



A podcast about the economics of trade & policy
with Chad P. Bown

Episode 200. Has the USMCA improved working conditions in Mexico?

[Episode webpage](#)

December 18, 2023

Transcript

(lightly edited)



Chad Bown: On the campaign trail in 2016, presidential candidate Donald Trump constantly complained about Mexico. One of his biggest complaints was about trade with Mexico under the NAFTA – the North American Free Trade Agreement.

US presidential candidate Donald Trump (June 28, 2016): *Our politicians have aggressively pursued a policy of globalization – moving our jobs, our wealth and our factories to Mexico and overseas... NAFTA was the worst trade deal in the history, in the history of this country.*

When he became President, Trump’s approach to the NAFTA and to Mexico would turn into one of the most contentious trade negotiations in history.

Trump threatened to rip up the NAFTA. He imposed tariffs on Mexican and Canadian steel and aluminum. He threatened more tariffs. It took a year of negotiations before the three countries could finally reached a deal Trump called the USMCA – the US-Mexico-Canada Agreement.

To many, that is where the story ends. To us, that is where the story just begins.



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This episode explores what happened after President Trump finished his deal with Mexico. At that point, Democrats in the House of Representatives took over and negotiated something else into the USMCA – something called the rapid response labor mechanism.

To help American workers compete fairly, the House Democrats wanted Mexican workers to be able to unionize and to bargain collectively.

But what is the rapid response mechanism? What problem in Mexico is it supposed to solve? How does it work? How has the United States used it under the USMCA so far? What is happening to workers in Mexico as a result of this new mechanism?

To tackle all of this, I will be joined by a very special guest.

Kathleen Claussen: Kathleen Claussen, Georgetown University Law Center.

Chad Bown: Kathleen Claussen is a professor at the Georgetown University Law Center. She is a legal scholar, a former US trade official, and an expert on trade agreements and sustainability. Today, Kathleen and I are going to share some of our research examining the new rapid response labor mechanism and Mexican workers under the USMCA.

Chad Bown: Hi, Kathleen.

Kathleen Claussen: Hi, Chad.

Chad Bown: You are listening to an episode of *Trade Talks*, a podcast about the economics of trade and policy. I'm your host, Chad Bown, the Reginald Jones Senior Fellow, at the Peterson Institute for International Economics in Washington.

I. THE NAFTA RENEGOTIATIONS

Chad Bown: On the campaign trail, presidential candidate Donald Trump made his NAFTA plans clear:

US presidential candidate Donald Trump (June 28, 2016): *I'm going to tell our NAFTA partners that I intend to immediately renegotiate the terms of that agreement to get a better deal for our workers... And if they do not agree to a renegotiation, then I will submit notice under Article 2205 of the NAFTA agreement that America intends to withdraw from the deal.*



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Chad Bown: When President Trump took office in 2017, one of the first things his administration did on trade was to follow through on his promise to renegotiate the NAFTA.

Kathleen Claussen: One of President Trump's key talking points on the NAFTA was the US trade deficit. With Mexico, the United States ran a large bilateral trade deficit – the United States imported more from Mexico than it exported in return. To Trump that was unfair, he wanted balanced trade, country by country.

And when you looked deeper at those trade deficit numbers, a big problem was the automobile sector. With free trade under the NAFTA, the North American automobile industry had reorganized itself across Canada, the United States and Mexico.

The US shipped a lot of car parts to Mexico. Facilities in Mexico assembled them and then shipped a more expensive finished car, that included all of those parts, back to the United States.

Measured that way, the US ran a huge trade deficit with Mexico in automobiles alone.

Chad Bown: The Trump administration, focused on the bilateral trade deficit with Mexico, wants to renegotiate the agreement. President Trump threatens to rip it up. Then, trying to gain leverage with Canada and Mexico, in 2018 he makes their lives miserable by imposing tariffs on their steel and aluminum. Thinking that wasn't enough, Trump then threatened to impose more tariffs on their exports of cars.

