



Implementation of Mexico's USMCA-Required New Labor Justice

**The "Spearhead of Mexico's Development"
Still Needs Sharpening**



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This report was written by Daniel Rangel and Lori Wallach.

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Implementation of Mexico's USMCA-Required New Labor Justice System Is Lagging

The “Spearhead of Mexico's Development”¹ Still Needs Sharpening

Executive Summary

The recently-filed United States-Mexico-Canada Agreement (USMCA) enforcement case against Tridonex — a Matamoros auto parts manufacturer that has continually prevented its workers from being represented by an independent union — revealed a key shortcoming in Mexico's USMCA-required labor reform implementation: the Mexican government's decision to delay the establishment of new labor justice bodies in the most industrialized and labor-troubled states of the country. Analysis of Mexican government plans to phase-in the new institutions reveal that the group of Mexican states in which the overwhelming majority of all strikes erupt, half of all manufacturing occurs and half of all foreign direct investment (FDI) is directed were granted the longest period to operationalize the new regime. These states are not required to establish new, independent labor adjudication courts under the Mexican government labor reform and USMCA implementation plan until May 2022. And, the Federal Labor Court for Collective Matters, a recently established Mexico City entity that is already in operation and handles collective disputes such as demands over collective bargaining agreement (CBA) control and strikes for sectors that fall within federal jurisdiction, is also not authorized to handle cases originating in states that do not have the new local labor courts already established. Improving labor rights and their enforcement in Mexico was a priority focus of congressional Democrats during the renegotiation of the North American Free Trade Agreement (NAFTA). The revised NAFTA, formally called the USMCA, went into effect on July 1, 2020. The COVID-19 crisis slowed Mexico's implementation of its new USMCA labor obligations. However, the problems identified in this report extend beyond those delays and reflect significant institutional problems that require urgent redress.

Under the current Mexican implementation plan, workers in the states in the last phase-in tier, which are those most in need of urgent labor reforms, are stuck with only access to the problematic, old labor institutions at the local and federal levels until their state-level new bodies are operational. And, once a case is started in the old regime, it is expected to be completed there, which means the old local boards will keep functioning long after the reform is implemented in each state. An official from one Mexican state noted that the old labor body would remain operational for at least three years after the new institutions come into place to deal with a backlog of 6,000 cases already filed. Assuming similar backlogs in other states, the Mexican states with the biggest labor problems might have the corrupt, old labor courts deciding cases until 2025 or beyond.

The absence of labor bodies that facilitate workers' enjoyment of the union democracy rights guaranteed in the pact effectively denies workers' the USMCA-guaranteed labor rights that went into effect when the pact did on July 1, 2020. Our review of Mexico's current, revised phased-in implementation of its new labor institutions shows that the Mexican states where workers most require new credible, independent, and

¹ On November 17, 2020, the Chief Justice of the Mexican Supreme Court of Justice of the Nation, Arturo Zaldívar, swore in 45 judges to head the recently established labor district courts. During his speech, Justice Zaldívar said: “The labor reform and particularly the new labor justice must be the spearhead of Mexico's development. (...) With your appointment, an unprecedented and historic phase, not only for the federal judicial branch, but for the entire country starts. You have a great challenge, achieving updating social justice, a justice with a humane face, sensitive and close to the people.” See: *Suprema Corte de Justicia de la Nación*. “La reforma laboral debe ser punta de lanza del desarrollo del estado mexicano: Arturo Zaldívar.” November 17, 2020. Available at: <https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6264>.

efficient institutions are the last places reform is required to be implemented. The states in the longest phase-in group represent a staggering number of new strikes per year — 25.7 — compared to the rest of the country, while the states in the earliest phase-in have 1.5 new strikes per year. Similarly, the states with the longest period to set up the new institutions experience, on average, almost 3.7 times more labor conflicts than the states with the shortest timespan. Gaps in Mexico's implementation of its labor obligations under the USMCA may lead to many more enforcement actions following the filing of two USMCA Rapid Response Enforcement claims in mid-May.

