Trade and Labor a la Latina:

A South perspective of firm-specific labor enforcement mechanisms in trade agreements

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"Mr. LIEVANO (Colombia) was of the opinion that while the general raising of the standards of living and labour conditions in the world was within the competence of the ILO, those related to the low cost production by exploited labour of article to be sold in international markets could be handled only by the ITO. In the event of such unfair competition a rapidly working and simple procedure should be available for redress."

United Nations, Conference on Trade and Employment, First Committee: Employment and Economic Activity, Summary Record of the Sixth Meeting, December 8, 1947.[1]

1. Introduction

Most policymakers, scholars, and even unionists nowadays tend to believe that the notion of including labor provisions in international trade agreements is an exclusively northern agenda. Indeed, over the past couple of decades, developed country governments and stakeholders from the global North have been behind much of the push for a rapprochement between international trade frameworks and labor standards. However, this has not always been the case. During a crucial juncture of the 20th century, developing countries – particularly Latin American nations – consistently advocated for the inclusion of employment and labor commitments in international economic arrangements. Throughout the tumultuous 1940s, Latin American diplomats and negotiators strived to link the efforts to liberalize trade to conditions that would guarantee employment opportunities, fair competition, and decent working conditions for people. Moreover, they advocated for enforcement mechanisms that could address the trade effects of exploitation of labor in foreign countries. Such mechanisms would have depended on cooperation between the International Labor Organization (ILO) and the International Trade Organization (ITO).

Shortly after the decolonization of Africa and Asia in the 1960s and 1970s, the developmental agenda pivoted to other priorities, and the labor issue faded into the background. The trade and labor discussion regained prominence in the 1980s when actors from the global North raised it to address the growing dislocations caused, and yet to be caused, by the surge of global and regional supply chains. The labor side deal included in the 1994 North American Free Trade Agreement (NAFTA) was a watershed moment in this process. Since then, every U.S. free trade agreement (FTA) has included labor provisions. Similarly, the European Union began incorporating labor terms into its trade agreements, with the EU-CARIFORUM Economic Partnership Agreement being the first EU FTA to include substantive labor terms, supported by an enforcement mechanism. Concurrently, worker rights non-profits and trade unions integrated corporate social responsibility campaigns into the international defense of workers toolkit. This movement has set a significant precedent for the recent adoption of corporate due diligence laws by certain European countries.

In terms of trade agreements, interestingly, the most evolved version of the trade and labor linkage was achieved precisely when NAFTA was renegotiated and redubbed the United States-Mexico-Canada Agreement (USMCA) in 2018-19. The reason lies in the inclusion of a novel enforcement tool – the Labor Rapid Response Mechanism (RRM).

The RRM created a pathway to target and sanction specific facilities where workers' rights to organize in unions and negotiate collectively are being undermined. Notably, myriad Mexican labor unions and civil society actors have leveraged the RRM to advocate for better labor protections and wages at workplaces across the country. At the same time, the Mexican government has collaborated with the U.S. and Canadian governments to address complaints through this mechanism, and although it has voiced criticism regarding specific cases, it has not generally opposed the frequent use of this innovative tool. Commentators, policymakers, and unionists both in North America and elsewhere rightly see USMCA as the frontier of labor provisions in trade agreements. Former ILO Deputy Director-General for Policy, Sandra Polaski (2023), has called the RRM the most striking innovation in the UMSCA. U.S. Trade Representative Katherine Tai (2024) recently stated that the USMCA's RRM is a first-of-its-kind mechanism that is proving the concept that workers can secure their rights through innovations in a trade agreement. The European Trade Union Confederation (ETUC) has urged EU policymakers to learn from tools like the RRM in the USMCA to develop an EU worker-centered trade policy.

Moreover, labor rights organizations in Mexico have emphasized the role of the RRM as a tool for achieving genuine union representation in the country (CALIS & CILAS, 2023).

This policy brief explores whether the experience of RRM within the framework of the USMCA could potentially inspire countries in the Global South, especially those in Latin America, to rekindle their tradition of advocating for the inclusion of labor provisions in trade agreements. This would entail placing worker interests and rights at the forefront of their development strategies.

2. Fair labor standards from the South:

The Latin American struggle to include labor in the postwar international governance system

It might come as a surprise for many today, but during the consequential 1940s Latin American nations carried the banner of labor rights in the international economic arena. Starting with the discussions over the design of the nascent United Nations, up until the heated negotiations that led to the Havana Charter in 1947, Latin Americans constantly raised labor and employment issues. During the international conferences that scaffolded the postwar international governance system, Latin American nations' agendas focused on the relationship between employment creation, labor protections, and decent living standards, on one side, and trade liberalization, on the other.

One early example took place during the negotiations for an economic charter for the Americas in 1945. Although now largely forgotten – parallel to the discussions destined to put in place the Bretton Woods institutions – the nations of the Western Hemisphere agreed to an Economic Charter for the Americas. The charter was one of the main outcomes of the Inter-American Conference on Problems of War and Peace held in February 1945 at the Chapultepec Castle in Mexico City.

While the U.S. delegation at Chapultepec had as their main economic goal to discipline discriminatory trade practices and reduce barriers to trade (Thornton, 2021, p.110), Latin American delegations had a very different view of what was needed to underpin economic relations in the region. According to Thornton (2021), Latin Americans were mostly concerned about issues of equal representation and adequate funding for development (pp. 111-113). However, others also wanted to put issues of employment and labor on the table. For instance, the Dominican Republic advanced a draft resolution related to social legislation to protect workers. Likewise, Thornton (2021) mentions that the Chilean delegation introduced a resolution outlining policies to reduce and mitigate unemployment. As it turns out, the final version of the charter included a commitment to realize the objectives of the 1944 ILO Declaration of Philadelphia,[2] which reaffirmed the importance of the right of freedom of association and collective bargaining.