Finally, the three countries reached a deal in the fall of 2018. In reality, not much would change as part of that agreement. They did agree to some new rules for how much of a car had to be made in North America and by highly paid workers so as to receive duty free tariff treatment as an import. They also changed some of the old rules on dispute settlement. But there was not a lot – and certainly little to reduce trade barriers in goods between the three countries.

But politically, President Trump was happy...

President Donald Trump (October 1, 2018): *It is my great honor to announce that we have successfully completed negotiations to terminate and replace NAFTA and the NAFTA trade agreements with an incredible new US-Canada-Mexico Agreement called USMCA, it just works. USMCA...*

Chad Bown: That was October 1. Then, on November 6, something happened.



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ABC News (November 6, 2018): *Millions of Americans turning out to vote in what has been perhaps the hardest fought and certainly the most expensive midterm elections ever. Let's get right to the big headline: The results in the battle for control of Congress. Democrats taking the House of Representatives, surpassing the 23 seats needed to seize control and flip the majority...*

Kathleen Claussen: By taking control of the House of Representatives, Democrats could refuse to approve and incorporate Trump's new USMCA into US law until they got what they wanted out of the deal.

And that took another year. The Democrats in the House formed their own working group and went back to the Mexican government. They negotiated to get some of their priorities into the USMCA as well.

Here is House Speaker Nancy Pelosi making that announcement in December 2019.

Nancy Pelosi, Speaker of US House of Representatives (December 10, 2019): *There is no question of course that this trade agreement is better than NAFTA. But in terms of our work here, it is infinitely better than what was initially proposed by the administration... It's a victory for America's workers. It's one that we take great pride, great pride in advancing... I also want to thank Richard Trumka, the President of the AFL-CIO. He was persistent, dissatisfied, knowledgeable. He really got us to a place which is a far distance from where we started with the proposal that was given to us.*

Chad Bown: What the House Democrats really wanted was something to be called the rapid response labor mechanism. As Pelosi made clear, the mechanism was also something hugely important to Richard Trumka of the AFL-CIO – America's largest federation of labor unions.

II. MEXICO'S LABOR PROBLEM

Chad Bown: Understanding why the House Democrats and American unions wanted the rapid response labor mechanism requires pinpointing the source of Mexican worker suffering.

To learn more about Mexican workers, we spoke with Alvaro Santos. Alvaro is a professor at Georgetown Law. He is Mexican, he is an expert on trade and Mexico's labor laws, and he was a Mexican government trade official during part of the NAFTA renegotiations. To be clear, Alvaro was not in government during the negotiations over the new rapid response mechanism.



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We started by asking Alvaro about the history of Mexico's labor law:

Alvaro Santos: There's a huge paradox at the center of Mexican labor law. On the one hand it is very pro worker. That's true of Mexican legislation – Mexican federal labor law – but also of its constitution.

What happened was that it was part of a corporatist system, where the government kept control of workers through their union leaders and an agreement with employers. This eventually led to a lack of interest in the rank and file and agreements at the top that didn't really benefit the workers.

Kathleen Claussen: It is not as if Mexican law didn't give workers rights. It's just that the Mexican labor enforcement system and all the political elements that Alvaro mentioned made it really difficult for Mexican workers to enforce their rights, especially their right to unionize.

Alvaro Santos: It's relatively easy to form a union in Mexico, in contrast with the United States. All you need is 20 workers that basically get together and go to the government and say, "Hey, we want to form a union."

But that has become incredibly difficult because of protection contracts. These contracts are where firms and official unions can sign a collective bargaining agreement with a company even before it hires any workers. So, unbeknownst to the new workers, what they will realize whenever they want to organize is that there is already a union and that, in fact, they already have a collective bargaining agreement. And it's incredibly difficult to challenge the old union and to gain ownership of the collective bargaining agreement.

Chad Bown: Workers could unionize but they could not bargain collectively because the corporatist union had already signed these protection contracts with companies. These corporatist unions were not democratically elected by the workers at a plant. This was a union imposed on the plant by the combination of the government, the corporations, and some high-level labor officials who were like politicians, sometimes super far removed from the actual workers.

