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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2209**

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SUBCOMMITTEE ON THE WESTERN  
HEMISPHERE, CIVILIAN SECURITY AND  
TRADE

September 26, 2019

The Honorable Nancy Pelosi  
Speaker of the House  
H-204, U.S. Capitol  
Washington, DC 20515

Dear Madam Speaker, Chairman Neal, Chairman Blumenauer and the USMCA workgroup:

I greatly appreciate your tireless work to improve the U.S.-Mexico-Canada Agreement (USMCA), or NAFTA 2.0. I share your commitment to securing necessary changes to the USMCA that will raise the standard of living for American workers and disincentivize the practice of outsourcing middle class American and Canadian jobs to Mexico, where corporations can currently violate international labor rights and pay workers unconscionably low wages suppressed by a decades-old system of control through undemocratic unions and protection contracts.

As such, I write to propose an action plan for the initial verification of free and fair elections under Mexico's new labor laws for the purpose of ensuring the laws' implementation and enforcement as we consider ratifying the USMCA. There must be assurance of free and fair procedures both when an independent union challenges a Confederation of Mexican Workers (CTM) or other undemocratic union to be the workers' elected representative and when workers are called upon to ratify or reject existing collective bargaining agreements (CBAs) following the Protocols against protection contracts.

To protect American jobs, the following four steps must occur before we ratify the USMCA:

- I. Mexico's new labor laws must survive and actually become effective;
- II. The infrastructure envisioned by Mexico's new labor laws must be built in the real world;
- III. Free and fair representation processes must occur in a representative sample of workplaces in key manufacturing export sectors; and
- IV. Enforcement mechanisms ensuring ongoing, successful implementation into the future must be included in the USMCA text.

**I. Mexico's New Labor Laws Must be Strengthened, Survive and Take Effect**

While Mexico recently passed new labor laws, there are numerous obstacles preventing their proper implementation. Protection unions, employers and some governors responsible for overseeing the implementation of the new labor laws have shown resistance to complying with them. Particularly troubling, employers who have benefitted from suppressed wages are working closely with protection unions to scuttle the reforms.

Hundreds of groups have filed lawsuits or challenge the constitutionality of the new labor laws.<sup>1</sup> One Mexican federal appeals court quickly granted an injunction against the law going into effect, asserting that the reforms exceed the authority of the federal legislature because they are self-executing.<sup>2</sup> The CTM subsequently obtained additional injunctions on a variety of grounds.<sup>3</sup> The Mexican Ministry of Labor and Social Welfare (STPS) is appealing.<sup>4</sup>

Protection unions seem poised to file legal challenges to the Protocol for verification of existing Collective Bargaining Agreements that was published on July 31 (Protocol).<sup>5</sup> This would further hinder, and could even block, the implementation of labor reforms. If Mexican courts invalidate the Protocol, and it is not quickly replaced by a new one, this would place Mexico in violation of Section 2(f) of the USMCA Labor Annex.

Clearly, the status of Mexico's new labor laws, which form the basis of the labor market changes at the heart of the USMCA, remains seriously in doubt. Not only will Mexican workers be harmed by effectively locking in the current dysfunctional labor system, but U.S. workers will experience further downward pressure on wages and jobs in a highly integrated economy. Before Congress ratifies the USMCA, Mexico's labor reforms must survive these attacks.

In addition to withstanding the myriad of attacks, Mexico's labor law should explicitly include ILO rights and reports, not merely reference the ILO Declaration of Fundamental Principles and Rights at Work. The revised NAFTA allows any party to argue that it needs to meet only the principles of labor rights rather than provide actual labor rights to satisfy its obligations. For this reason, the revised agreement must be explicitly linked to specific ILO's rights and the cases and reports that furnish precise interpretations of them.

## **II. The New Infrastructure Required by the New Law Must Come to Life**

Mexico must allocate the resources needed to properly implement and enforce its new laws. To properly administer and enforce Mexico's new labor laws, an estimated 230 conciliators and 321 registrars will be required. Administrative and support staff and trained personnel will also be necessary for the Labor Tribunals and the Local Conciliation Centers. Currently, the Mexican Labor Ministry (STPS) reports having about 1,000 inspectors and plans to add another 500. According to the global standard established by the International Labor Organization (ILO), these numbers are inadequate. There should be one inspector for every 10,000 workers, or about 5,600 inspectors in

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<sup>1</sup> Testimony of Gladys Cisneros, Mexico Program Director, Solidarity Center. Presented to the House Committee on Ways and Means. June 25, 2019. Available at: <https://waysandmeans.house.gov/legislation/hearings/mexico-s-labor-reform-opportunities-and-challenges-improved-nafta>.

