers' sole bargaining representative, dues owed to Los Mineros for multiple years were repaid and 36 workers terminated reportedly for participating in trade union activity were reinstated with back pay.

An agreement on a course of remediation was also announced in the case of the Goodyear rubber tire facility in San Luis Potosí. It constitutes an answer to the petition regarding the failure to apply a sector-wide agreement (the so-called *contrato ley*) for the rubber industry in Mexico. It is worth noting that the case has a precedent--setting nature because one trade union tries to enforce a sector-wide agreement at a single facility. In order to comply with the agreement, on the one hand, Goodyear must apply the sector-wide agreement at the San Luis Potosí plant, and on the other hand, it must ensure that its workers maintain any wages or benefits exceeding the sector-wide agreement. Besides, Goodyear committed itself to, among other things, provide back pay to workers who were paid less than they should have been.

A similar scenario occurred in the case of the Draxton facility in Irapuato, Guanajuato, which is the second time the US self-initiated a request for review under the USMCA. In the light of an agreement on a course of remediation, the employer committed itself to issue an employer neutrality statement concerning freedom of association and collective bargaining, as well as company guidelines to safeguard these rights. The employer has also undertaken to reinstate with backpay a union official who was unlawfully dismissed for engaging in protected union activity. A free and fair vote organised on 30 November 2023, in which a new, independent union (SINTTIA) was elected, is a further positive outcome of the case. The effectiveness of the USMCA's RRLM can also be noticed when analysing the Volkswagen case, in which a course of remediation took place against

a background of wrongful dismissal of some members of the outgoing leadership committee of Sindicato Independiente de Trabajadores de Industria Automotriz, Similares y Conexos Volkswagen de México following a recent trade union election. This largest automobile assembly plant in Mexico has pledged that, by the date for completion of the course of remediation, namely 9 August 2024, it shall reinstate several unjustly dismissed workers with back pay and the same working conditions, benefits, titles, job duties they had before, as well as implement guidelines in order to prevent employer's interference in trade union affairs and safeguard workers' rights to freedom of association and collective bargaining.

It should be finally noted that in response to a petition filed by Frente Auténtico del Trabajo and the Sindicato de Industrias del Interior, the parties reached an agreement on a course of remediation also at the INISA 2000, the Industrias del Interior, S. de R.L. de C.V. 2000 garment facility in Aguascalientes. The facility undertook, among other things, the following actions to ensure remediation of the denials of rights: issuing a public, written neutrality statement which commits to ensure respect for the rights of freedom of association and collective bargaining, establishing and deploying a zero-tolerance policy for violations of the neutrality statement or company guidelines, relocating the union's office and full-time union work employees to perform union work to a different work area, installing, maintaining and publicising the existence of a complaint mechanism, e.g. telephone line or direct email address, to which workers can report violations. By contrast, Mexico committed to provide in-person workers' rights training for all company personnel during working hours, as well as to monitor the facility, including by conducting periodic inspections[18].

Unfortunately, one of the cases did not end favourably for the workers. VU Manufacturing auto parts facility made the decision to close its plant in Piedras Negras, which marked the end of implementation of a course of remediation. This was an interesting case in which two (the 5th and the 6th) requests under the USMCA's RRLM were made. The first of the two petitions was filed by a Mexican union – Liga Sindical Obrera Mexicana – and a worker advocacy group – the Comité Fronterizo de Obreras. This led to a number of actions taken by the government of Mexico in order to ensure a free and fair election to choose union representation for workers. Unfortunately, the organisation of a vote supervised by the officials from the ILO and Mexico's National Electoral Institute and the issuance of a certificate of representation, which authorised Liga Sindical Obrera Mexicana to bargain collectively on behalf of VU Manufacturing workers did not improve the situation and the second petition was filed. It claimed that denial of rights of freedom of association and collective bargaining continued at the

[18] INISA, *Course of Remediation*, 8.8.2023, https://ustr.gov/sites/default/files/INISA%20-%20Course%20of%20Remediation.final%20(8.8.2023).pdf (access: 19.9.2025).

