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PROJECT

USMCA's Rapid Response Mechanism:

A Primer on How to Use this New Labor Enforcement Trade Tool to Fight for Workers' Rights

September 2022



Introduction

Corporations have relied on privileges and powers granted to them in trade agreements for decades in order to relocate production and outsource jobs to countries where wages are lowest and where workers' fundamental rights can be more easily denied. The North American Free Trade Agreement (NAFTA) and its many clones provided foreign investor rights, which enabled the safe and easy relocation of production and jobs, and duty-free access for goods made in relocated plants without mandating that these facilities adhere to any enforceable labor or environmental standards.

The revised NAFTA, redubbed the United States-Mexico-Canada Agreement (USMCA) after its renegotiation in 2018-19, includes stronger labor standards and an ingenious new system to mend the "race-to-the-bottom" in wages and work conditions that the original NAFTA generated. One key feature is a requirement that countries enact in their domestic laws and enforce the labor protections provided by the International Labor Organization's Core Labor Standards. As a result, the NAFTA renegotiation process pushed Mexico to enact major labor reforms in 2019. Those changes provide new opportunities for Mexican workers to organize for representation by independent unions – replacing the corrupt "protection" unions allied with management that have undermined Mexican workers' interests for decades. Under the new system, workers have the right to form and join unions, freely elect their leadership, and participate in collective bargaining to improve their working conditions and demand better wages. USMCA can help enforce these new rights and processes aimed at improving workers' wages and conditions.

Specifically, the USMCA includes an innovative legal tool called the Rapid Response Mechanism (RRM). The RRM is novel in that it allows workers and unions to target specific facilities that are not complying with USMCA labor rights obligations related to union organizing and specifically the implementation of these right in domestic labor laws. This differs from enforcement in past trade deals that included labor obligations, which was through a mechanism called "state-to-state" dispute settlement. The RRM system adds significantly to the traditional state-state enforcement system in the following ways:

The USMCA Labor Rights Rapid Response Mechanism vs. the Previous Process

Traditional Dispute Settlement	Rapid Response Mechanism
<p>Sanctions don't target firms violating labor rights and can be "absorbed" by governments. Governments can face fines or sanctions, while firms have no direct incentive to change behavior.</p>	<p>If workers' rights are denied at a specific company, the facility involved can be targeted with sanctions and face direct financial consequences if the abuse does not stop or if violations are not remediated.</p>
<p>Governments can endlessly delay the resolution of a case, and the relevant agencies have no obligation to notify stakeholders about their decisions.</p>	<p>The RRM has an expedited process. After stakeholders file a petition, the U.S. government has 30 days to notify the petitioners whether they are moving forward with their labor rights violation complaint. The whole process, including an enforcement panel's authorization of sanctions on an offending company, should take less than 148 days.</p>
<p>Violations must be proven to be "sustained" or "recurring." In other words, a case can only be filed if there are many documented cases of labor abuse.</p>	<p>One violation of a covered labor right is sufficient to file a RRM petition. Thus, if a company colludes with a protection union to rig one contract vote, a case may be initiated.</p>
<p>Complaining parties must prove that labor violations occur in "a manner affecting trade." This vague requirement is difficult to satisfy, and requires burdensome econometric research to establish.</p>	<p>The complaining parties must only prove that the facility involved exports or competes with imported products from USMCA parties. No economist or other expert is needed to establish that a labor violation impacted trade flows or patterns.</p>
<p>Violence and intimidation are not characterized as labor rights violations. If workers face harassment or threats while attempting to exercise their rights, they have no recourse.</p>	<p>Any sort of coercion which infringes upon the labor organizing and voting rights guaranteed under the RRM (see below) can be grounds for a petition.</p>

This document provides a brief explanation of the ways in which workers, democratic unions, and civil society organizations can use this new tool in their fight for better wages and working conditions in Mexico.⁺

It includes a description of what sorts of violations can become the subject of a potential RRM case, how to file a petition, what kind of evidence workers and unions should gather to build a case, what process should be followed, and possible outcomes. Widespread use of the USMCA Rapid Response

⁺ This primer is focused on the process of filing a petition before the U.S. government to elevate and address complaints of labor rights violations in Mexico. Although the RRM could, in principle, also be used by Mexico and Canada, at the time this resource was published, every existing case had been triggered by the United States. Since this document draws from the lessons of those first cases, it will not discuss potential cases where Canada or Mexico could activate the mechanism.



