

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

GLENN SPENCER
SENIOR VICE PRESIDENT
EMPLOYMENT POLICY DIVISION

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Submitted via email: USMCA.labor@ustr.eop.gov, ILAB-Outreach@DOL.gov

Brenna Dougan
Director for Labor Affairs
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Samantha Tate
Division Chief for USMCA Monitoring and Enforcement
Office of Trade and Labor Affairs, Bureau of International Labor Affairs
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Subject: USMCA Labor Council Meeting

Dear Ms. Dougan and Ms. Tate:

The U.S. Chamber of Commerce appreciates the opportunity to submit the following comments to the Office of the U.S. Trade Representative (USTR) on Chapter 23 of the USMCA and the USMCA Interagency Labor Committee for Monitoring and Enforcement Interim Procedural Guidelines for Petitions Pursuant to the USMCA.

In August 2020, the U.S. Chamber of Commerce submitted [comments](#) to the USTR on the “Interagency Labor Committee for Monitoring and Enforcement Procedural Guidelines for Petitions Pursuant to the USMCA.” The comments expressed the Chamber’s concerns with the lack of due process protections found in the labor and dispute settlement chapters of the trade agreement as they relate to the so-called rapid-response mechanism. Consistent with the Chamber’s previous comments on the USMCA, the Chamber remains concerned with the USMCA labor chapter and related procedures.

First, the final procedural guidance has yet to be published, hence any action on a petition is inappropriate and unfair to the owner of the covered facility and the respondent party. The Chamber believes that clear, final procedural guidance must be published. The updated guidance should reflect the Chamber’s previously submitted comments and establish parameters that create a transparent process. Specifically, the final guidance should allow for the owner of a facility that is the subject of a petition to be notified of a petition in which the owner’s facility has been named. To ensure transparency, the Chamber believes that petitions should be publicly posted in the Docket on Regulations.gov. Additionally, the owner of the facility must be

included in consultation and remediation efforts resulting from a review. Such an approach will do more to favor a quick and effective resolution of potential concerns over more punitive approaches. Finally, the owner must be kept apprised of the status of a review and the review determination. The Labor Committee should not be acting on petitions without the final procedural guidance being published.

Second, the Chamber is concerned about the foundational due process issues arising out of the timing of USMCA labor petitions. The USMCA entered into force July 1, 2020. However, the Labor Committee is acting on petitions that allege a denial of rights occurred, in part, before July 1, 2020. The possibility of imposing remedies on a facility for failure to comply with the USMCA before the USMCA entered into force is a violation of the right to due process and should not be tolerated. Furthermore, Mexico set a timeline of three years for all collective bargaining agreements to be transferred to the Federal Center for Conciliation and Labor Registry and four years for all existing collective bargaining agreements to be either terminated or ratified. Some of these commitments vary from state to state within Mexico, and in many locations these deadlines have not yet arrived. Acting on petitions filed against facilities in Mexico before such facilities were able to reassess their respective collective bargaining agreement within Mexico's timeline is also a violation of the right to due process and carries the potential to set dangerous precedent.

In consideration of the comments above, the Chamber submits the following questions to the Labor Council:

- When will the final procedural guidance be published?
- Why are petitions being acted on before the final procedural guidance is published?
- Why is the Committee acting on a petition that alleges a Denial of Rights occurred before the USMCA was entered into force?
- Why is the Committee acting on a petition in a Mexican state that has not yet been required to implement Mexico's reformed labor laws?
- Will the final Procedural Guidance include provisions that will protect a facility owner's right to due process?

The U.S. Chamber of Commerce appreciates the opportunity to provide these comments and looks forward to continued engagement on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Spencer", with a long horizontal flourish extending to the right.

Glenn Spencer