VU Manufacturing plant, which was particularly manifested in discrimination against the fairly elected representative Liga Sindical Obrera Mexicana. Some important commitments, i.a. to create an environment promoting respect for workers' choice of union representation, were undertaken by VU Manufacturing in an agreement on a course of remediation but ultimately, as pointed out by Thea Lee, the Deputy Undersecretary for International Labor Affairs at the Department of Labor, "the company undermined the majority union's ability to represent workers in collective bargaining negotiations and their right to strike".

Remarkably, as mentioned before, in one USMCA case (San Martín) the stage of an arbitration panel was reached. On 15 May 2023, the American Federation of Labor-Congress of Industrial Organizations, United Steelworkers and the Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana (Los Mineros) filed a USMCA's RRLM petition alleging "a violation of Los Mineros' rights as title holder of the collective bargaining agreement at the San Martín mine and the hiring of workers to replace striking workers in violation of the collective bargaining agreement and Mexican law". The Interagency Labor Committee for Monitoring and Enforcement determined that there was sufficient, credible evidence of a denial of rights enabling the good faith invocation of RRLM. As a consequence, the US Trade Representative requested the Mexican government review an allegation that workers' rights were being denied at the San Martin mine facility. She pointed out that the owner of the mine resumed its operations despite the ongoing strike and entered into collective bargaining with a coalition of workers, even though Los Mineros had the exclusive right to represent workers in collective bargaining. However, the government of Mexico did not find any denial of rights, so on 22 August 2023, the US requested the establishment of the RRLM panel. After conducting on-site verification and hearing, the panel unanimously decided that, as a matter of law, it lacks jurisdiction to determine if a Denial of Rights under the USMCA has occurred. Focusing on the fact that "the actions that are alleged to constitute a Denial of Rights have been treated by Mexican courts as having their legal origin in the 2007 strike", the panel explained that "actions that are or are highly likely to be adjudicated under pre-2019 Mexican labor law are not subject to Denial of Rights claims". It further pointed out that "there is no contention between the Parties regarding the applicability of the USMCA to events occurring prior to its entry into force – the USMCA is not applicable to those events". The panel clarified that the disagreement between the US and Mexico concerns the applicability of the USMCA and the RRLM "to events that took place after the entry into force of the USMCA, but whose causal origin lies in events that took place before its entry into force on 1 July 2020, and, according to Mexican jurisdictional rules, are covered by pre-2019 labor legislation". According to the final determination of the panel of 26 April 2024, to come under the jurisdiction of the RRLM, there must be

a claim in the Request for a Panel that the legislation set out in the RRLM (referred to as LFT – Ley Federal del Trabajo, Mexican Federal Labor Law) is being violated. In other words, the application of the RRLM "is limited to violations of freedom of association and collective bargaining rights as defined and enshrined in the 2019 LFT"[19]. The panel is of the opinion that such an interpretation complies with a principle of non-retroactivity enshrined in the Mexican constitution, as well as customary international law. It is important to note that the determination of the panel is final.

The third group of cases are those in which the successful resolution of a USMCA's RRLM matter occurred even before any course of remediation activities were undertaken, in other words, in which violations of labour law were addressed immediately after the US requested Mexico's review of the matter. This group includes the following cases: Saint Gobain, Unique Fabricating, MAS Air, Teklas, Asiaway, and Tizapa.

In Saint Gobain case, a facility in Cuautla exporting automotive glass, the petition filed by the AFL-CIO, United Steelworkers, and a Mexican union called Sindicato Independiente de las y los Trabajadores Libres y Democráticos de Saint Gobain México alleged that workers were denied free association and collective bargaining rights in connection with the July 2022 collective bargaining agreement approval vote and the upcoming vote to determine which union would represent workers in collective bargaining negotiations. Ultimately, the independent Mexican union petitioners won the representational vote while the US was reviewing the case so there was no need to trigger a course of remediation phase.