Mechanism could have a significant, positive impact on Mexican workers' and independent unions' fight to uproot the old system of employer-coopted "protection" unions, which has suppressed the rights of workers for decades and undermined wages in the whole North American region.

1. When Do You Have a RRM Case?

Workers' rights are often undermined and violated in both the United States and Mexico. And while both countries are required under USMCA to respect and enforce labor rights, not every violation can give rise to a RRM petition.

The RRM covers cases where workers' rights to freedom of association and collective bargaining have been violated. It applies to facilities* located in Mexico that export goods or provide services to the United States, or those that compete with U.S. goods or services sold in Mexico.

Workers can and should file a petition if...

- A company tries to obstruct workers' efforts to form an independent union.
- A company pressures workers to not join a union or retaliates against employees that unionize or participate in union activities.
- A company doesn't negotiate in good faith with a legally recognized union on a collective bargaining agreement (a union contract).
- A vote for workers' to approve or reject a union contract or union's leadership is not conducted fairly.
- Workers are denied access to a copy of the collective bargaining agreement covering their workplace.
- Local authorities collude with companies or unions to deny workers the right to, among others, have fair union elections, join or not join a union or go on strike.

***To What Facilities Does the RRM Apply?**

Workers can file RRM petitions against companies in almost any economic sector **except agriculture**. The RRM authorities will pay special attention to petitions regarding facilities where workers manufacture autos and auto parts, aerospace products, electronics, steel and aluminum, and bakery goods and call centers and mines because the U.S. government identified these subsectors as enforcement priorities.

What situations provide the basis for an RRM petition?

Example 1: Management retaliates against workers trying to organize an independent union

A car company, Vortex Motors, has a plant in Guanajuato that exports auto parts to the United States. One day, workers on the assembly line began to talk and share their dissatisfaction with their low and stagnant wages. They sought a substantial raise but knew that the company's union, which had been overly friendly with management for years, wouldn't support or promote this demand. So, a group of workers decided to form an independent union to challenge the incumbent union. When management hears about this, it fired the leaders of the independent union and denied remaining workers' demands to recognize their affiliation to the independent union.

Example 2: Intimidation and threats during union contract or election votes

Under the new Mexican labor law, every union contract must be subject to a "personal, free, direct and secret-ballot" vote for workers to approve or reject their existing contract before May 2023. One of these votes was approaching at Flywind Co., a large mining company that extracts gold in the state of Zacatecas. Flywind's management arranged special meetings with workers and gave the incumbent union unlimited access to workers in the workplace to sway the vote in its favor. Neither the company nor the incumbent union distributed copies of the collective bargaining agreement (CBA) to the workers. The company's Human Resources staff and the delegates of the incumbent union told workers that they could lose their contract benefits if they voted down the existing CBA. Workers felt intimidated during the vote because the election was carried out in the company's auditorium, where four cameras controlled by the company recorded everything and everyone. In the end, the contract was approved by a slight margin.

Example 3: Companies Colluding with Authorities

Workers at Serfling Electronics, a home appliances company, decided to form an independent union at its plant in Coahuila. The newly-created independent union decided to challenge the incumbent union. (As a technical matter, this involves challenging the incumbent union's control ("titularidad") over the collective bargaining agreement, which means what union has the right to represent the workers in bargaining a contract.) To that end, they filed a lawsuit against the company and the incumbent union before the authorities, calling for an election so workers could choose who should represent them. The authorities refused to act, dragging their feet and doing nothing for a year. In the meantime, delegates of the incumbent union told workers seeking a new union that they would suspend contract benefits for workers who chose to end their affiliation with the incumbent union. Serfling Electronics did nothing when workers notified Human Resources about these threats, not even informing the workers that the threatened action was illegal.



2. How to File a Petition?

The Rapid Response Mechanism can be triggered by a public petition submitted to the Office of Trade and Labor Affairs of the U.S. Department of Labor (OTLA). Public stakeholders, such as labor unions, NGOs, affected workers, and other interested parties, can submit such petitions to request the U.S. government to activate the RRM. An RRM petition is effectively a request by someone outside of the government for the U.S. government to agree to use the RRM process. This involves the governments of the United States and Mexico working together to try to resolve a labor rights violation. And, if that does not achieve a remedy, to bring a case to a tribunal for a ruling that can lead to sanctions if a company is found to be violating the rules. While OTLA will take hand-delivered petitions, it prefers electronic submissions and documents that are searchable. (The U.S. government can also self-initiate the process. Of the five known RRM cases at the time of publication, one was self-initiated and the rest were based on public petitions.)