The implementation of the charter was assigned to a future inter-American technical economic conference that never happened (Rabe, 1978). Yet Latin American governments

kept advocating for the inclusion of labor and employment considerations throughout the decade, but this time on a global stage.

The structure of the nascent United Nations was largely defined at Dumbarton Oaks in Washington D.C. in 1944. Albeit largely excluded from Dumbarton Oaks – only representatives from Great Britain, China, and the Soviet Union were invited to the table by the United States – Latin American countries made several comments and suggestions to the proposal that came out of the superpowers' meeting. For instance, the Bolivian government proposed that organized labor be represented on the Economic and Social Council (ECOSOC), which in turn could promote concerted action to further economic development, industrialization and the raising of living standards in developing countries (Thornton, 2021, pp. 102-107).

Box 1: The Latin American fight for an enforceable fair labor standards clause in Havana

Even more impactful were the Latin American contributions to the "fair labor standards" debate within the negotiations that led to the Havana Charter. In the late months of 1947, diplomats and technocrats from dozens of countries gathered in Havana to finish the foundational charter for an international trade organization. Even before the Havana meeting, Latin America played an important role in pushing the fair labor standards debate onto the agenda. Middlebrook (2024) notes that the Cuban delegation emerged as the leading proponent of incorporating a fair labor standards clause into the U.S. draft for the ITO charter discussed in London in 1946 (p. 42). Initially, this draft only included a provision allowing countries to prohibit imports of goods produced by prison labor. By the time they arrived in Havana, several Latin American delegates were among the staunchest advocates for the inclusion of a "fair labor standards" clause in what was forming up to be the Havana Charter. According to Jensen (2016), while the U.S. delegation's main negotiating mandate revolved around promoting trade liberalization through tariff reduction and strict controls on quotas, representatives from other nations had a wider agenda (pp. 85-86; 94-95). Particularly, the delegates from Argentina, Brazil, Colombia, Mexico, and Uruguay, among others, were determined to include specific commitments related to social progress and economic development, but also full employment and labor standards. This stance faced opposition from developed country delegations like the United States and the United Kingdom, as well as from other developing countries, notably India (Middlebrook, 2024, p. 42).

During the conference, the Mexican delegation offered several amendments to the draft text aiming at strengthening labor protections by acknowledging preexisting ILO international instruments and pressed for further cooperation between the future ITO and the ILO (Jensen, 2016). It also introduced language destined to protect migrant workers in the context of the ongoing Bracero program, a U.S. policy that permitted millions of Mexican laborers to enter the United States for farm and railroad work under short-term contracts. The Colombian delegate was focused on the need to create a *"rapidly working and simple procedure"* for labor rights' violations. Under this procedure, any country suffering from unfair competition caused by another country's exploitative labor conditions and resulting low production costs could demand the ITO to investigate the matter. This proposal received support from the Brazilian, Mexican, and Venezuelan delegates.[3] The charter's final language did not go as far as the Latin Americans might have wanted, but it undeniably linked trade and labor, plus it created a framework for the ITO and ILO to review potential violations of the Fair Labor Standards clause.[4]

Unfortunately, after languishing for three years in the U.S. Congress, the Havana Charter never came into existence. The ITO was never created. And, with the turn of the decade, Latin America's concerted efforts to link trade and labor standards faded into oblivion.

The new developmental agenda of the 1960s and the 1970s was greatly influenced by the decolonization of dozens of countries in Africa and Asia during that time. This process led to the formation of the Non-Aligned Movement with the adoption of the Algiers Charter in 1967 and the calls for a New International Economic Order (NIEO). During that period, Latin America shifted its focus towards the Third World as a space for coordination and solidarity (Perrone, 2024, p. 23). Hence, some aspects of the Latin American developmental agenda of the 1940s persisted in the NIEO movement, such as the reaffirmation of national sovereignty over domestic resources and the right of each country to regulate multinational corporations operating in its territory. The 1974 NIEO declaration also added new demands to the developmental imaginary: an outright rejection of foreign occupation, colonization, neo-colonization, or apartheid and the necessity for meaningful technology transfer to narrow the gap between developed and developing countries, among others.[5] However, the interconnected objectives of including full employment imperatives and labor standards in trade arrangements completely disappeared from the agenda. Not even the Charter of Economic Rights and Duties of the States – an initiative championed by Mexican president Luis Echevarría which was also adopted in 1974 (Thornton, 2021, pp. 166-189) – mentioned labor rights or full employment as aspirations. [6]

3. The North Picks Up the Banner:

From NAFTA's Labor Side Deal to the USMCA

In several ways, the start of the Latin American debt crisis of the 1980s brought an end to the developmental era and paved the way to the neoliberal transition (Thornton, 2021, pp. 193-194). Suddenly, developing countries' economies were restructured by global technocrats from the International Monetary Fund and the World Bank who prescribed unfettered trade liberalization, fiscal austerity, and a hands-off approach to the economy as the best policy mix to achieve social progress. Since labor unions opposed these policies, developing country governments turned to labor repression and the erosion of workers' rights to ease the process of trade liberalization, privatization, and deregulation (Dean, 2022).