With Mexican workers unable to stand up for themselves and bargain collectively, it suddenly becomes clear why labor interests in the United States worried so much about Mexico.

Alvaro Santos: The main worry of the US is unfair competition on the part of Mexican workers because their wages are low. Because the expectation that NAFTA would increase wages in Mexico didn't happen. And part of the reason why that didn't happen is because the market



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conditions are not where actors can negotiate freely, so demand and supply can really work. In Mexico, there's a restraint on the worker's ability to demand higher wages and better working conditions.

So, the costs of labor in Mexico have become artificially low. And I think that was the concern of the US – that this is unfair competition, it's social dumping. And one of the key elements through which this happened is the failed collective bargaining system in Mexico that has restrained workers from organizing.

Kathleen Claussen: Now, the United States had been working with Mexico on this issue for a long time. It worked with Mexico on this problem during the TPP negotiations back in the early 2010s. TPP is the Trans-Pacific Partnership – the trade agreement from which President Trump pulled the United States on his first Monday in office.

Alvaro told us about how Trump doing that caused Mexico's labor reform efforts to stall out. They stalled until 2018-19 when Mexico took some major steps forward by doing four big things:

Alvaro Santos: The first one is that it gets rid of the National Conciliation and Arbitration Boards, and it gives all the labor disputes to the judiciary. So it basically gives that jurisdiction to the Mexican courts.

The second one is that it creates an autonomous center for labor conciliation and registration, which will register the unions and also the collective agreements. It will be in charge of certifying union leadership and overseeing elections. It basically takes that control away from the executive branch.

Third, it also guarantees that there will be personal, free, and secret elections to determine union leadership and the control over the collective bargaining agreements. It basically ends the corporatist system that was in place in Mexico, with the hope that workers will then be able to organize genuinely and bargain collectively.

And there was another really important part, which was that there was a verification process in which all existing collective bargaining agreements had to be certified. They had to be verified as having the support of the workers who basically worked in that place.

Chad Bown: This last point is super important. For Mexico's workers, the reform was like rebooting the game. All of the plants had to have a re-vote. This re-vote created an opportunity for the workers to organize to kick out that old corporatist union and get rid of the old



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protection contract. If the workers could organize, they could democratically vote in a new union, and that new union could then bargain collectively for a new contract on their behalf.

And this is where the USMCA's rapid response mechanism will ultimately come in.

Alvaro Santos: That's where you can see how the labor law reform and the rapid response mechanism work in tandem. Because several of the cases that you see in the rapid response mechanism are a result of this verification process.

Chad Bown: We'll come to these rapid response situations in a minute.

Now, from the US government perspective – taking one step back from this – it wanted to craft the USMCA in a way that would help Mexico. It is as if the US government could see Mexico's baby steps toward labor reform were happening. Things looked promising, but the US was worried. It had seen Mexico make false starts on labor reform before. The US was concerned that the Mexican government might not be able to follow through all by itself. Maybe that entrenched system and those corporatist unions would be too strong. So the US did two things.

Kathleen Claussen: The first thing the US government did was to offer up money – big money.

Congress appropriated \$180 million to help the Mexican government implement its labor reform program. It allocated that money over four years to help Mexico set up those courts, and to train those officials and bureaucrats. It also allocated funding to programs on the ground to educate Mexican workers about their rights so that they could advocate for those rights. They could democratically elect a new union that would bargain on their behalf.

Chad Bown: The second thing Congress did was to come up with some penalties. The House Democrats negotiated to introduce punishment for Mexico if these Mexican workers were not allowed to organize into new unions that could be verified under the new Mexican labor system. The penalties would come through this new rapid response labor mechanism.

III. HOW THE RAPID RESPONSE LABOR MECHANISM WORKS

Chad Bown: Now let's turn to how this brand new rapid response mechanism – or RRM – works.



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Suppose there is a problem at a plant in Mexico – workers there are not being allowed to vote to form an independent union. The question is, what can they do about it?