There is an obvious way for the Mexican government to remedy this problem. As this report documents, an "Implementation Council" that determines the schedule of required compliance has repeatedly modified the list of states that must be in compliance by each phase-in period. To capture the intent of the USMCA Labor Chapter's obligations, the Council must shift states with high industrial activity and a large number of labor disputes, such as Tamaulipas and Chihuahua, to the earlier phase-in date. This would mean that the new institutions in these states would have to be functioning in October 2021, more than two years after the Mexican labor law reform requiring the new institutions was passed and a year after the USMCA went into effect. Additionally, the Mexican Council of the Federal Judiciary could amend its regulation that now determines that a new Federal Labor Court for Collective Matters is to only handle collective disputes, such as demands over CBA control and strikes, that arise from states in the first tier of implementation. This court is already functioning, and the judiciary could extend the competence of this court over the disputes that fall under federal jurisdiction and arise from states in the later tiers of implementation. This would give workers in key sectors, such as automotive, auto parts, metals and mining, a novel, more reliable forum to bring their claims.

Introduction

In May 2021, the first two labor rights enforcement cases were filed under the revised NAFTA's novel Rapid Response Mechanism (RRM). The cases were initiated almost exactly two years after the enactment of Mexico's labor reforms, which implemented a 2017 Mexican constitutional labor reform as well as new labor obligations under the revised NAFTA. The RRM is a targeted, facility-specific enforcement mechanism unique to the USMCA that is devised to protect workers' right to organize.

For decades, Mexico's laws and institutions have at best been permissive of — and in many instances even fostered — the collusion between corporations, employer-controlled unions and government officials to the detriment of the rights and interests of Mexican workers. The result is that 25 years after NAFTA, Mexican real manufacturing wages are lower than manufacturing wages in China.

Many policymakers, unions workers and activists in the United States and Mexico hope that Mexico's new labor regulations and institutions, as well as the revised NAFTA's enforcement mechanisms can contribute to redressing this historic problem. However, one of the recent RRM cases, triggered by the continuous attempts of Tridonex — an auto parts manufacturer based in Matamoros, Tamaulipas — to prevent its workers from organizing and being represented by an independent union, highlights a key shortcoming of Mexico's labor reform implementation: Establishment of new labor justice bodies was postponed for years in the most industrialized and labor-troubled states of the country.

While the substantive provisions aimed at strengthening union democracy in Mexico went into force immediately after the May 2019 passage of Mexico's reformed labor law, the new labor justice system that is established under that law is slowly being brought to life through a phased implementation scheme. Yet, the new labor justice system is essential to enforce the law's enhanced rights and guarantees.

After repeatedly delaying implementation and moving more states into the latest tiers of operation, the government released a scheme that gives the nine states that represent nearly 50% of Mexico's industrial activities at least an entire additional year to set up the new independent labor bodies. The textbook labor law violations identified in the Tridonex case spotlight the problems that arise in the absence of independent, reliable institutions to solve conflicts between labor and employers in highly industrialized, labor intensive states in Mexico. Tridonex workers not only have faced harassment and illegal firings by their employer but have also seen how the existing, old labor institutions such as local and state conciliation and arbitration boards (CABs) stonewalled their efforts to achieve better wages and working conditions through

Background on Mexico's Labor Law Reform

On May 1, 2019, Mexico enacted changes to its Federal Labor Law (FLL) to overhaul an outdated, corporate-friendly law and related institutions. Mexico had pledged to make labor law reforms during Trans-Pacific Partnership (TPP) negotiations and amended its Constitution accordingly in 2017. The revised constitutional provisions mandated the creation of new federal and state-level labor courts and conciliation centers to deal with worker-employer disputes, as well as requiring secret-ballot voting by workers to approve collective bargaining agreements and to elect union leadership, among other reforms. Business interests in Mexico oppose these changes and they were not implemented in Mexican statute or policy. The renegotiation of NAFTA, through which congressional Democrats won stronger labor standards and enforcement, and then the election of a new president in Mexico, finally resulted in the May 2019 enactment of the labor reforms conceptualized in the 2017 constitutional changes. The revised NAFTA, formally called the United States-Mexico-Canada Agreement, went into effect on July 1, 2020.

independent union representation.² Since Tamaulipas is part of the group of states that has an additional year to create the new labor courts that would eventually replace the CABs, Tridonex workers will not have a new local labor court to take their demands seriously until May 2022.