It is not surprising then that, by the late 1980s and early 1990s, the notion of including labor standards in trade agreements was a reactive notion for developing country elites and government officials. By then, northern labor unions and other worker advocates started demanding that their governments use trade and market access as cross-border leverage to improve labor laws and working conditions (Compa, 2022). According to Polaski (2022), this demand – which was based both on international solidarity and self-interest – had greater success in the United States as compared to the European Union due to differences in the institutional design of the two systems (p. 207). In the United States, the trade-labor linkage gained particular political relevance in the context of NAFTA, when U.S. President Bill Clinton promised U.S. unions that he would include labor protections to the NAFTA text negotiated by the previous administration. This was the origin of NAFTA's labor side deal or the North American Agreement on Labor Cooperation (NAALC), which, for the first time, linked labor standards to a trade agreement. Despite the significance of this precedent in the history of the trade-labor linkage, NAALC's real coverage of labor rights was quite limited and its dispute settlement provisions were complex and cumbersome (Middlebrook, 2024, p. 69). These structural flaws crucially weakened the NAALC's potential to address labor rights violations and prevent a race to the bottom in labor conditions in North America as NAFTA came into force.

The conclusion of the NAALC did not immediately lead to the widespread development of similar practices in other regional agreements or to the incorporation of labor rules in the multilateral trading

system. This lack of diffusion was due, in part, to opposition from developing country governments. For instance, developing countries adamantly resisted Clinton's call to discuss labor standards in the World Trade Organization (WTO) context during the 1996 Singapore Ministerial Conference (Santos, 2018). A renewed attempt to bring labor standards, or the so-called "social clause," into the WTO framework also categorically failed in the leadup to the 1999 Seattle Ministerial Conference (Polaski, 2022, p. 204).

Thereafter, the link between labor and trade only made its way to certain bilateral or regional trade agreements where rich countries acted as demandeurs and developing countries could not resist the demands from larger, more powerful trading partners. Yet the standards themselves and their enforcement mechanisms were largely weak and ineffective (Middlebrook, 2024). Very few cases were initiated by governments, some lasted years without yielding results, and no penalties were ever imposed. The disappointment with the outcomes of efforts to link trade and labor standards largely explains the opposition of U.S. unions to large multi-country trade agreements, such as the Trans-Pacific Partnership (Santos, 2018). This was the context in which USMCA's Rapid Response Mechanism made its appearance in the international economic statecraft arena and radically changed the game.

4. Firm-specific labor enforcement:

The new frontier of labor standards' enforcement through trade deals

Before USMCA, the trade agreements with labor provisions negotiated during the past 20 years relied on the state-state dispute settlement mechanisms embodied in the pact to address potential violations of its labor-related terms. Older deals like NAFTA did not even allow recourse to the dispute settlement provisions of the main agreement or, if they did, they would only give grounds to challenge a country's failure to enforce its own labor rights (Santos, 2018). Additionally, for a country to be able to hold its trading partner accountable for labor rights violations taking place in the territory of the latter, a series of stringent requirements would have to be overcome. The labor standards' breaches must be "sustained or recurring." Moreover, the complaining country must prove that the violations affect trade or investment flows. Assuming that a complaining country surpasses all of these obstacles and convinces a panel that a violation of the labor standards in the agreement has occurred, the remedy relies on the complaining country suspending concessions granted to the offending country through the trade agreement. Such suspension of concessions would likely take the form of retaliatory tariffs on a set of products. This means that the problematic actors engaged in the denial of rights don't face sanctions directly, or at least, don't face sanctions alone. The idea of a whole country being penalized for the labor rights violations carried out by specific firms or even sectors is one of the main drivers of developing countries' opposition to the trade and labor linkage.

Many, if not all, of these assumptions do not apply to the USMCA Rapid Response Mechanism. The RRM – as U.S. Trade Representative Katherine Tai often puts it (Brookings Institution, 2024) – pierces the state-to-state interaction to assess the labor rights situation at specific facilities and determine whether the firm involved is complying with the labor guarantees enshrined in domestic law and the USMCA. More pointedly, the RRM is a trade-related, firm-specific labor enforcement tool that protects workers' rights of freedom of association and collective bargaining.

However, before delving into the characteristics of the RRM and assessing how it has operated in practice, it is important to highlight the asymmetric design of this tool. The RRM was not included in the original 2018 redo of NAFTA. Following the 2018 mid-term election, as Democrats won the U.S. House of Representatives, they made clear that they did not consider the 2018 USMCA effective in terms of labor standards and enforcement rules and that U.S. organized labor would not support the deal. Democrats demanded a better labor enforcement system to combat the pervasive problem of corporatist unions suppressing wages in Mexico (See Box 2). Put differently, a key USMCA priority for the Democrats and its constituencies was delivering on a mechanism that could be used to raise wages and working conditions in Mexico with the hopes that better wages South of the Río Bravo would translate into better wages and more bargaining power for U.S. workers.

It was against this backdrop that the negotiators, along with the U.S. Congress, developed the RRM. The mechanism is embodied in two annexes to the USMCA Dispute Settlement chapter that were added to the deal through a protocol in 2019. One annex establishes the RRM procedures between the United States and Mexico, and the second one does it for Mexico and Canada. There is no RRM between the United States and Canada. In principle, the RRM could be used by the Mexican government to investigate and sanction U.S. or Canadian facilities where workers are being denied their rights to organize and/or bargain collectively. However, Mexico is only enabled to activate the RRM against the United States or Canada if the affected workers have exhausted the domestic remedies available to them. Leclerc (2023) has pointed out that this requirement seems to have been carefully designed to ensure that virtually no RRM claim could be filed against the United States or Canada.