To figure this out, we spoke to Daniel Rangel. Daniel is a lawyer at ReThink Trade, an advocacy and research organization that's worried about trade policy hurting workers on the ground. Daniel has helped represent workers at RRM situations in four different Mexican plants since 2021.

Daniel Rangel: Basically the way in which it works is that the complaining country, the country that receives a petition from an independent union, for instance, that is facing labor rights violations, can decide whether there is enough evidence to send the petition to the other country, which can then conduct an internal review.

Kathleen Claussen: The complaining country Daniel is referring to here is the United States.

Now, petitions are one way to get the attention of the US government and ask it to use the rapid response mechanism. But that is not the only way. In the US, there is also an anonymous web form – a hotline -- where an individual could write in anonymously and report a problem.

So, when the US government receives this information – either a detailed petition or some sort of tip – government officials from the Department of Labor and the US Trade Representative's Office decide whether there's been a denial of the workers' rights at that plant. If so, they activate the RRM by telling Mexico that they think there's a problem.

Daniel Rangel: If the other country determines, "OK, yeah, there is a situation here," then the two countries can agree on a solution.

Kathleen Claussen: At this point, there are many types of potential solutions the US and Mexican governments could come up with – and it depends on the situation of course. But often it is for them to find a way to insist upon an election at the plant to see if – when given a fair chance – the workers will elect a new union to replace the old union.

But there could be more – the law is really unclear here. Maybe the solution involves mandating that the company provide back pay for the workers who might have been fired unfairly for trying to unionize and to restore their jobs.

OK. What is also interesting is if the US and Mexican governments cannot agree between themselves on a solution, or if they disagree about the underlying problem.



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Daniel Rangel: Then the complainant country can establish a panel which will ultimately authorize sanctions against that company. So that's what's very novel about this procedure. And in a way, it has a tight timeline.

Kathleen Claussen: There are at least three important points here.

First is a panel – this is supposed to be a set of labor experts called in to hear the case. Not trade experts, experts in labor law.

Second are the penalties against the company. As soon as the situation gets started, the US government can tell US customs to “suspend liquidation” of import duties on goods from that facility. “Suspending liquidation” means that the company’s tariff bill becomes, well, suspended – the company won’t know what it will be. Ordinarily, under the USMCA, the company pays zero tariffs. With the RRM, it could end up having to pay the MFN rate that exporters in other countries have to pay, which might be 10 or 25 or 50 percent, depending on the good. That might mean that it suddenly needs money to cover a bond or a deposit. So, these are new costs for the firm, as well as uncertainty about what those costs will be.

Daniel’s third important point was the tight timeline. This is the rapid response mechanism. It is speedy. The US and Mexico are supposed to resolve these issues really quickly.

The big takeaway is that this is the first time in a US trade agreement that we’ve seen anything like this – a tool that allows the US government to penalize companies in another country for labor rights issues. And it can do so, based on its own determination of a problem at the worksite; setting up an independent panel is essentially the backup plan.

Representing Mexican workers, Daniel too sees the RRM as having one big objective:

Daniel Rangel: The ultimate objective of the rapid response mechanism is to address the widespread practice of having protection contracts in Mexico, which has resulted in the wage gap between Mexican and US and Canadian workers.

IV. HOW THE RAPID RESPONSE MECHANISM HAS BEEN USED SO FAR

Chad Bown: One of the earliest uses of the rapid response mechanism certainly made the headlines. It involved General Motors – one of America’s most historically consequential and



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politically important companies. The United States government started a situation at a GM plant in Silao, Mexico.

This was huge. The plant assembles incredibly popular pickup trucks – the Chevy Silverado and GMC Sierra. The General Motors facility was also big – with more than 5,000 workers. The allegation was that the workers at that facility were not being allowed to unionize.

Kathleen Claussen: Most of the situations so far have been in the auto sector. We can count nearly 20 RRM situations to date, nearly all involved something to do with cars.

But aside from GM, most of the other situations are at plants that make car parts. Many are companies you have never heard of.