Petitions must be in writing and dated, and must include the following information:

1. Name of the individuals or groups filing the petition along with their contact information (with both physical and email addresses).
2. Name of the facility that the petition targets and, if possible, the address and city where it is located.
3. The facility's economic sector – for example, auto parts, aluminum or plastics.
4. A detailed and specific description of how workers' rights are being violated at this facility.
5. The provisions of Mexico's labor laws that have been breached.
6. Whether any solution has been attempted through the domestic laws and procedures of Mexico, and if so, the status of those legal proceedings.
7. Whether a similar complaint has been filed before any other international body.

Petitions should be submitted to OTLA using this contact information:

Office of Trade and Labor Affairs, Bureau of International Labor Affairs
U.S. Department of Labor
200 Constitution Avenue NW, Room S-5315
Washington, DC 20210
Email: USMCA-petitions@dol.gov. Telephone Number: 202-693-4887

3. What Kind of Evidence Should a Petition Include?

To maximize the chances of the U.S. government elevating a petition and taking quick action, petitioners should try to include the following types of evidence:

- 1. Documents that demonstrate what kind of goods are produced at or what types of services are supplied from the targeted facility.** For instance, the company's website should have information about the type of goods or services it produces that can be included.
- 2. Documents showing that the company exports those goods or services to the United States.** Or, that U.S. goods or services compete with those of the targeted facility in Mexico. Petitioners can use trade data websites such as Panjiva or ImportGenius to obtain this information.
- 3. Union documents available to the petitioners,** such as union bylaws and official union recognition certificates, certificates of representation, etc.
- 4. Collective bargaining agreement in force in the workplace** along with any subsequent revisions.
- 5. Documents related to any union vote that could have taken place at the relevant workplace.** This includes notices, vote minutes, certificates, etc.
- 6. Documentation related to domestic legal proceedings.** This includes certificates of representation requests, administrative determinations, lawsuits with respect to what union has the right to negotiate contracts for workers ("demandas de titularidad"), judicial decisions, and workers' reinstatement lawsuits.
- 7. Workers' declarations** and any communication between workers and the company.

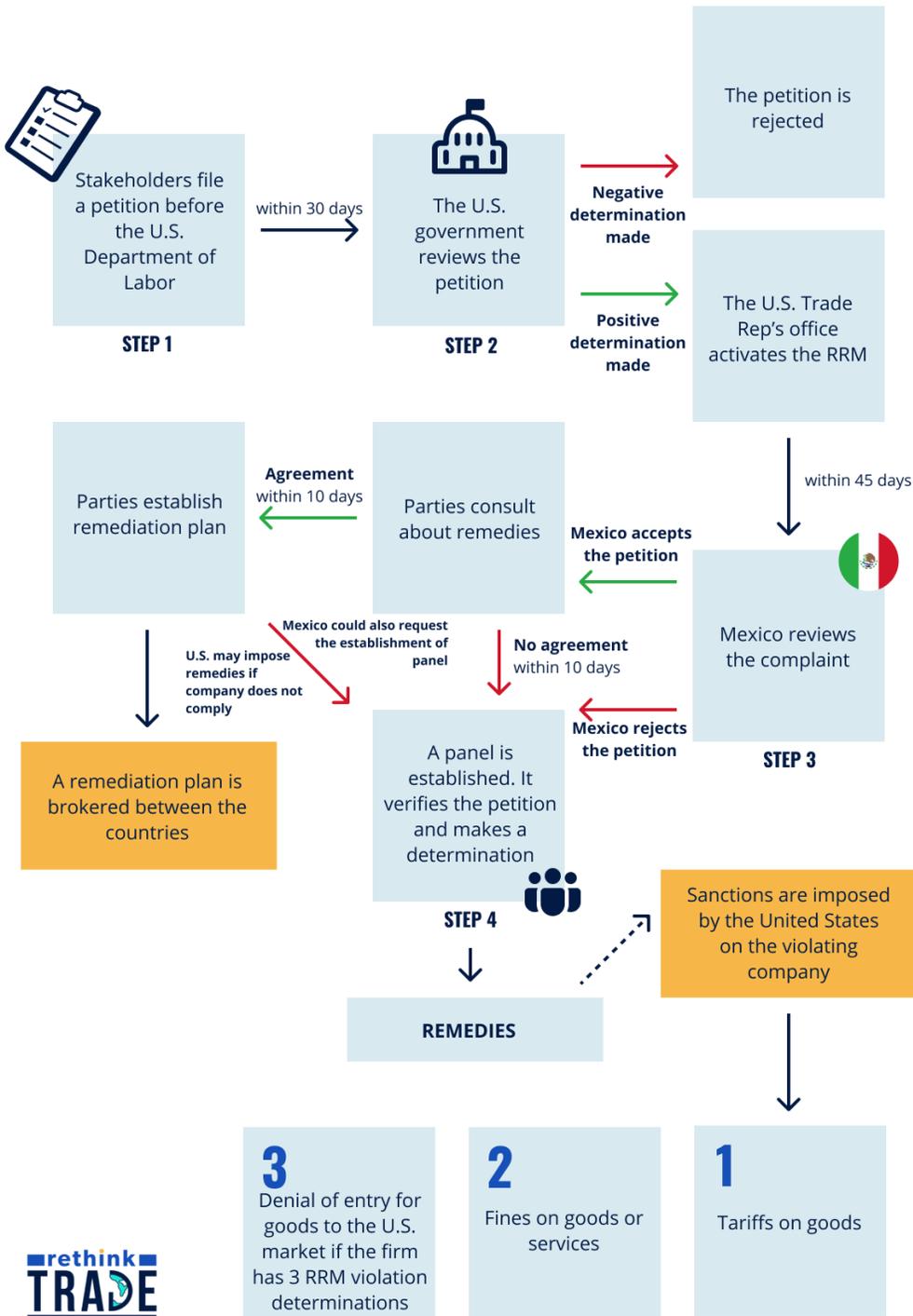
Fear not! The RRM does *not* require petitioners to gather all of this documentation.