The lengthy delays in establishment of the new labor court structure have not received sufficient attention amidst worrying news about Mexico's obligation to ensure existing collective bargaining agreements (CBAs) are ratified and union officials are democratically elected. All existing CBAs must be ratified through personal, free, direct and secret-ballot voting before May 2023. Yet, as of May 4, 2021, less than 1% have been ratified.³ Representatives of old, employer-friendly protection unions⁴ are already asking for an extension of the deadline required by the new labor law and the USMCA. And some of the ratification votes that are happening are troubling. For instance, serious irregularities occurred during a vote to ratify a CBA at a General Motors plant in Silao, Guanajuato, which is the target of the other May 2021 RRM case that was self-initiated by the U.S. government.⁵ As well, the Mexican government has rolled back the deadline by which unions must modify their bylaws to abide by the personal, free, direct, and secret-ballot election requirements. Transitional Articles 22 and 23 of Mexico's 2019 Labor Law Reform established statutory deadlines for the amendment of bylaws' rules related to union leadership elections by December 2, 2019, and the rules governing the approval and review of CBAs by May 1, 2020. However, by mid-2020, only 9.5% of local unions had modified their bylaws.⁶ This prompted the Implementation Council (a body composed by representatives of the federal government, the local governments and the judiciary tasked with the oversight of the implementation process) to extend the deadline, arguing that the COVID-19 pandemic was a major obstacle for union members to gather and modify bylaws.⁷ The Implementation Council granted unions 45 additional days to change the voting rules related to approval and verification of CBAs and 17 days for those related to union leadership. The new timelines are set to begin in each state when the state's health authorities reopen public sector activities. By the last time the Implementation Council met in 2020, on October 16, only one state had reopened activities for the public sector and just 14% of local unions had modified their bylaws.⁸

While all these problems are clearly relevant and raise concerns about Mexico's strategy to implement the labor reforms and its commitments under the USMCA, this report sheds light on the largely unnoticed issue

² Thomas Kaplan, "Complaint Accuses Mexican Factories of Labor Abuses, Testing New Trade Pact," New York Times, May 10, 2021. Available at: <https://www.nytimes.com/2021/05/10/business/economy/mexico-trade-deal-labor-complaint.html>.

³ María Del Pilar Martínez, "Sindicatos piden prórroga en legitimación de contratos," El Economista, May 4, 2021. Available at: <https://www.economista.com.mx/empresas/Sindicatos-ven-difícil-cumplir-con-el-acuerdo-de-legitimacion-de-contratos-y-piden-prorroga-20210504-0109.html>.

⁴ "Protection union" refers to a problematically common practice in Mexico of employers working with "union" officials to register a union and sign a CBA with low wages and other terms that protect the employer's interests, without workers having any say and often before any workers are even hired. See: Carlos de Buen Unna, *Collective Bargaining Agreements for Employer Protection* ("Protection Contracts") in Mexico, Friedrich Ebert Foundation, December 2011, Available at: https://www.academia.edu/7879996/Collective_Bargaining_Agreements_for_Employers_Protection_in_Mexico.

⁵ Thomas Kaplan, "The U.S. asks Mexico to investigate allegations of labor violations at a G.M. facility," New York Times, May 12, 2021. Available at: <https://www.nytimes.com/2021/05/12/us/politics/the-us-asks-mexico-to-investigate-allegations-of-labor-violations-at-a-gm-facility.html?searchResultPosition=2>.

⁶ Alejandro Páez Morales, "90% de sindicatos locales no han modificado sus estatutos: STPS," Crónica.com.mx, July 27, 2020. Available at: <https://www.cronica.com.mx/notas-90-de-sindicatos-locales-no-han-modificado-sus-estatutos-stps-1159873-2020>

⁷ Labor and Social Welfare Secretariat, "Acuerda CCIRJL ampliación de plazos establecidos en la Reforma Laboral para modificar estatutos sindicales," April 20, 2020. Available at: <https://www.gob.mx/stps/prensa/acuerda-ccirjl-ampliacion-de-plazos-establecidos-en-la-reforma-laboral-para-modificar-estatutos-sindicales>.

⁸ Coordination Council for the Implementation of the Labor Justice System Reform, *Minute of the Fourth Ordinary Session of 2020*, October 16, 2020. Available at: https://reformalaboral.stps.gob.mx/rl/doc/Acta_Cuarta_Sesi%C3%B3n_Ordinaria_2020_del_CCIRSJL_VF_16102020_mod1301_2021.pdf.

of how the most highly industrialized Mexican states, which are also those with more frequent capital-labor conflicts, are backloaded in the staged introduction of Mexico's new conciliation centers and labor courts. As made evident by the Tridonex case, the lack of independent and reliable institutions to solve conflicts between labor and employers constitutes a substantial obstacle to workers' achieving the rights and guarantees enshrined in the new labor law. Therefore, the Mexican government should consider ways in which it can accelerate access to the new labor law system in those places where it is most direly needed.