Take the situation involving VU Manufacturing, a company that makes arm rests for cars.

Milenio Noticias (February 13, 2023): *El conflicto entre la empresa VU Manufacturing y sus trabajadores en Piedras Negras, Coahuila, nuevamente puso las condiciones laborales en México bajo la mirada de Canadá y Estados Unidos...*

Kathleen Claussen: Another example involved a company called Tridonex that makes brakes and steering wheels.

There have been some other big name companies – a Panasonic facility that makes audio systems for cars, and a Goodyear plant that makes tires – but most of these companies are not household names.

Chad Bown: Next consider the unions. In most of these situations, the problem has involved one of those old corporatist unions. A new independent union is trying to vote them out, and the old union is standing in the way, sometimes breaking the rules to do so.

On the US side, American unions have also played a role. Sometimes the petitions triggering the RRM have been written by American unions alongside these new, start-up independent unions in Mexico. Richard Trumka's federation – the AFL-CIO – as well as other unions like the United Auto Workers union, the United Steelworkers union – have all been supporting situations on behalf of Mexican workers.

Kathleen Claussen: In terms of the legal process, what is interesting is that the outcome of almost all of these situations has been the same. Not all, but most of them.



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For the most part, US and Mexican governments have agreed there is a problem and negotiated a remediation plan for the company running the plant.

Usually that means holding a new vote. Sometimes that has meant rehiring illegally fired workers, sometimes paying back wages.

Chad Bown: OK, you said not all there. Let's talk about some of the exceptions.

Kathleen Claussen: Again, this entire process is largely unprecedented, so the governments are figuring it out as they go.

In a small handful of situations, the Mexican government rejected the US request because it said the problems occurred before the USMCA came into force.

In one situation – the one involving that Tridonex plant – the US government went outside of the legal process and worked with the US parent company to get them to fix the problem.

In only one situation so far has the US government felt the need to set up a panel. That one is still ongoing, so we don't know what will happen there yet.

And, in the case with that VU manufacturing company, the US and Mexico ended up having to use the RRM a second time.

Then, just recently, we've learned of a new situation – at a separate facility – where, according to the US government, that company refused to hire laid off workers from the VU plant because of those workers' unionizing activities.

So, while most of the situations we've seen have ended up in the same place, the path the governments took to get there was often quite different.

Chad Bown: Now I want to turn to the question of whether the rapid response mechanism has been effective.

Kathleen Claussen: Whether it has been effective depends in part on what you think effective means.

One definition might be giving workers a chance to democratically elect unions to represent them. By our tally from various sources – press reports, the governments – in the vast majority of situations, that appears to have been the case. Workers are electing new unions.



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Chad Bown: The next question involves its economic impact.

Workers want to unionize to bargain collectively to get better working conditions and higher wages.

For example, go back to that very first situation at the General Motors plant in Silao – the one that makes GMC Sierra and Chevy Silverado. Those workers successfully voted in a new union, and the first year got an 8.5 percent wage increase – slightly higher than the rate of inflation. The second year they negotiated another 10 percent wage increase. A number of the situations have followed a similar script.

There are exceptions though. Take that situation at VU Manufacturing, the auto parts company that makes the arm rests. VU Manufacturing initially negotiated one of these remediation plans with the Mexican and US governments.

But then, in October 2023, the company suddenly announced it was shutting down its Mexican plant. Those workers presumably lost their jobs.

Now, we do not have access to this VU Manufacturing company's accounting records. But one possibility is that the company could no longer remain profitable if it had to pay higher wages that the workers might negotiate through collective bargaining. That is one of the possibilities we will have to monitor with this new mechanism.

Kathleen Claussen: There are other important caveats before we can draw conclusions as to whether the RRM has been effective. Obviously, one is that it is still really early and there's not a lot of data to draw from.

Chad Bown: I definitely agree with that. But evaluating the true effectiveness of the mechanism will ultimately also need to consider how workers are doing even if they work at plants that are not being forced to confront an RRM situation.