Petitioners should submit their claims in a timely manner with an eye on balancing the gravity of the labor rights violations taking place with the evidence available to them. The list above only provides examples of the kinds of documentation U.S. authorities seek when reviewing a petition. If you can provide these documents with your petition, it can speed up the process and increase chances of success.

Also importantly, the U.S. government is required by law to protect confidential information. So, any documentation that includes sensitive information should be marked as “provided in confidence” and petitioners should explain why the information is confidential. (For instance, that it includes the names of workers who could be exposed to retaliation by the employer or a “protection” union if their names are revealed.)



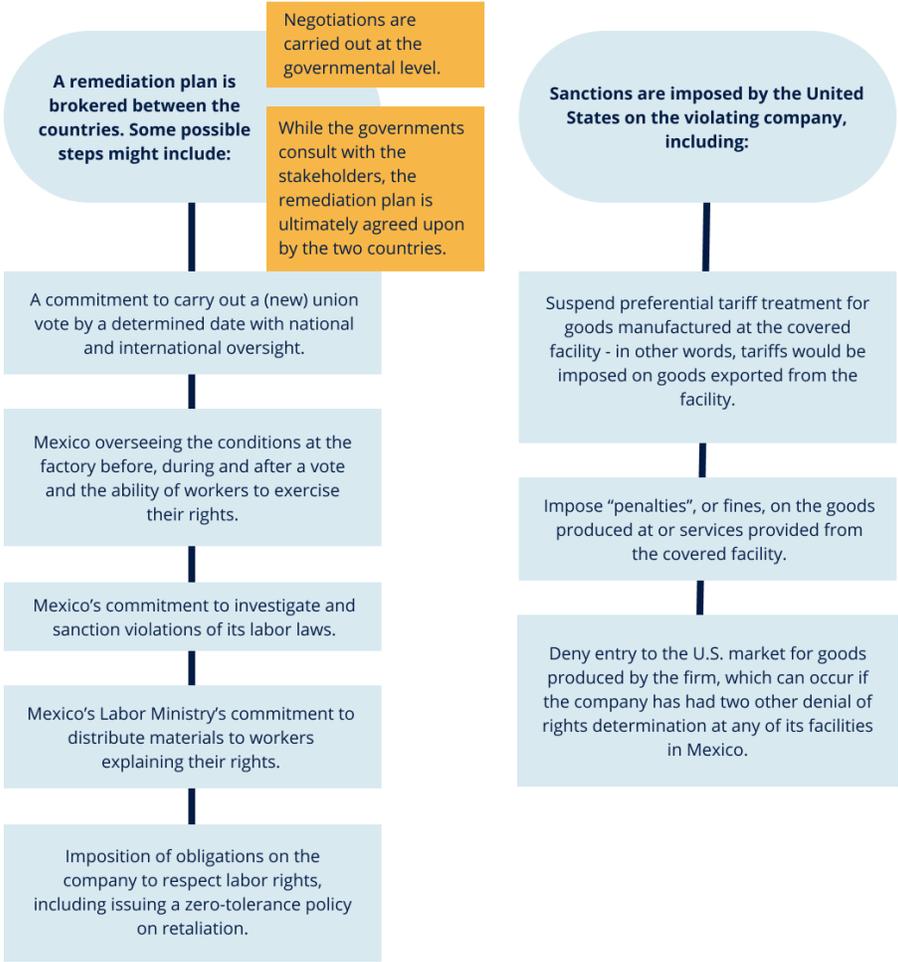
4. How Does the RRM Process Work?



