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USMCA: Labor Provisions

Overview

The proposed U.S.-Mexico-Canada Agreement (USMCA), signed in late 2018, requires implementing legislation that must be approved by both Houses of Congress before it can enter into force. Labor issues are one of the major policy issues of interest for some Members of Congress as they consider the final agreement.

The USMCA would revise and strengthen labor provisions of the 1994 North American Free Trade Agreement (NAFTA), and require Mexico to enact certain changes to its domestic labor laws. Scrutiny over Mexico's labor practices during the negotiations put increased pressure on Mexico to advance ongoing reform efforts. After several years of domestic debate and constitutional reforms in 2017, on May 1, 2019, Mexican President Andrés Manuel López Obrador signed into law a labor reform bill aimed at enhancing Mexican worker rights by ensuring that workers can vote for union representatives by secret ballot, establishing the right to join unions of choice, and creating an independent labor court to resolve disputes between union workers and employers and register contracts, among other measures. Similar issues are addressed in an annex of the USMCA.

Historically, U.S. labor advocates have expressed concern over free trade agreements (FTAs) with developing countries, due to those countries' relatively lower wages and labor standards, and have sought stronger labor provisions in U.S. FTAs. In the view of some observers, U.S. FTAs can help improve standards, build capacity to support worker rights in developing countries, and enhance economic development and growth. At the same time, trade liberalization can adversely impact domestic labor markets in certain industries and regions of the country. In the long run, FTAs help reallocate resources to more efficient industries, support higher-paying U.S. jobs, and, according to most economists, have a net positive effect on the U.S. economy. The U.S. International Trade Commission estimates that if implemented, the collective bargaining commitments made by Mexico in USMCA, would increase Mexican union wages and help reduce wage disparity.

NAFTA

NAFTA's labor provisions are in a side agreement containing 11 "guiding principles" pertaining to worker rights. Other provisions involve technical assistance, capacity building, and separate dispute procedures, along with a labor cooperation mechanism. Full dispute resolution procedures apply only to a country's "persistent pattern of failure" in trade-related cases to enforce its own laws regarding child labor, minimum wage, and occupational safety and health. Issues such as freedom of association and the right to organize are limited to ministerial consultations.

USMCA

The proposed USMCA includes components of more recent U.S. FTAs that strengthen labor provisions and provide recourse to the same dispute settlement mechanism as other parts of the agreement. Unlike NAFTA, it requires parties not only to enforce their own laws, but also adopt and maintain specific laws on core worker rights related to the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work. The USMCA also commits parties to:

- not waive or otherwise derogate from labor statutes or regulations to promote trade and investment;
- not fail to effectively enforce labor laws through a "sustained [consistent or ongoing] or recurring [periodically or repeatedly] course of action or inaction" in a manner affecting trade or investment between parties; and
- promote compliance with labor laws through appropriate government action, such as appointing and training inspectors or monitoring compliance and investigating suspected violations.

USMCA also builds on U.S. FTA practice by prohibiting imports of goods made by forced labor, and adding new commitments related to violence against workers, migrant worker protections, and workplace discrimination. It maintains standard U.S. FTA language that each party would retain the right to "exercise reasonable enforcement discretion and to make bona fide decisions" on the allocation of enforcement resources. Additionally, it specifies that the labor chapter shall not be construed to empower another party to undertake labor law enforcement in the territory of another party.

NAFTA and USMCA labor provisions are often discussed in the context of Mexico's record on worker rights. Some stakeholders and Members of Congress advocated that the United States negotiate a labor plan with Mexico, both during past Trans-Pacific Partnership (TPP) talks and again during the negotiations to revise NAFTA. In the proposed TPP, for example, the United States had negotiated separate bilateral labor consistency plans with Vietnam, Malaysia, and Brunei, which included commitments for specific legal reforms and other measures. Mexico resisted such a plan. Instead, USMCA includes a separate annex addressing labor practices of most concern.

Mexican Labor Reforms

In the USMCA, Mexico agreed to develop and implement reforms to strengthen its labor laws to protect collective bargaining and to reform its system for administering labor justice. Annex 23-A in USMCA's labor chapter (Chapter 23) commits Mexico to enact specific legislative action in regard to its labor laws; specifying that absent such action a delay in USMCA's entry into force could be possible. The

annex states that it is the “expectation” of the parties that Mexico adopt such legislation before January 1, 2019.