Being aware of this context is key to understanding how the mechanism has been deployed so far and the limitations it has in its current form. While both the United States and Canada have the tools to initiate firm-specific labor actions against Mexico, the U.S. government under the Biden administration has been much more active in using this tool. Thus, this policy brief primarily focuses on the use of the RRM by U.S. authorities.

As a starting point, the RRM can be better understood by analyzing the following constitutive elements:

Covered rights:

Even though the USMCA Labor Chapter covers several labor rights such as the elimination of forced and child labor, the right not to be discriminated at the workplace, and even protections for migrant workers, not every standard is enforceable through the RRM. Countries can only activate the RRM in cases of violations of the rights of freedom of association and collective bargaining. These rights have both economic and human rights dimensions. By repressing workers'

right to form unions and bargain collectively, governments and/or corporations not only violate human rights; they also prevent the wage convergence that trade economic theory predicts (Polaski, 2022, p. 204). Thus, it should not be surprising that these two rights are the main focus of the Rapid Response Mechanism.

In practice, the U.S. government has activated the RRM in a wide array of situations related to workers' right to unionize and collective bargaining. An important number of cases have been related to irregularities during union elections where union officials and management have colluded to undermine workers' will. Other RRM complaints arise from rampant union-busting activities by corporations that have fired and intimidated workers, denied benefits, or illegally withheld sums of money from their employees. There have been cases related to corporations not recognizing either sectoral collective bargaining agreements (CBAs) or imposing CBAs that have not been negotiated by legitimate unions. More recent cases have denounced employers refusing to negotiate in good faith with the unions that represent their workforce. There are cases that have roots in long-standing conflicts between labor and management and others that have arisen based on the new guarantees provided by the 2019 Mexican labor reform.

Overall, the RRM has shown itself to be a flexible tool for addressing several ways in which workers' rights to organize and negotiate collectively are undermined.

Sectoral scope:

The RRM is available for workers in the manufacturing, mining, and services sectors. It appears that agriculture is the only economic sector purposefully excluded. It is likely that such an exclusion was due to the rampant labor rights abuses and lack of protection that characterizes agricultural supply chains both in the United States and Mexico.

A large number of RRM complaints are related to the auto sector, an industry of special importance for the regional supply chains. However, U.S. authorities have emphasized their interest in using the mechanism in a wide array of sectors. Recently, the United States has activated the RRM to address denial of rights at a call center, textiles facilities, a food processing factory, and even in the airline industry.

Procedure:

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. If the United States has a good faith belief that workers' rights are being denied at the targeted facility, it asks Mexico to conduct a review. Mexico has 45 days to assess the situation. Ideally, the Mexican government either accepts that there is a denial of rights taking place and then engages in consultations with the U.S. government to establish a plan to remediate the violations or denies the allegations, in

which case the U.S. government has the right to invoke a panel. Under the RRM, the panel determines whether a denial of rights has occurred and, if so, authorizes the imposition of sanctions by the United States. The panel is composed of three labor experts selected by the governments of the USMCA countries.

The whole process, including an enforcement panel's authorization of sanctions on an offending company, should take less than 148 days.

In practice, of all the RRM cases, only two have reached the panel stage. More than half of the cases have been resolved by the United States and Mexico agreeing to a remediation plan. Mexico did not accept at least three RRM cases. In one of these cases, the panel declared that it did not have jurisdiction over events that took place before the entry into force of the USMCA. The second case is currently in the panel stage.

Remedies:

The Rapid Response Mechanism authorizes the imposition of financial penalties on private facilities, namely, suspension of preferential tariff treatment, imposition of penalties on the involved facility's exports, or denial of entry to the export market. Goods can only be denied entry to the export market in cases where a firm had denied rights on two or more prior occasions.

As of June 2024, there has not been a panel determination corroborating a denial of rights at a specific facility; therefore, no remedies have been applied. However, U.S. authorities have imposed provisional measures in several cases in the form of a suspension of liquidation of the entries of goods produced at the facility. This means that the firm involved faces uncertainty regarding its customs duties' liability since a panel could authorize the imposition of penalties. The uncertainty, along with the reputational risk caused by being targeted as a facility where labor rights are denied, have been powerful drivers for companies' attempts to solve the issues leading to RRM complaints in a rapid fashion.

5. Firm-specific labor enforcement turns four:

Overview and Early Lessons

By July 2024, the USMCA reached its fourth anniversary since coming into effect. Recently, the U.S. Trade Representative Office (USTR; 2024) published a factsheet summarizing the impact of its use of the RRM. The U.S. government has activated the mechanism more than 19 times – all of them during the Biden administration. According to USTR, these cases have directly benefited over 27,000 workers, provided millions of dollars in back pay and benefits to workers, ensured wrongly terminated workers were reinstated, and helped secure free and fair elections in which workers selected independent unions to represent them. The Mexican Ministry of Labor and Social Welfare (STPS; 2024) has recognized the significant role that the RRM has played in overcoming resistance to acknowledging union democracy and the right to organize in certain workplaces.

More broadly, the RRM has been an important tool used by independent Mexican labor unions – and their allies – to support organizing campaigns at dozens of facilities across Mexico. Leveraging the RRM, independent unions, and their allies have succeeded in securing favorable union contracts, resulting in higher wages and improved working conditions for thousands of Mexican workers. However, the RRM does not operate in a vacuum. The 2019 Mexican labor reform is the inexorable background to the RRM activity.