If the threat is enough, maybe companies will smooth the way for workers to unionize and bargain collectively. And we get the GM sort of outcome but without activating the RRM.

But it could also turn out to be the case that some companies decide to shut down. Maybe they see the writing on the wall and move out of Mexico. Maybe they move back to the United States or to some other country.



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The point is, only a longer-term assessment of the data on how all Mexican workers are doing – both those at facilities facing RRM complaints and those elsewhere – will be able to tell us the overall impact of this new mechanism.

V. REACTIONS TO HOW THE RAPID RESPONSE MECHANISM HAS BEEN USED SO FAR

Chad Bown: The USMCA and the new mechanism have only been in place for 3 years, and there have only been about 20 situations. Nevertheless, we also wanted to know from the various participants how they thought that the rapid response mechanism was going so far.

Let's start with the perspective of the Mexican workers – and those advocating on their behalf. Again, here is Daniel Rangel.

Daniel Rangel: In my experience, working with some independent unions in Mexico trying to use the RRM, I think that the most important highlight is that it has actually been a tool to spotlight labor rights violations in Mexico.

This is especially so given the context that we have both in the United States and in Mexico with fairly pro-labor administrations. And also considering that, in the US, there is record level support for unions and for working people. People have been really interested in finding out more about what's going on south of the border in terms of labor relations.

The other important highlight of this mechanism is that it has actually delivered material gains and has been used to support successful organizing campaigns in places where, five years ago, it would have been impossible for an independent union to win the right to represent workers.

Kathleen Claussen: It does seem like USMCA – or T-MEC as it is called in Spanish – is actually helping some Mexican workers.

Daniel Rangel: It's very interesting how USMCA has helped educate workers about their rights. And they see in USMCA – that they will call T-MEC – and regular workers will know about the T-MEC, which is something that is interesting that probably wouldn't have happened in the past.

They will say, "According to the T-MEC, I have these rights."

And I think that it has been an important contribution to develop this knowledge in workers about what they are entitled to.



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Chad Bown: It is still early, but we also wanted to know whether Daniel thought that the word might be spreading about the RRM. Maybe more and more Mexican workers learning about the mechanism meant it was causing companies to start to treat their workers better out of fear that their company might be next.

Daniel Rangel: I think that the RRM has had a little bit of a trickledown effect in other situations – but less so than expected. There's a case in which you have a new independent union that has won the right to represent workers at two facilities. Then, if they have an organizing campaign at a third facility, I think that management of that company is aware that they have had successful organizing drives and that they have used the mechanism, which could be a problem for them. And then they stop engaging in the labor abuses that they had in the past. There's some evidence of that.

Now, whether this has actually generated a domino effect for the rest of the economy, I think that we haven't seen any evidence of that.

Chad Bown: Next we wanted to learn about the reaction of the Mexican government. Even though Alvaro is no longer a Mexican trade official, we asked him what he thought the main reaction of the Mexican government was so far.

Alvaro Santos: I think that Mexican officials probably regard the mechanism positively in the sense that it has actually helped them move forward with the objectives of the labor law reform. And you can see that in the way that the Ministry of Labor and the former Minister of Labor actually were quite cooperative with the mechanism. They really wanted to address the problems that the workers were identifying.

They weren't dragging their feet or invoking some procedural excuses. They really wanted to get this done. And I think that the success of the rapid response mechanism cases so far shows that the Mexican government sees this is an important tool to use.

Overall, they probably think that it is a good thing.

Chad Bown: So far, the process of using the mechanism does seem to have involved a lot of collaboration between the US and Mexican governments. In most of these situations, they seem to have worked together to address a common concern.

However, that might not last forever. Here's Daniel.



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Daniel Rangel: I worry about the degree in which the system depends on the political will of the incumbent government. Particularly in the case of the US and Canada. So, if you have a government that is pro labor and that cares about labor rights in other places with its commercial partners, then it's great because it really gives some teeth if you want to improve labor conditions in those places.

