



June 22, 2021

Comments Submitted Via Email

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Re: Notice and Request for Comments; USMCA Labor Council Meeting

Dear Ms. Dougan and Ms. Tate:

The Motor & Equipment Manufacturers Association (MEMA) submits these comments in response to the request published June 11, 2020¹ from the Office of the United States Trade Representative (USTR) and the U.S. Department of Labor (DOL) on suggestions for topics to be discussed during the first United States-Mexico-Canada Agreement (USMCA) Labor Council meeting being held June 29, 2021.

Introduction

MEMA is the nation's leading trade association representing over 1,000 motor vehicle parts suppliers that manufacture components, technologies, and systems for use in passenger vehicles and heavy trucks.² MEMA members provide original equipment (OE) components and systems to new vehicle manufacturers, as well as aftermarket parts to maintain and repair vehicles in service. In total, vehicle part suppliers represent the largest sector of manufacturing jobs in the United States, directly employing over 907,000 people in all 50 states and generating 2.4 percent of U.S. GDP.³ Our members lead the way in developing advanced, transformative technologies that enable safer, smarter, and more efficient vehicles.

MEMA has been highly engaged in the USMCA and actively advocated the U.S. Congress to pass the implementation legislation. MEMA supported the USMCA in principle even as parts suppliers

¹ 86 Fed. Reg. at 38136.

² MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); MERA – The Association for Sustainable Manufacturing; and, Original Equipment Suppliers Association (OESA).

³ MEMA [U.S. Labor and Economic Impact of Vehicle Supplier Industry](#), February 2021.



continue to face the cumulative impacts of multiple, concurrent trade actions, like tariffs on key specialized materials and component parts used in their production. From the early days of the trade negotiations in 2017 to the upcoming first anniversary of the pact's entry into force on July 1, 2021, MEMA has worked closely with the USTR, DOL, and U.S. Customs and Border Protection discussing various USMCA issues.

About Vehicle Parts Suppliers (Parts Producers) and the Supply Chain

MEMA offers the following background information about the role of vehicle suppliers in the overall supply chain to establish a baseline perspective vis-à-vis our comments. Vehicle suppliers manufacture materials, parts, and systems for a wide range of customers. The vehicle industry depends on a strong, functioning North American supply chain, which is highly interdependent and integrated. In addition to fostering global competitiveness, the regional certainty of USMCA helps to encourage continued U.S. investments in parts suppliers' advanced technology development and production.

MEMA supports two key goals to enhance regional and global supply chain competitiveness. The first is to develop and deepen the domestic capability to produce cutting-edge technology. The second – and vitally important – is to ensure supply chain resiliency that will support America's current manufacturing jobs as well as our economic and national security. This will create a robust supply of critical established goods and technologies. Nations that lead the development and adoption of innovative technologies will also shape supply chains and job creation, define global standards and, potentially, reshape the international marketplace. The USMCA is a critical pact reinforcing our regional strength to be globally competitive.

Request for Labor Council to Consider Comments on Rapid Response Labor Mechanism

Article 23.14 of the USMCA establishes a Labor Council composed of senior government representatives from trade and labor industries. The Labor Council may consider any matter within the scope of Chapter 23 (Labor) and “perform other functions as the Parties may decide.”⁴ Although the Rapid Response Labor Mechanism (Mechanism) is found in Chapter 31 of the USMCA, it addresses important labor issues worthy of the Labor Council's attention and merits inclusion in the “other functions” the Labor Council has the authority to perform. Underscoring this authority is the fact that there are no procedures set forth in Chapter 31 to facilitate the solicitation, receipt, and consideration of comments from the public.

The Mechanism and Recent Review Requests Made by the United States to Mexico

The Mechanism is the first of its kind and allows the United States to take enforcement actions against individual facilities in Mexico if those facilities violate workers' rights to freedom of association and collective bargaining. The Mechanism permits the United States to request an expedited review of an alleged “Denial of Rights” of such rights at specific facilities in Mexico. Unlike the labor rights provisions in Chapter 23, which focus on broader country-wide or industry-wide labor practices, the Mechanism targets labor violations involving specific Mexican facilities and workplaces.

Under the Mechanism, the USTR – either through the petition process or through its own initiative – is allowed to submit a request that Mexico review whether there is a denial of rights and attempt to remediate any issues it finds. If the United States and Mexico are subsequently not able to

⁴ USMCA, Chapter 23, Article 23.14, Item 3, page 23-12.

agree that the issue has been resolved, the United States may request the establishment of a Rapid Response Labor Panel to determine whether there has been a denial of collective bargaining rights.