Box 2: Corporatist unions in Mexico and the 2019 Labor Reform

Corporatist unionism has strangled workers and labor organizing in Mexico for decades. According to Xelhuantzi López (2019), since the outset of the Mexican Revolution, the ties between the *Partido Revolucionario Institucional* (PRI) – the dominant political party that emerged from the revolution – and the nascent union federations like the *Confederación Regional Obrera Mexicana* (CROM) and the *Confederación de Trabajadores* de México (CTM) devolved into a crony-style relationship between public officials, union leaders, and businesses that deactivated workers' collective power. This type of unionism, which erodes collective bargaining in favor of guaranteeing suppressed wages for national and international corporations and uneven income distribution, deepened in the 1980s and dominated labor relations in workplaces across Mexico until well into the 21st century (pp. 275-297).

Until recently, it was completely normal in Mexico to see union leaders negotiating CBAs with management without workers' input or consent, and sometimes without workers even knowing that a union was supposedly representing their interests. This type of arrangement is called a "protection contract" locally, and its practice was pervasive (de Buen Unna, 2011, pp. 5-7). In 2020, Mexican authorities estimated that 80 to 85% of the CBAs in Mexico were protection contracts (Associated Press, 2020).

Mexico's institutional design to regulate labor relations contributed to the corporatist unions' stranglehold as labor disputes were handled by tripartite conciliation and arbitration boards (CABs) with representatives from organized labor, businesses, and the government. Since corporatist protection unions controlled most workplaces and were allied with the business class and local government officials, any attempt from an independent union – i.e., a union that does not negotiate protection contracts – to challenge the incumbent group faced stark odds (Quintero, 2006).

The few independent unions in Mexico that escaped from these practices and other worker rights advocates pushed for changes to the country's labor institutions for decades (Polaski, 2023). However, it was trade policymaking the immediate cause that materialized those changes. During the Trans-Pacific Partnership (TPP) negotiations, the Obama administration in the United States pressed certain countries, including Mexico, to carry out labor law reforms in order to conclude the deal (Polaski, 2023; Santos, 2018). Accordingly, Mexico reformed its Constitution in 2017 to include the core tenets of the forthcoming labor reform.

The revised constitutional provisions mandated the creation of new federal and state-level labor courts and conciliation centers to deal with worker-employer disputes. They also required personal, direct, and secret-ballot voting by workers to approve collective bargaining agreements and to elect union leadership. Importantly, the new labor regime envisioned a federal-level conciliation and registration center, which would take over the registration of unions and union contracts from the tripartite CABs. Independent unions, progressive organizations and political parties, and academics had been advocating for these changes since at least the 1990s. However, their realization necessitated shifts in the regional political landscape (Bensusán, 2020).

When the election of Donald Trump in the United States triggered the renegotiation of NAFTA in 2018, the status of Mexican labor reform returned to the center stage. Per U.S. negotiators' insistence, an annex to the new NAFTA, redubbed USMCA, included Mexico's commitment to implement the changes to its labor institutions and processes envisioned in the 2017 Constitutional reform (Polaski, 2023). This international commitment, along with the election of Andrés Manuel López Obrador in 2018 and his party (MORENA) winning ample majorities in Congress, finally resulted in the May 2019 enactment of the labor reforms conceptualized in the 2017 constitutional changes.

The 2019 reform has revolutionized labor relations in Mexico. While certain practices are hard to eradicate, the new labor institutions – along with USMCA and its firm-specific enforcement tool – have imbued new life into Mexico's labor movement.

With labor reform as the background, the RRM emerged to complement the toolbox available to independent unions in their struggle for better wages and conditions for Mexican workers. It is hard to imagine Mexico being able to agree to some of the commitments assumed through the remediation plans negotiated with the United States if the old system were in place. Moreover, some of the remedies, such as conducting new elections with proper oversight and transparency, would simply be out of the realm of possibility under the pre-2019 regime. Hence, an early lesson of the last four years of firm-specific labor enforcement is that a conducive domestic legal environment is essential for enforcement actions to yield results.

However, the impact of RRM actions should not be overstated. Even assuming that all of the 27,000 workers that were employed at facilities targeted by the RRM benefited after the enforcement actions – a questionable presumption – there are almost 10 million

people working just in the manufacturing sector in Mexico (INEGI, 2023). While over 20 facilities have been targeted through the RRM, there are more than 600,000 manufacturing facilities scattered throughout the Mexican territory (Data México). Even if the U.S. government ramps up its labor enforcement activities, it will only be able to reach a tiny fraction of the Mexican economy.

Thus, the RRM should not be the exclusive focus of attention. Trade agreements can also strengthen non-dispute-based mechanisms that contribute to better labor standards. As a matter of fact, an important but often overseen, element of the USMCA labor agenda is related to technical assistance and capacity building. The U.S. Congress designated $180 million to the Department of Labor (DOL) to support the implementation of the 2019 labor reform and strengthen labor rights in Mexico through bilateral technical assistance, grants, and other arrangements (IMLEB, 2021). The goal behind financing these activities is to contribute to the widespread enhancement of labor relations in Mexico, as well as prevent USMCA violations. The Independent Mexico Labor Expert Board, a body created by the U.S. Congress to evaluate the implementation of Mexico's labor reform and compliance with its labor obligations, does an excellent job of monitoring these activities. However, more scholarship and analysis are needed to assess their impact.