But if you don't care about those values, then it will be very easy for the government to just not use the mechanism. And given that it's something that is very new, then it could become something that is forgotten fairly easily.

Kathleen Claussen: Alvaro too highlights that not everything about the RRM is positive from the Mexican government side.

Alvaro Santos: I also think that the Mexican government sees this as, and rightly so, as a very asymmetrical mechanism which means that, you know, only the US and Canada can use it against Mexico. There's really no reciprocity in the use of the mechanism. I think that that's a big problem that they probably would want to change.

Kathleen Claussen: The way the USMCA is written – because of a footnote (we lawyers are big on footnotes) -- Mexico really can't bring a case to the US government and say – “Hey, workers in the United States are not being allowed to unionize and bargain collectively.” Legally, using the RRM against a US facility is really unlikely to happen.

Alvaro pointed out what he sees as one other problem.

Alvaro Santos: All of this attention in Mexico as having a problem with worker's rights is deserved. But it seems to suggest that the US is a really good place for workers to organize and bargain collectively, because during the negotiations and afterwards you had all of this attention on the problems with Mexican unions and all of these delegations of US congressmen making sure that Mexico was devoting enough resources for its labor law and so forth. All of which is great.

But the US has a big problem in organizing – it's become a really hostile place for workers to organize. The unionization rate has fallen from around 35 percent after World War II to around six percent in the private sector today. And that's not because workers have suddenly decided they don't want to organize. In fact, if you look at the surveys, there's a huge mismatch between willingness to organize and ability to organize.



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The US seems to hide behind the wall of, “Mexico has a big problem,” which is absolutely true, not recognizing that it has a fundamental problem in the way it deals with worker rights here at home.

Kathleen Claussen: We also spoke to some of the companies and their representatives to hear about their perspectives. I would say they have three main concerns.

One is that they are not at the table. Some companies have said they don’t know there’s a problem at their plant until after the US government issues a press release about its activation of the RRM. Then the two governments make a plan to fix the problem without engaging the company or sometime without sharing any information at all. It may be hard for the company to figure out what is going on. So all that has led to questions about due process and what the company ought to do or could do to resolve the issue.

A second concern is that companies don’t know what to do to avoid scrutiny in the first place. Of course, the companies want to play nice with both governments. But each solution is tailored to each plant. So companies that are watching the RRM from the outside say, “Hey, we want to comply with all the rules, but we don’t actually know what that takes.”

Third, some companies have voiced concern that they are being penalized when the bad actor may be someone else entirely – the leaders of the old union, for example. So, here’s the company facing higher tariffs when it may not have been in a position to prevent the problem from the outset.

Chad Bown: Finally, there is the reaction of the US government. Based on the press releases from USTR and the Department of Labor, the Biden administration would seem to be pleased with how use of the rapid response mechanism has gone so far.

Kathleen Claussen: Congress and other labor advocates have more mixed views. Some members have Congress have called for still more use of the RRM.

For labor advocates, some are concerned that the system relies too heavily on US union or civil society intervention, rather than building up capacity among Mexican workers themselves. Some are also concerned about the lack of visibility into each situation. Just as the companies are seeking more information on how governments are using the tool, so is civil society. For instance, there have been a handful of rejected petitions and members of civil society don’t always know why they were rejected.



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VI. WHAT'S NEXT FOR THE RAPID RESPONSE MECHANISM

Chad Bown: To wrap things up, Kathleen and I thought we would share some of our reactions to the use of the rapid response mechanism to date.

Kathleen, you start. First, what has surprised you the most about this new mechanism?

Kathleen Claussen: What surprised me at first was how few times the mechanism was used in the early years – and I think this surprised some in the labor community as well. The problem was so well known with labor issues in Mexico – many thought there would be a bunch of uses of the RRM right from the start.

But it was slow to ramp up, and part of that has been because each situation is so administratively intensive to investigate and review. And, of course, the US government wanted to start with a sure winner. So eventually they got there. Now we are more in the sort of second round of RRM – the situations are more complex and maybe closer calls, or they create more legal questions like – how do you penalize an airline whose workers aren't being allowed to unionize?