Over the last six weeks, the USTR has twice requested that Mexico review two facilities in the automotive industry. These are the first times the Mechanism has been used since being included in the USMCA after entry into force on July 1, 2020. MEMA has an interest in the administration of these proceedings.

Transparency and Due Process in the Mechanism's Procedures and the Need for Additional Guidance by USTR and DOL

MEMA supports the rights of workers and applauds USTR and DOL for soliciting comments from the public on the administration of the USMCA to ensure these rights are protected. Nonetheless, MEMA is concerned that given how quickly the Mechanism was developed, neither the provisions nor the guidance issued by the U.S. Government provide sufficient information to companies seeking to comply with the very labor requirements the Mechanism is designed to protect. There is similar lack of understanding of the rules applicable to private parties following when a request under the Mechanism is issued by the United States to Mexico.⁵

Specifically, MEMA suggests the following actions regarding the Mechanism's execution, which will lead to faster results for workers by providing companies with the information and tools necessary to comply:

- It would be very beneficial to the trade community for the appropriate offices within USTR and DOL to conduct educational outreach sessions for stakeholders on the Mechanism and the labor laws it is designed to protect, including any suggested remedial measures or best practices that companies might take to protect and enhance the rights of its workers. As vehicle manufacturers and vehicle parts producers are included in the list of priority industries and have been the subject of the first use of the Mechanism, MEMA would be glad to provide input and otherwise assist in these efforts by providing additional information on the workings and operations of the vehicle industry and its supply chain.
- MEMA has read through press accounts that a number of requests to Mexico are being contemplated by USTR. To the extent that some of these requests may not be brought as part of the petition process outlined in the June 30, 2020, *Federal Register* notice,⁶ it would be helpful for USTR to inform the trade community if there are different standards governing these requests and how MEMA and the vehicle industry can make positive contributions to this process.
- MEMA agrees that an overriding objective of the Mechanism is to reach solutions between the United States and Mexico to correct the actions giving rise to United States' requests of Mexico to review denial of rights allegations at specific Mexico facilities. To facilitate this objective, when a request is made by the United States to Mexico regarding the review of a particular facility in Mexico, MEMA urges USTR to give thought to providing the owner of that facility sufficient non-confidential information (or otherwise have access to such information) to enable such a facility to provide a meaningful response during the initial

⁵ Rules on filing Rapid Response Mechanism petitions by private parties with USTR are set for in 85 Fed. Reg. 39258I June 30, 2020, Interagency Labor Committee for Monitoring and Enforcement for Petitions Pursuant to the USMCA.

⁶ 85 Fed. Reg. at 39257.

45-day review period. This would increase the likelihood of a speedy resolution of the matter, saving time and resources before a timely and costly dispute resolution panel would need to be formed under the Mechanism. In all cases, MEMA strongly encourages USTR to provide companies with the full record at the beginning of the 45-day review process (where a request has been made to Mexico) for the same purposes.

- In keeping with the objective of working toward corrective actions by facilities in Mexico that are alleged to have taken actions resulting in a finding of a denial of rights for its workers, it is also important to ensure due process for the companies at issue. To this end, MEMA believes it will be important for the USTR to provide sufficient time for facilities to remedy these failings before any trade sanctions, including tariffs and import bans, are applied.
- MEMA supports clarification of how on-site facility verifications will be conducted as part of the Mechanism's panel proceedings. For example, the scope of a panel's verification activities and the extent to which access to the facilities and records at the subject Mexican plants will be allowed and to whom remain unclear.
- To assist U.S. companies and their Mexican facilities to be in compliance with the new labor laws enacted by Mexico in 2019 that will be enforced through the Mechanism, MEMA would encourage USTR and/or the DOL to publish non-confidential summaries of the review results to aide in compliance efforts and the establishment of best practices for enforcement priority industries, such as automotive.
- In addition to the transparency goals represented by these comments, MEMA urges that USTR and DOL periodically evaluate the performance of the Mechanism and make any necessary or helpful adjustments to achieve the objectives of the Mechanism. MEMA also recommends that one of the goals of the periodic assessments would be to maximize the results of a targeted facility's participation, thereby streamlining and making the process more efficient. MEMA looks forward to working with USTR and DOL to make the Mechanism not only an effective, but also a fair and transparent process.
- Finally, MEMA believes USTR and DOL have the authority to solicit comments and hold meetings with industry stakeholders regarding the Mechanism and other matters covered by Chapter 31 of the USMCA. MEMA assures USTR and DOL that it would be an active participant in these proceedings.

Conclusion

MEMA appreciates the Labor Council's consideration of these comments. For more information, please contact me via email at awilson@mema.org or Leigh Merino, vice president of regulatory affairs at lmerino@mema.org.

Sincerely,



Ann Wilson
Senior Vice President
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