Going back to the issue of firm-specific labor enforcement and the impact of the USMCA's RRM activity, the past four years have yielded some early lessons:

a) The firm-specific nature of the RRM contributes to bridging the South-North divide over the trade and labor debate

As described in the first section of this policy brief, during the last 50 years labor standards have not been part of the developmental agenda advanced by the Global South at international negotiating fora. Despite Latin American nations being early advocates in favor of linking trade pacts and labor standards, during the neoliberal years, most Latin American policymakers and negotiators have assumed a defensive position when it comes to the inclusion of labor issues in trade agreements.

The concerns are not without merit. Trade law has stronger enforcement mechanisms compared to most other international legal systems. Moreover, through free trade agreements and the emergence of a multilateral trading framework as embodied by the WTO, developing countries have had to heavily restructure their economies, often facing dire social and economic challenges. Perhaps more importantly, the design of traditional state-state dispute settlement proceedings, when applied to labor rights violations, could lead to a situation in which an entire country or an economic sector not involved in the violations is forced to face the penalties caused by specific "bad private actors."

Simultaneously, trade liberalization has negatively impacted blue-collar workers in

rich countries, especially in the United States. American corporations did not hesitate to relocate production to places with lower labor costs, disregarding – and also seizing on – the absence of labor guarantees in such places. Even more damagingly so, U.S. corporations used the possibility of relocating facilities as a negotiating tactic against their workers, undermining their bargaining power (Bronfenbrenner, 2000). These realities are key drivers in the efforts to strengthen labor rights and enforcement mechanisms in U.S. trade agreements and the hope is, indeed, to disincentivize the so-called "social dumping." Thus, concerns about abuse of labor standards in trade deals in a manner that negatively impacts developing countries with lower labor costs, broadly speaking, are not unwarranted.

The RRM, however, dismantles the traditional assumptions of this debate. By focusing on assessing the behavior of individual firms and sanctioning "bad actors," developing countries' concerns about disproportionate penalties should be assuaged. Furthermore, the capacity of rich countries, like the United States, to use RRM-like tools in a protectionist way is diminished, given the focus on specific facilities and companies and the guarantee that any final determination has to be made by an independent panel. Yet an RRM that is truly reciprocal would contribute greatly to the quest to reduce perceptions of unfairness and risks that including this system in other agreements generates.

Box 3: Mexico's response to the U.S. active use of the RRM

Since the RRM has only been in place for a few years, only one Mexican administration has been in the position of receiving the vast majority of the RRM requests for review that the U.S. government has raised since 2021. The López Obrador administration was widely perceived as pro-worker and – in addition to implementing the 2019 labor reform – it carried out flagship initiatives aimed at improving workers' livelihoods, such as banning abusive outsourcing practices and granting substantial and sustained increases to the minimum wage.

Regarding the USMCA's labor commitments, President López Obrador pledged from the outset to fully honor such obligations (Cassella & Behsudi, 2019). When it comes to RRM activity, Mexican authorities under the López Obrador administration generally expressed their willingness to cooperate with U.S. authorities and relevant stakeholders to address RRM cases. While the new labor authorities have played an important role in addressing some of the violations and trying to mediate between different stakeholders,

the investigative functions inherent to the RRM process have been subpar. Bluntly, stakeholders perceive that U.S. authorities are conducting more thorough investigations of the complaints compared to their Mexican counterparts. The lack of comprehensive and impartial investigations on the Mexican side is problematic, considering that domestic authorities have a new toolbox provided by the 2019 labor law reform to remedy and sanction labor rights violations. Indeed, even in the cases where Mexico has acknowledged that labor rights violations have occurred, there is no evidence of sanctions being applied at the domestic level (Polaski, 2023, p. 15).

Moreover, the Mexican government has taken a hard line regarding the reach of the RRM with respect to situations that started before USMCA's entry into force. In two cases, Tridonex and Grupo México, the Mexican government refused to accept that a denial of workers' rights had occurred based on the argument that the potential violations started before July 1st 2020, USMCA's entry into force date. The panel that decided the Grupo México dispute ruled in favor of Mexico in April 2024, deciding that events taking place before USMCA's entry into force and not subject to the 2019 new labor law are outside of RRM panels' jurisdiction. While Mexican apprehension with regard to cases that took place before USMCA's entry into force is understandable, it should not lead to a complete negation of the possibility that labor conflicts that started before July 2020 can be addressed through the RRM. Labor conflicts are often protracted, and there are violations of the rights to organize and bargain collectively that are, in essence, continuous. In this type of cases, workers should not be denied the opportunity to leverage the RRM just because ongoing violations started before the entry into force of the agreement.
Nonetheless, in the press release revealing the outcome of the Grupo México decision, the Mexican government hailed the RRM as a potent and innovative tool for safeguarding labor rights within trade agreements. Furthermore, it expressed its intention to rectify design asymmetries in the mechanism during the 2026 review of the USMCA, expressing its desire to utilize the RRM for the protection of migrant workers' rights in the United States and Canada (STPS, 2024).