Unique Fabricating case was the 7th request for review under the USMCA's RRLM. It was lodged by the Interagency Labor Committee as a result of a petition claiming that the Unique Fabricating facility in Santiago de Querétaro, the auto industry plastics manufacturer, was violating workers' freedom of association and right to collective bargaining. The petition was filed on 2 February 2023 by the Mexican "Transformation Union" – "Transformación Sindical"; Sindicato Nacional de Trabajadores de la Transformación, Construcción, Automotriz, Agropecuaria, Plásticos y de la Industria en General, del Comercio y Servicios, Similares, Anexos y Conexos del Estado de Querétaro. It claimed that Unique Fabricating denied the union access to the facility and interfered with its organising efforts. The Interagency Labor Committee determined, on the basis of its review of the petition, that there was sufficient and credible evidence of a denial of rights that allowed the good faith invocation of the RRLM. The United States

[19] Agreement Between the United States of America, the United Mexican States, and Canada, Mexico – Measures Concerning Labor Rights at the San Martin Mine (MEX-USA-2023-31A-01), 26.4.2024, https://ustr.gov/sites/default/files/San%20Martin%20-%20Panel%20Determination%20-%20For%20Posting.pdf (access: 19.9.2025).

Trade Representative submitted a request to Mexico to examine the issue. During the review period, the Mexican government carried out many measures to ensure the protection of workers' rights in the factory, including training managers and workers, and, in collaboration with the company, published a neutrality statement acknowledging the workers' ability to select their own unions and stating their zero tolerance policy against union favouritism and discrimination. The company also signed an agreement with the new union in which it promised to provide equal access to the facility for new and existing trade unions, to take measures to prevent potential infringements of freedom of association, and to provide dues from affiliates to the new union. Furthermore, the Mexican government monitored a union representation vote at the Unique Fabricating facility, in which workers elected an independent union to represent them in the bargaining process at the plant. Following the measures taken by the Mexican government and the facility in question, the US agreed that there is no ongoing denial of rights. Ambassador Tai[20] directed the Secretary of the Treasury to resume liquidation of entries of goods from the facility.

A successful resolution of a RRLM petition occurred also in MAS Air, namely a national cargo air carrier based in Mexico City. Thus, this was the first USMCA-'s RRLM request in the field of a service business. The petition in question was filed by a pilots' union – the Asociación Sindical de Pilotos Aviadores de México – alleging labour rights violations at MAS Air, including not only the dismissal of several pilots for participating in union activity, but also irregularities in a vote to ratify a collective bargaining agreement. A pilots' union claimed intimidation and interference in union activities by MAS Air. Reaching a resolution in October 2023 required work between the US government, the Mexican government, and MAS Air. Consequently, the latter agreed to all the conditions, i.a. to reinstate one of the dismissed pilots who wished to return to work and to pay severance to other pilots allegedly fired for participating in union activity who did not wish to return to work.

There were also further USMCA cases in which the USMCA Interagency Labor Committee for Monitoring and Enforcement requested the government of Mexico review an allegation that the rights of workers are being denied and in which the role of new and independent trade unions is noticeable. One of them is Teklas (the Teklas automotive parts plant in Aguascalientes), in which a petition was filed by the Liga Sindical Obrera Mexicana. The government of Mexico and Teklas reacted quickly and took some actions to stop the denial of rights at the plant in question. They included reinstating with backpay and benefits workers unlawfully dismissed for engaging in protected union activity, issuing an employer neutrality statement concerning freedom of association and collective bargaining,

[20] Katherine Chi Tai was the 19th United States Trade Representative from 18 March 2021 to 20 January 2025.

issuing guidelines to safeguard these rights, restructuring the human resources department, and employing new personnel in place of employees who committed violations, providing trainings for workers and managers regarding new policies. Importantly, on 29 January 2024, in a free and fair vote at Teklas workers elected a new, independent union – Liga Sindical Obrera Mexicana, which has begun a collective bargaining process with Teklas.