Another thing that has surprised me has been how often the mechanism is used alongside Mexico's own enforcement system. But maybe this shouldn't be surprising, given what Alvaro told us about the Mexican government's labor reform efforts. None of this happens in a vacuum. In many instances, there is more going on – either the plant has been subject to administrative action by the Mexican government or there may even be a court case underway in Mexico. The RRM is operating beside those local systems – and of course those systems are the ones the US government has supported building up in these recent years.

And maybe if I could add one more – although we tend to focus on the suspension of liquidation issue and the financial burden that the companies could face, some of those companies have said that the bigger stick here is reputational. It is less about immediate supply chain issues and more about being called out in a very public way for bad behavior. Really in several ways, this tool operates more like a corporate social responsibility tool than what we typically think of as a trade tool.

How about you Chad?

Chad Bown: For me, what I have found *least* surprising is that almost all of these situations have arisen in the automotive supply chain. That was such a hugely contentious part of the



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NAFTA renegotiations and the UAW has been outspoken for so long, there was a sense that we were going to see a lot of situations at Mexican plants in that sector.

What I did not expect is that there would be so many situations at second tier auto parts companies– the VU Manufacturing companies of the world – making things like seatbelts or arm rests. A lot of the situations are at these relatively small companies – impacting at most only a couple of hundred workers.

At least as of yet, the RRM is not going after a lot of big multinational, name brand companies. Now, of course, that could be because those companies are actually following the rules with their workers and they have squeaky clean facilities. That is a possibility, and we don't really know.

OK, Kathleen, what are you looking out for next?

Kathleen Claussen: We haven't gotten into the details, but there is that one situation that has now gone to an expert panel.

It will be interesting to see how this first panel resolves the question about whether there's been a denial of rights at a mining facility, as the US claims. The panel has already faced some challenges in carrying out its work, and that work is still underway.

Lastly, let's see how the governments approach their assessment of the RRM when the USMCA is up for review in a couple years. In both countries, the political landscape may look very different.

Chad Bown: What I'll be looking out for is the rest of the world's reaction to this new mechanism. As we have hopefully made clear by now, this is an extraordinarily novel policy tool. No one else has anything similar.

The current US administration as well as labor advocates seem to like it. They are hoping that all future US economic agreements have something similar in it. There have even been announcements that maybe something like the RRM could find its way into IPEF – the Indo-Pacific Economic Framework that the US is negotiating with thirteen other countries in that region. We'll see.

Chad Bown: Kathleen, thanks so much for joining me this week!

Kathleen Claussen: Thanks for having me.



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GOODBYE FOR NOW

Chad Bown: And that is all for *Trade Talks*.

A huge thanks from both me and Kathleen to Alvaro Santos at Georgetown Law and Daniel Rangel at ReThink Trade. We also wanted to thank lots and lots of other people involved in these RRM situations who will go nameless as they agreed to speak to us off the record. This includes other lawyers involved in the process, Mexican and American government officials, and some of the company interests as well.

A big thanks from me to Kathleen Claussen. Do check out a couple of new articles that Kathleen and I have written together about this amazing rapid response mechanism. One is just about to be published in the *American Journal of International Law* and the other in the *World Trade Review*. I will post a link to the papers on the episode page of the *Trade Talks* website.

Thanks to Melina Kolb, our supervising producer. Thanks to Sarah Tew, on digital. As always, thanks to Collin Warren, our audio guy.

Do follow us on Twitter or X, we're on @Trade__Talks. That's not one but two underscores, @Trade__Talks.

<insert super funny double underscore joke here>. ■

READ MORE...

- Claussen, Kathleen and Chad P. Bown, "[Corporate Accountability by Treaty: The New North American Rapid Response Labor Mechanism](#)," *American Journal of International Law*, forthcoming.
- Bown, Chad P. and Kathleen Claussen, "[The Rapid Response Labor Mechanism of the US-Mexico-Canada Agreement](#)," *World Trade Review*, forthcoming.