<sup>2</sup> Hernandez, Gerardo, *El Economista*, July 24, 2019, "CTM pega primer hit en batalla legal contra reforma laboral," <https://www.eleconomista.com.mx/empresas/CTM-peg-a-primer-hit-en-batalla-legal-contra-reforma-laboral-20190724-0003.html>.

<sup>3</sup> Becerril, Andrea, *La Jornada*, August 4, 2019, "Obtiene la CTM siete amparos contra la reforma laboral," [https://www.jornada.com.mx/2019/08/04/politica/007n1pol?fbclid=IwAR0XQvZGLCHQHmejeUp\\_x\\_d0tTXWANhKym5Dm5QUtK8LBtwiseExJZSCv0](https://www.jornada.com.mx/2019/08/04/politica/007n1pol?fbclid=IwAR0XQvZGLCHQHmejeUp_x_d0tTXWANhKym5Dm5QUtK8LBtwiseExJZSCv0).

<sup>4</sup> Martinez, Maria Del Pitar *El Economista*, August 4, 2019, "Secretaría del Trabajo impugna las suspensiones contra la reforma laboral que promueve CTM," <https://www.eleconomista.com.mx/empresas/Secretaria-del-Trabajo-impugna-las-suspensiones-contra-la-reforma-laboral-que-promueve-CTM-20190804-0020.html>.

<sup>5</sup> Becerril, Andrea, *La Jornada*, August 3, 2019, "Centrales obreras hacen frente común contra la legitimación de CCT" (Workers' centrals make a common front against the legitimation of CBAs), [https://www.jornada.com.mx/2019/08/03/politica/005n1pol?fbclid=IwAR1zU-wiTRrnWWuh4WZFpvpUQy8\\_CxXKPDYJGX2iiEqqzoX72ZCOTFROcs#.XUV0M\\_xp9Zg.facebook](https://www.jornada.com.mx/2019/08/03/politica/005n1pol?fbclid=IwAR1zU-wiTRrnWWuh4WZFpvpUQy8_CxXKPDYJGX2iiEqqzoX72ZCOTFROcs#.XUV0M_xp9Zg.facebook).

Mexico in total. The Ministry will require substantial resources for training and salaries to ensure an effective Federal Center for Contract Registration and Conciliation.<sup>6</sup>

Unions affiliated with Mexico's largest national union organization, the Confederation of Mexican Workers (CTM), control thousands of collective bargaining agreements, many of which are effectively protection contracts. Furthermore, independent Mexican unions claim they were not fully included in consultations regarding the new labor laws and, as such, have questioned whether the government has the resources and capacity to fulfil its promises.

Last month, Mexico's Treasury Secretariat submitted its 2020 budget proposal to the Mexican Senate. The total budget proposed for the Secretariat of Labor and Social Welfare is 28,756,371,575 pesos (\$1,473,778,781), a 33.54 percent reduction from 2019. While most of this reduction reflects a large cut in the national youth employment program, the total amount available for the Secretariat's regular policy functions was also reduced by 8.73 percent – although some line items, such as prosecution, were increased.

In view of the massive labor enforcement challenges posed by the May 1, 2019 labor reforms – including establishing new labor courts and a new union registration and conciliation authority, recruiting and training personnel, conducting referendums on at least 230,000 collective bargaining agreements, and clearing backlogs of hundreds of thousands of individual and collective lawsuits – the government's failure to allocate any significant resources for implementation of the reforms and other enforcement challenges raises serious questions about its ability and even its intent to meet the law's goals.

Given the widely acknowledged weakness of Mexican state institutions, particularly in this critical area, creating new institutions is already a herculean task. At present, the resources Mexico has allocated fall far short of what is required for even minimal success. We should not vote on the USMCA until a budget and plan adequate to the task of implementing and enforcing Mexico's labor reforms is in place.

### **III. Free and Fair Representation Processes Actually Occur in a Representative Sample of Workplaces in Key Export Sectors**

The U.S. Congress must actually see Mexican workers in key export sectors begin to exercise the ability to select their own representatives and negotiate their own contracts democratically, or the most likely outcome of the USMCA will be the continuation of the system of employer-dominated unions and protection contracts that have kept Mexican wages artificially low, sucked middle class jobs out of the U.S. and Canada, and reduced the standard of living of workers in all three countries.