The successful resolution of a USMCA's RRLM matter was also announced at Asiaway Automotive Components Mexico – auto parts plant in San Luis Potosí. Following the US's request that Mexico review the matter, Mexico and Asiaway took measures to combat violations of labour law, including not only reinstating with backpay an unlawfully dismissed worker, but also correcting other employer interference in trade union activities.

Last but not least, the successful resolution of a USMCA's RRLM matter was also announced at the Tizapa mine in Zacazonapan. The petition in Tizapa case was filed on 4 March 2024 by Los Mineros (Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana, the National Union of Mining, Metal, Steel and Allied Workers of the Mexican Republic). It alleged that the mine's operators – Industrias Peñoles – not only discriminated against Los Mineros supporters when withholding of bonus payments and when dismissing twelve Los Mineros union leaders unlawfully, but also refused to recognise this trade union as the workers' collective bargaining representative, even if Los Mineros defeated another union in a vote to identify which union owned the collective bargaining agreement. The review of the petition conducted by the Mexican government ended in an agreement between the latter and Minera Tizapa's operators.

CONCLUSIONS

The main aim of this article was to explore the USMCA cases, and in particular the functioning and the effectiveness of the RRLM. The latter, inscribed in the US dualism of dispute settlement mechanisms, concerns freedom of association and collective bargaining (Annex 23-A), as opposed to the possibility of enforcement of other labour law obligations arising from Chapter 23 "Labor" via Chapter 31 "Dispute Settlement" (namely outside the RRLM). With regard to the evaluation of the effectiveness of the RRLM, the findings of this study show that the majority of cases under the USMCA's RRLM were successful. Importantly, this is true both in cases where courses of remediation under USMCA's RRLM were undertaken and in cases where the successful resolution of a USMCA's RRLM matter occurred even before any course of remediation. It is worth noting here that, apart from the INISA 2000 case, all agreements on a course of remediation reached between Mexico and the US concerned denial of rights of free association

and collective bargaining in autos and auto parts sectors. This state of affairs may undermine the effectiveness of the RRLM in relation to sectors not mentioned in footnote 4 of Annex-31, such as garment sector. In fact, only INISA – the Aguascalientes facility in which an agreement on a course of remediation was reached – is a sewing operation and part of a larger production chain for the manufacture of denim jeans.

The purpose of this study was also to verify the hypothesis that the US sanction-based approach in the context of FTAs ensures better effectiveness of labour rights than the promotional approach adopted by the EU. This paper presents evidence that supports this hypothesis – it shows, i.a., the deterrence potential of such a solution – and demonstrate that the EU should follow the example of the US in terms of its approach to the enforceability of labour provisions in FTAs. Given that there is an urgency to develop and safeguard a stable framework of implementation and enforcement of the EU trade and sustainable development chapters, the EU should stick to both the pre-ratification and post-ratification conditionality. The EU-New Zealand FTA can be assessed positively, but only in the latter aspect. As for the first of the above-mentioned dimensions, the EU should look at the US approach to its partners, e.g. Mexico, which – in 2018 – was obliged to ratify the outstanding ILO convention No. 98, and – in 2019 – to carry out very serious reforms of labour law. By way of comparison, the EU's partner, namely New Zealand, has not yet ratified the outstanding ILO conventions Nos. 87, 138, and 187. The analysis of cases and findings presented suggests that the EU – just like the US – should enter negotiations with hard provisions in the templates on the table. Of course, it is not a question of copying the USMCA, but maybe reconsidering the promotional approach, as well as the country-specific approach to the EU's partners. Pre-ratification and post-ratification conditionality could increase the enforceability of labour provisions in FTAs. As aptly pointed out by D.H. Zeigler: "A right without a remedy is not a legal right; it is merely a hope or a wish. (…) In Hohfeldian terms, a right entails a correlative duty to act or refrain from acting for the benefit of another person. Unless a duty can be enforced, it is not really a duty; it is only a voluntary obligation that a person can fulfill or not at his whim. In such circumstances, the holder of the correlative «right» can only hope that the act or forbearance will occur. Thus, a right without a remedy is simply not a legal right"[21].