In all, the López Obrador administration's pro-worker stances and willingness to consult with U.S. authorities to devise remediation plans for the targeted facilities contributed to the improvement of labor conditions in said facilities. Albeit some positions and actions in certain cases can be questionable, overall Mexico's willingness to solve the issues underlying the complaints has contributed to the early success of the mechanism. The way in which subsequent Mexican administrations, including the recently installed

Sheinbaum government, position themselves vis-à-vis the RRM – as well as how the United States and Canada continue using it – will make or break the model of firm-specific labor enforcement for future trade agreements. Moreover, Mexico's position is likely to be highly influential in the way in which other Global South countries assess this type of tool and the possibility of including it in other agreements.

b) The process of elaborating and filling RRM petitions has spurred and fostered labor solidarity across national borders

One of the few unintended achievements of NAFTA's labor side agreement was the creation of an operational framework for the continental networks of transnational solidarity that involve labor unions and workers' rights organizations from Mexico, Canada, and the United States. Such networks predated NAFTA and the NAALC. For instance, in 1990, activist Ford workers in the United States and Canada formed the North American Ford Workers Solidarity Network in response to the killing of a worker employed at Ford's Cuautitlán plant and the wounding of eight of his coworkers, who were protesting over cuts in employment and fringe benefits (Middlebrook, 2024, p. 21). While these were the type of labor rights violations that the NAALC complaint mechanism was supposed to address, the mechanism was ultimately ineffective. None of the complaints advanced beyond the consultations phase and no panel was ever established. Yet the NAALC created a new space for advocates to strengthen transnational coalitions and take concrete action to articulate challenges to the status quo and promote workers' interests (Compa, 2022). Indeed, out of the 46 public submissions filed by unions and civil society organizations through the NAALC, 29 were filed by binational or tri-national coalitions, involving a total of 259 organizations (Middlebrook, 2024, pp. 125-129).

In the USMCA era, these networks have gone back into high gear. Nearly one-third of the known RRM petitions as of June 2024 have been filed by binational coalitions of unions and civil society organizations. This type of transnational labor solidarity and cooperation would not have been possible without the networks that the NAALC fostered. In this sense, the USMCA built on the NAALC legacy and provides opportunities for unions and worker advocates to collaborate to reduce the power imbalance between workers and transnational capital to which traditional trade agreements have contributed. Starting with the 1994 NAFTA, trade agreements have systematically favored the interests of large corporations by including expansive foreign investor rights and maximalist intellectual property guarantees (Santos, 2019). The RRM makes inroads into a new model of

trade policymaking that rebalances the equation and gives rights and opportunities to stakeholders that have been negatively affected by past trade deals.

The formation of transnational solidarity networks also contributes to bridging the South-North divide over trade and labor. By generating support within developing countries for the inclusion of labor standards in trade agreements through collaborative enforcement that enhances workers' rights, the traditional skepticism of the trade and labor linkage from the global South should diminish. Domestic constituencies in developing countries can start demanding their governments to include this kind of tool in existing and prospective trade agreements, which could contribute to solving the trade-labor deadlock experienced, particularly at the multilateral level.

c) RRM processes should be further formalized to address concerns of opaqueness and due process

The Biden administration has wholeheartedly embraced the RRM as a core tenet of its worker-centered trade policy. A U.S. government that decidedly chooses the workers' side – not only in the domestic context, but when it comes to foreign affairs as well – is refreshing and a sign that a different kind of globalization is possible. However, the vigorous use of this novel instrument has generated discomfort in several stakeholders. This discomfort goes beyond the expected opposition that targeted firms and their allies might mount when their labor practices are being scrutinized in a way that had not happened before.

Some commentators have echoed businesses' complaints regarding alleged failures to afford due process to the firms targeted by RRM actions (Manak & Carrillo Obregon, 2024). Yet lawyers representing workers and unions also feel uneasiness with the lack of transparency and clarity they have perceived in specific stages of the RRM process. While the U.S. government issued a set of guidelines that clarify several aspects of the proceedings, such as the expected content of a petition or the process that U.S. authorities must follow when they are being asked to activate the mechanism, some other aspects are not as clear.

It is not clear, for instance, what criteria the agencies use to determine why one petition is supported but others are denied since their decisions include no reason to explain a determination. Furthermore, once the U.S. government transmits a case to the Mexican authorities, the nature of the interactions between the two governments is still an opaque matter. A concern for some unions has been the lack of inclusion of petitioners at the negotiating table when governments agree on a remediation plan that is supposed to address the situation flagged by the petitioners in the first place.

If RRM-like tools will become a common feature of trade agreements in the 21st century, these issues must be addressed.

Facility-specific labor enforcement tools would benefit from further formalization of their processes. In order to assuage due process and transparency concerns, the RRM should be supported by institutions similar to those existing for trade remedies investigations. For decades, the trade policy world has accepted that countries are allowed to investigate and sanction firms that benefit from unfair trade practices, such as distorting subsidies or dumping. Furthermore, most countries around the world have developed sound institutions and clear processes to carry out enforcement actions to address these practices. RRM supporters should push for the formalization of facility-specific labor enforcement tools that resemble those existing for trade remedies. If this goal were achieved, a country could respond to labor rights violations that lead to artificial competitive advantages as easily as it would respond to unfairly subsidized or dumped imports. Moreover, if the system is further formalized, countries that feel unfairly targeted by probes into labor rights violations would have a clearer framework and more guarantees to defend themselves.

d) The RRM and any new labor firm-specific enforcement mechanism in trade agreements must support local institutions

The RRM became operational in a unique context. In July 2020, Mexico was taking the initial steps to implement arguably the most important overhaul of its labor institutions in its history. This means that at the moment when workers, unions, and civil society organizations could start filing complaints before the U.S. and Canadian governments, several of the new labor institutions envisaged by the 2019 reform were not yet in place. By the time the first RRM cases started to arise in the spring of 2021, some of the new Mexican labor institutions were starting to operate with limited capacity. Others, such as the new labor tribunals, were being phased in over several years (Rangel & Wallach, 2021).