5. What Are the Potential Outcomes After Filing an RRM Case?

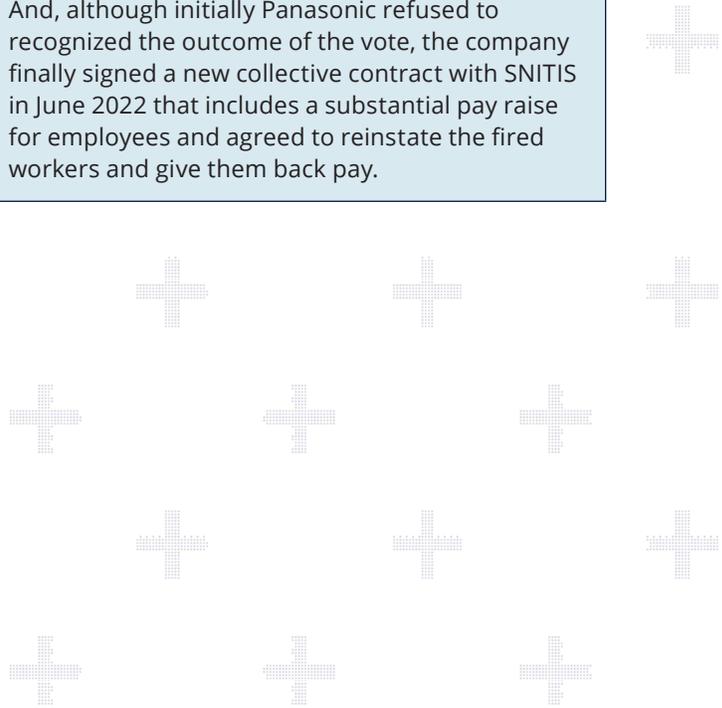
The two likeliest outcomes for an RRM case that is accepted by the U.S. government are either a remediation plan or sanctions on the company.

RRM Outcomes





Successful RRM Cases	
<i>General Motors, Silao</i>	<i>Panasonic, Reynosa</i>
<p>The U.S. government self-activated the RRM after reports about vote tampering during a union contract legitimation vote at General Motors' Silao facilities (GM Silao) in May 2021. Through the activation of the Rapid Response Mechanism, Mexico and the United States agreed on a remediation plan that gave guarantees for a new vote to be held with national and international observers. Via that new vote, the Silao GM workers eventually elected an independent union, SINTTIA, in February 2022. SINTTIA negotiated an improved union contract with GM, which was overwhelmingly approved by the workforce in May 2022.</p>	<p>SNITIS, an independent union in the North of Mexico, denounced Panasonic for violating USMCA labor rules by signing a contract with SIAMARM, an illegitimate Confederación de Trabajadores de México (CTM) union, behind workers' backs and firing workers who protested at an auto parts plant in Reynosa, Mexico. Mexican federal authorities had scheduled a union vote so that workers could choose between SNITIS and SIAMARM. While that vote was pending, Panasonic colluded with SIAMARM to try to negotiate and lock in a new contract. SNITIS and Rethink Trade filed an RRM petition demanding that a fair election be held, no new sham contract be enacted between SIAMARM and Panasonic and the workers fired for union activity be reinstated. Thanks to workers' relentless organizing and the RRM petition, SNITIS won the vote in a landslide. And, although initially Panasonic refused to recognize the outcome of the vote, the company finally signed a new collective contract with SNITIS in June 2022 that includes a substantial pay raise for employees and agreed to reinstate the fired workers and give them back pay.</p>





Resources

[*Sample RRM Petition*](#)

[*Labor Chapter of the USMCA*](#)

[*Rapid Response Mechanism Protocol \(Annex 31-A\)*](#)

[*RRM Interim Procedural Guidelines*](#)

[*Department of Labor's Website on USMCA and Labor Rights*](#)

[*Rethink Trade's Website on the Revised NAFTA & Workers' Rights*](#)