This is good counsel for any policy-maker and treaty negotiator who wishes to effectively protect fundamental labour rights as stated in the ILO's 1998

[21] D.H. Zeigler, *Rights Require Remedies: A New Approach to the Enforcement of Rights in the Federal Courts*, "Hastings Law Journal" 1986–1987, vol. 38(665), pp. 678–679. See also idem, *Rights, Rights of Action, and Remedies: An Integrated Approach*, "Washington Law Review" 2021, vol. 76(1). Zeigler's footnotes are omitted here.

Declaration on Fundamental Rights and Principles at Work, including the rights to freedom of association and collective bargaining.

REFERENCES

Literature

Arnaud L., *From NAFTA to USMCA: Revisiting the Market Access – Policy Space Trade-Off*, "New Political Economy" 2024, vol. 29(3), DOI: https://doi.org/10.1080/13563467.2023.2260986

Blecker R.A., *The Rebranded NAFTA: Will the USMCA Achieve the Goals of the Trump Administration for North American Trade?*, "Norteamérica: Revista Académica del CISAN-UNAM" 2021, vol. 16(2), DOI: https://doi.org/10.22201/cisan.24487228e.2021.2.516

Bonne W., *Unresolved Labor Disputes under the USMCA's Rapid Response Mechanism: Probing the Applicability of the ATS in Light of Nestlé v. Doe*, "New York University Journal of Law and Business" 2022, vol. 19(1).

Borchert I., Conconi P., Di Ubaldo M., Herghelegiu C., *The Pursuit of Non-Trade Policy Objectives in EU Trade Policy*, "World Trade Review" 2021, vol. 20(5), DOI: https://doi.org/10.1017/S1474745621000070

Burfisher M.E., Lambert F., Matheson T., *NAFTA To USMCA: What Is Gained?*, "IMF Working Papers" 2019, no. 73, DOI: https://doi.org/10.5089/9781498303286.001

Campos Ortiz F.E., *Labor Regimes and Free Trade in North America: From the North American Free Trade Agreement to the United States–Mexico–Canada Agreement*, "Latin American Policy" 2019, vol. 10(2), DOI: https://doi.org/10.1111/lamp.12171

Castellanos Villalobos M., *Libertad sindical en México. Aplicación de los convenios 87 y 98 de la OIT en relación con las obligaciones derivadas del T-mec*, "Revista Vox Juris" 2023, vol. 41(1), DOI: https://doi.org/10.24265/VOXJURIS.2023.v41n1.09

Corvaglia M.A., *Labour Rights Protection and Its Enforcement under the USMCA: Insights from a Comparative Legal Analysis*, "World Trade Review" 2021, vol. 20(5), DOI: https://doi.org/10.1017/S1474745621000239

Covarrubias V.A., *El T-MEC y la tercera generación de arreglos laborales. Los escenarios probables para el trabajo y la industria regional*, "Norteamérica, revista académica del CISAN-UNAM" 2021, vol. 16(1), DOI: https://doi.org/10.22201/cisan.24487228e.2021.1.470

Covarrubias V.A., Dufour-Poirier M., *El T-MEC y la tercera generación de arreglos laborales: De las experiencias previas en Latinoamérica al futuro previsible para las relaciones industriales mexicanas*, "Norteamérica: Revista Académica del CISAN-UNAM" 2023, vol. 18(1), DOI: https://doi.org/10.22201/cisan.24487228e.2023.1.591

Finbow R.G., *Populist Backlash and Trade Agreements in North America: The Prospects for Progressive Trade*, "Politics and Governance" 2023, vol. 11(1), DOI: https://doi.org/10.17645/pag.v11i1.6078

Karski K., *Migration*, [in:] *International Law from a Central European Perspective*, ed. A. Raisz, Miskolc–Budapest 2022, DOI: https://doi.org/10.54171/2022.ar.ilfcec_10