In this context, the USMCA negotiators' decision not to require the exhaustion of local remedies—or even resorting to them in parallel—to activate the mechanism in Mexico was sensible. RRM cases have fostered collaboration between U.S. and Mexican authorities. Plus, the U.S. government's use of the mechanism, along with its contributions to capacity building, has supported the implementation of the 2019 labor reform.

In other contexts, however, it is worth considering how a supranational labor enforcement tool, such as the RRM, should interact with domestic institutions. Requiring the exhaustion of local remedies might affect RRM-like tools' efficacy and their capacity to prompt changes on the ground. Yet allowing stakeholders to use this mechanism as a first instance to lodge their grievances risks undermining local institutions and creating incentives to bypass domestic labor authorities. This model could, therefore, erode local institutions' legitimacy in the long run, which evidently would go against the underlying goals of linking trade agreements

and labor standards. Alternative designs could include requiring an initial resort to local remedies for a pre-established period of time before turning to the supranational mechanism or having differentiated requirements for different labor standards. In any case, trade negotiators and labor advocates should not aim for a one-size-fits-all approach. Any new RRM-like tool should be tailored to the specific conditions of the countries involved, the track record of the relevant institutions, and the specifics of their trade relationships.

e) The RRM has spurred new debates in the corporate social responsibility field

Human rights, labor, environmental, faith, and other public interest advocates have demanded for decades the development of tools that address corporate wrongdoing, especially when it comes from multinational corporations operating in the global South. Claussen and Bown (2023) argue that the RRM shifted the institutional home of corporate accountability debates and placed them in the trade arena. Plus, they contend that the RRM should be seen as a corporate accountability tool rather than a trade or trade-and-labor enforcement mechanism (p. 115).

Leaving aside the theoretical debate of whether the RRM should be understood as a trade enforcement tool or not, the lessons learned from using the RRM against facilities located in Mexico have been taken into account in developing new corporate accountability tools. For instance, the RRM experience has been used to formulate a new grievance mechanism for the German auto industry in Mexico under the German corporate due diligence law (BMZ, 2023). German authorities and stakeholders sought guidance from unionists, officials, and experts involved in the USMCA RMM cases to develop this new tool, showing that the RRM is indeed perceived as a key contribution to the corporate social responsibility field.

More recently, the United Auto Workers (UAW) filed a complaint against Mercedes-Benz under the German corporate due diligence law. This action was prompted by the German automaker's anti-union campaign against the 2024 UAW organizing drive at one of its facilities in Alabama. This development underscores that facility-specific actions are not unique to North-South relations. Instead, these mechanisms – whether in the context of trade agreements or due diligence legislation – could be leveraged to elevate the standards of labor protections in both developing and developed countries.

6. Conclusion

Could Firm-Specific Labor Enforcement Mark the Way for a New Trade and Labor Agenda from Latin America?

Mechanisms like the RRM entail a shift in the neoliberal assumptions about global trade. For the global North, it means that corporations would not be able to base their business model on outsourcing and chasing the lowest possible labor cost, prioritizing efficiency without focusing on how products are produced. For the South, policymakers would be forced to give up on development models where cheap labor is a country's main competitive advantage and where willfully keeping wages repressed is part of a broader economic strategy. The post-neoliberal order will have to deal with more decentralized production, even if that sometimes means higher consumer prices in the Global North and different job creation and value-added policies in the South.

Firm-specific labor mechanisms in trade agreements can also help break traditional debates based on North-South relations and interests. Piercing the state-to-state interaction strengthens the capacity of the transnational labor movement, rebalancing the power of workers with respect to multinational corporations. It must be noted that such piercing of the state-to-state interaction in favor of capital was one of the key tenets of neoliberal globalization as it elevated the status of foreign investors under international law, allowing them to challenge states through Investor-State Dispute Settlement (ISDS). Focusing on deprivileging corporate power can be a way to bring North and South governments together.

Yet if firm-specific labor enforcement is to be a part of the post-neoliberal international economic scaffolding, it must be strengthened considerably.

The lack of reciprocity of the RRM, as it stands today, is one of its main drawbacks and potentially the principal obstacle for this system to become a new model for labor rights enforcement through trade agreements. Besides the obvious issues related to asymmetric enforcement of labor standards in a trade deal that is supposed to grant

equal standing to its participants, the lack of reciprocity contributes to a fictional narrative where labor rights violations only happen South of the Río Bravo, in Mexico and beyond. However, the labor abuses and union-busting culture of corporate America are well known. Support for unions in the United States is at a record high and organizing drives are surging across the country. In this context, Americans have come to realize that many of their household brand names have deeply anti-union attitudes. This goes without even mentioning the situation of agricultural, domestic, and other invisibilized workers who are not granted the same protections that others enjoy under U.S. federal law (Perea, 2011). A truly reciprocal firm-specific labor enforcement tool could directly support U.S. workers' efforts to unionize to gain better wages, benefits, and working conditions. The RRM is supposed to be a tool that enables workers to get their fair share of the benefits that trade integration might create. This tool – when included in trade agreements – should be equally available to workers across national borders. Any vision seeking to expand the RRM to other contexts must decidedly tackle the reciprocity issue.

That international organizations and agreements were reciprocal, granted equal representation, and provided tools to raise the living standards for the peoples of developing countries was a rallying cry for Latin American diplomats and negotiators in the 1940s. The dismantling of the neoliberal order provides an opportunity for Latin America to pick up those banners and put them front and center of the post-neoliberal debate.

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