We must see new Mexican labor laws work in a representative sample of workplaces before we can be confident that they will work on a national scale. While we hope to see all Mexican workers afforded the fundamental rights of freedom of association on the job, for the purposes of ratifying the USMCA, it is appropriate to focus on the largest sectors of trade between our countries. Accordingly, we should examine a sample of facilities that meets the following minimum criteria:

1. Includes at least 500 facilities (a tiny fraction of the protection contracts that the new labor law says will be opened up);

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<sup>6</sup> Testimony of Cathy Feingold, Director, International Department, AFL-CIO. Presented to the House Committee on Ways and Means. June 25, 2019. Available at: <https://waysandmeans.house.gov/legislation/hearings/mexico-s-labor-reform-opportunities-and-challenges-improved-nafta>.

2. Includes both ratification cases (currently existing protection contracts) and first-time union elections and bargaining for unrepresented workers;
3. Includes following sectors in numbers roughly proportional to their size in the Mexican export economy:
  - a. Auto assembly
  - b. Auto parts
  - c. Aerospace
  - d. Industrial bakery
  - e. Electronics
  - f. Call centers

Several glaring flaws exist in the Protocols that create obstacles to the free and fair elections in the hundreds of thousands of facilities that have existing contracts with protection unions. These include:

1. There is no requirement to request the verification of any contract prior to May 1, 2023. The decision is left up to the incumbent union, which, in about 75 percent of cases (according to STPS) is a protection union. This timetable must be accelerated significantly, with the Mexican government accountable for measurable progress each year, not simply that the whole nation will be transformed at the end of the fourth year.
2. Workplace votes to approve existing contracts do not have to be supervised by a government official. The Protocol allows the incumbent union to choose a notary to attest to the vote, despite the well-known use of corrupt notaries in Mexican labor proceedings.
3. The Protocol does not establish any mechanism by which workers covered by a CBA can request the assistance of labor authorities to intervene in a contract verification. The Protocol must provide clear procedures for workers to obtain democratic representation after they vote to reject a protection contract.

At a minimum, Mexico's new labor laws must adhere to the ILO Declaration on Fundamental Principles and Rights at Work and ILO Convention 182, Mexico, by:

1. Requiring independent, democratic unions;
2. Requiring workers to have a say in contract negotiations and to vote on all contracts and union leadership;
3. Requiring unions to provide copies of contracts to workers; and
4. Stipulating that unions have a duty to represent their members.

Additionally, there must be evidence of:

1. Legitimate representation of workers;
2. Meaningful penalties for employers, protection unions and government officials who violate workers' rights to organize;
3. Worker access to outside groups and alternative unions; and
4. A commitment to fulfill the objectives of Mexico's labor laws through adherence to Mexico's Protocols for the Legitimation of Collective Bargaining Agreements (Protocols), especially the notice and freedom from interference requirements, and specifically the provision of proper notice and information to workers concerning any union election that takes place. The website housing these Protocols and other relevant material must be available and knowable by the unions and the workers to whom it applies.

#### **IV. Enforcement Mechanisms That Ensure Ongoing Successful Implementation Must Be Included in the USMCA Text**

We must include strong enforcement mechanisms in the body of the USMCA. This will ensure compliance with the USMCA's labor standards and strong, appropriate repercussions for violations.

A body of inspectors from the United States and/or Canada (depending on who has an interest in the facility in question) and Mexico must be able to investigate and audit any facility covered by the USMCA to determine compliance with its requirements. Where violations are found, monetary penalties must be available that are significant enough to deter facilities from violating the law as the "cost of doing business."

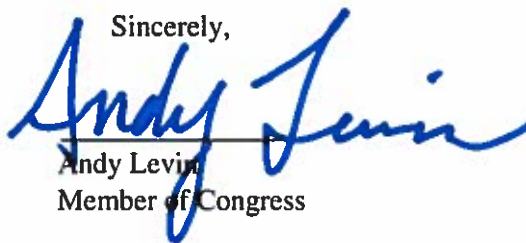
There also must be a mechanism for inspectors from the United States and Mexico to inspect any goods crossing the Mexico/United States border and verify compliance with all USMCA provisions. Where violations are substantiated, the inspectors must be able to deny entry into the United States of any goods made in violations of the USMCA provisions.

We have a once-in-a-generation opportunity as lawmakers to make lasting improvements to the lives of millions across the continent. While implementation and enforcement rely on Mexico, including these matters in the text of the USMCA will facilitate enduring change.

I respectfully request that the workgroup consider this proposal to ensure proper labor standards in Mexico, which will, in turn, help keep jobs in the U.S., expand purchasing power in Mexico and the U.S., and afford us confidence that the USMCA will mark an improvement for workers in the U.S., Mexico and Canada.

I look forward to working with you to advance trade rules that truly benefit American families.

Sincerely,

A handwritten signature in blue ink that reads "Andy Levin". The signature is fluid and cursive, with the first name "Andy" and last name "Levin" clearly distinguishable.

Andy Levin  
Member of Congress