Mateiescu S., *The Limits of Interventionism – Causality in the Social Sciences*, [in:] *Probabilities, Laws, and Structures*, eds. D. Dieks, W.J. González, S. Hartmann, M. Stöltzner, M. Weber, Dordrecht 2012, DOI: https://doi.org/10.1007/978-94-007-3030-4_10

Russo F., *Causality and Causal Modelling in the Social Sciences: Measuring Variations*, New York 2009, DOI: https://doi.org/10.1007/978-1-4020-8817-9

Scherrer C., *Novel Labour-Related Clauses in a Trade Agreement: From NAFTA to USMCA*, "Global Labour Journal" 2020, vol. 11(3), DOI: https://doi.org/10.15173/glj.v11i3.4228

Tyc A., *Global Trade, Labour Rights and International Law: A Multilevel Approach*, London 2021, DOI: https://doi.org/10.4324/9781003159612

Zeigler D.H., *Rights Require Remedies: A New Approach to the Enforcement of Rights in the Federal Courts*, "Hastings Law Journal" 1986–1987, vol. 38(665).
Zeigler D.H., *Rights, Rights of Action, and Remedies: An Integrated Approach*, "Washington Law Review" 2021, vol. 76(1).

Online sources
Agreement Between the United States of America, the United Mexican States, and Canada, Mexico – Measures Concerning Labor Rights at the San Martin Mine (MEX-USA-2023-31A-01), 26.4.2024, https://ustr.gov/sites/default/files/San%20Martin%20-%20Panel%20Determination%20-%20For%20Posting.pdf (access: 19.9.2025).
Bureau of International Labor Affairs, *USMCA Cases*, https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca-cases (access: 19.9.2025).
INISA, *Course of Remediation*, 8.8.2023, https://ustr.gov/sites/default/files/INISA%20-%20Course%20of%20Remediation.final%20(8.8.2023).pdf (access: 19.9.2025).

ABSTRACT

The aim of this article is to discuss a sanction-based model of labour provisions in free trade agreements (FTAs) adopted by the United States, against the background of the EU "promotional model" focusing on dialogue and cooperation. Using the case study research method, the authors analyses the United States–Mexico–Canada Agreement (USMCA) cases and the procedures adopted in the Rapid Response Labour Mechanism (RRLM). The findings of this paper reveal, among other things, that most USMCA cases were successful. The article shows that the EU should enter FTA negotiations with hard provisions in the templates on the table and should stick to both the pre-ratification and post-ratification conditionality which could increase the enforceability of labour provisions in FTAs.

Keywords: free trade agreements; labour provisions; United States–Mexico–Canada Agreement; USMCA; Rapid Response Labour Mechanism; RRLM

ABSTRAKT

Celem artykułu jest omówienie opartego na sankcjach modelu przepisów pracowniczych w umowach o wolnym handlu (FTAs) przyjętego w Stanach Zjednoczonych na tle unijnego „modelu promocyjnego", koncentrującego się na dialogu i współpracy. Wykorzystując metodę badania przypadków, autorzy analizują kazusy wynikające z umowy o wolnym handlu między Stanami Zjednoczonymi, Meksykiem i Kanadą (USMCA) oraz procedury przyjęte w ramach mechanizmu szybkiego reagowania w sprawach pracowniczych (RRLM). Wyniki badań m.in. pokazują, że większość spraw w ramach USMCA zakończyła się sukcesem. W artykule wskazano, że Unia Europejska powinna przystępować do negocjacji umów handlowych z twardymi postanowieniami w projektach przedkładanych swoim partnerom oraz powinna trzymać się zarówno warunkowości przedratyfikacyjnej, jak i poratyfikacyjnej, ponieważ może to zwiększyć egzekwowalność postanowień dotyczących pracy w umowach o wolnym handlu.

Słowa kluczowe: umowy o wolnym handlu; postanowienia dotyczące pracy; umowa o wolnym handlu między Stanami Zjednoczonymi, Meksykiem i Kanadą; USMCA; mechanizm szybkiego reagowania w sprawach pracowniczych; RRLM