Specifically, Annex-23A would commit Mexico to:

- Eliminate all forms of forced or compulsory labor;
- Protect the right of workers to organize, form, and join the union of their choice;
- Prohibit employer interference in union activities, discrimination, or coercion against workers;
- Provide for the exercise of a personal, free, and secret vote of workers for union elections and agreements;
- Establish and maintain independent and impartial bodies to register union elections and resolve disputes relating to collective bargaining agreements; and
- Establish independent labor courts.

While Mexico has recently enacted labor law reforms and undertook constitutional reforms in the past, the concern shared by several Members of Congress has been Mexico’s ability to implement and enforce its laws. Features of Mexico’s recent reforms aim to address these concerns.

Mexico’s Federal Labor Law: Key Articles

- **Article 47.2:** Protects workers from any form of violence or forced labor.
 - **Article 133:** Prohibits any form of retaliation or harassment by the government, union leadership, or companies of workers exercising their rights.
 - **Article 386:** Protects workers’ rights to vote for independent unions through a secret ballot process, allowing workers to form their own unions and pick their own representatives.
 - **Article 387:** Imposes legal obligations on firms to recognize workers’ right to strike.
 - **Article 604:** Replaces existing Conciliation and Arbitration Labor Boards that currently deal with employment law altercations with independent labor courts to resolve disputes and register contracts to ensure worker representation in unions.
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U.S. Trade Representative (USTR) Robert Lighthizer described Mexico’s reforms as a win for labor advocates, claiming that the new laws “will greatly improve Mexico’s system of labor justice and are exactly what labor leaders in the United States and Mexico have sought for decades.” Labor experts and advocates view the reforms as a major improvement and are hopeful of a renewed commitment to transform labor rights and justice in Mexico, but many remain concerned about implementation challenges. Other stakeholders and Members of Congress view Mexico’s reform efforts as a positive step forward and note that the USMCA labor chapter goes further than other U.S. FTAs.

Mexico’s Implementation Plan

Mexico has outlined an ambitious roadmap with annual benchmarks to implement its labor reforms over four years. Mexican officials contend that replacing the conciliation and arbitration board with independent labor tribunals and courts run by the judicial branch over the next three years will ensure effective enforcement. Mexico’s president submitted his budget proposals to Mexico’s Congress on September 1. The budget request includes \$523 million for the first stage of the labor reforms, with approximately \$267 million in additional funding from other government

agencies. Based on last year’s budget of \$291 billion, less than 1% went to labor issues. Critics question whether the 2020 budget and plan will be sufficient, and seek greater explanation from the Mexican government on whether it has the fiscal ability to carry out the reforms.

This skepticism has been echoed by some Members of Congress, who have proposed adding a labor inspection system within USMCA to ensure stronger enforcement by Mexico. One proposal calls for inspections of factories suspected of labor violations and potential punitive action through denial of tariff benefits for shipments from facilities. The proposal also would boost Mexico’s enforcement capabilities with U.S. assistance. Mexico has rejected such a system, and opposes reopening negotiations on the labor chapter. Both countries have emphasized that long-term concerns about labor enforcement could be addressed through USMCA’s sunset review clause, which requires a six-year review of the deal. In August, Mexico took additional steps, establishing a working group with Canada to meet quarterly to help ensure implementation of USMCA labor commitments.

Issues for Congress

The current debate over USMCA labor provisions revisits similar issues raised during NAFTA negotiations and its implementation. Some lawmakers have stated that Mexican labor reform and more enforceable labor provisions in USMCA are key factors in deciding whether to support the agreement and approve implementing legislation. Congress has held a number of hearings on these topics. A group of House Members is currently in consultations with USTR on possible ways to enhance labor enforcement to address some congressional concerns. With this debate as a backdrop, Congress may face several issues, such as:

- **Mexico’s enforcement ability and labor reform:** Reforms in Mexico have potential to be transformative but face challenges. Do Mexico’s recent actions demonstrate new political will to address concerns?
- **Resources:** Some stakeholders point to limited state capacity in Mexico, especially at the subnational level, as an issue. Should the United States assist Mexico with resources to implement the new labor standards?
- **Dispute settlement:** Some stakeholders advocate fixes to dispute settlement procedures, which, currently in effect, allow a disputing party to block formation of a panel via lack of consensus over panelist appointments. Could USMCA’s dispute settlement provisions be made more effective to resolve labor disputes?
- **Proposed inspection system:** A proposed labor compliance mechanism emulates features of an annex of the U.S.-Peru FTA to combat illegal logging. Mexico has rejected such a system. How might such a system be operationalized and gain approval of both sides, and would related issues be subject to dispute settlement?
- **Sunset clause:** Could USMCA’s six-year review serve as a dedicated outlet to resolve labor issues?

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