The Mexican States with the Most Serious Labor Problems, Most Foreign Investment and Most Industrial Activity Are the Last Required to Phase-in the New Labor System

The Mexican government's record to date of establishing the required, new labor institutions at both the federal and state level has not inspired confidence. While the Mexican labor law does not require the new labor institutions to operate prior to 2022 at the state level and 2023 for the federal bodies, the government has extended the timelines set out in its original implementation plan. This has delayed establishment of the independent labor courts that are critical to workers exercising their new rights. While some changes were necessitated by the pandemic, the implementation schedule's repeated modification raises doubts about when key changes to Mexico's labor regime will actually go into effect.

Mexico created a Coordination Council for the Implementation of the Labor Justice System Reform (Implementation Council)⁹ to implement the changes required by the labor reform and determine the schedule for phasing in the new bodies required by the labor justice system.

The Council decided that the new labor justice system would be implemented in three phases. Each of the 32 Mexican states would be assigned to one phase and a corresponding deadline, by which the new institutions would be operational. That means the states in the last phase would have until May 1, 2022 to establish the new state labor courts to adjudicate conflicts and the state conciliation centers to handle cases on a pre-judicial stage. Notably, the Federal Labor Court for Collective Matters, which is already in operation, is located in Mexico City and handles collective disputes, such as demands over CBA control and strikes for sectors that fall within federal jurisdiction, would also only handle cases originated in states where the new local labor courts have been established. Article 123.XXX.a of the Mexican Constitution asserts federal jurisdiction over key industries, including automotive, auto parts, textiles, electricity, mining, metals, hydrocarbons, petrochemical, cement, lime, chemicals, pharmaceuticals, food production, railroads, lumber, glass, tobacco and banking.¹⁰ That means the problematic, old system will remain in place for workers engaged in these key sectors in the states with the most pressing labor problems for at least one additional year, despite the fact that there is an operational court, with jurisdiction over their collective demands, that could provide a reliable, impartial forum.

And, once a case is started in the old regime, it is expected to be completed there, which means the old bodies could last beyond 2025. Even when the new institutions become operational, the old, problematic local boards will continue functioning to resolve the disputes that were initiated in advance of the new conciliation centers and courts being operational and receiving cases. For instance, the chairman of the

⁹ The Council is composed of representatives of the Labor and Social Welfare Secretariat, Finance Secretariat, the judiciary, the National Conference of Governors, and the National Conference of Labor Secretaries. Among other actions, the Implementation Council issued the "National Strategy for Implementation of Labor Reform."

¹⁰ Disputes arising from all other sectors are to be handled by state-level authorities. However, these distinctions have not been respected. In Matamoros, for example, many *maquiladoras* producing auto parts have deposited their CBAs in the local CAB. See: Quadratin México, "Exhorta STPS al diálogo para resolver huelga en 45 empresas de Matamoros," Quadratin. January 25, 2019. Available at: <https://mexico.quadratin.com.mx/exhorta-stps-al-dialogo-para-resolver-huelga-en-45-empresas-de-matamoros/>.

Local Arbitration and Conciliation Board of Durango (a Phase One state) stated that this institution from the old regime will remain operational for at least three years *after* the new institutions come into place, to deal with a backlog of 6,000 cases already filed.¹¹ Thus, the old CABs will keep functioning long after reform is implemented in each state. Assuming similar backlogs in other states, which in reality could be even bigger, the old local labor boards in Phase Three states might remain empowered to solve labor disputes until 2025 or beyond.

Before the list was cut down to only eight states, the Labor and Social Welfare Secretariat announced that all of the Phase One states combined represented 35% of the active labor disputes in the country.¹² However, the Secretariat has failed to clarify that the main criterion to select these states was the low rate of new cases being filed during recent years, as explained below, which raises the question of whether the reform is being implemented first where urgently required. Moreover, labor leaders have noted that the most industrialized states — particularly those in the North of the country, where having sound and reliable institutions to solve conflicts between labor and capital is critical — have been left last, and there is lack of clarity as to when the new labor justice system will widely apply in these states.

Figure 1. Phases of Implementation of the New Labor Justice System



*Source: Council of the Federal Judiciary.*¹³

For decades, academics and news reporters have documented the way in which the explosion of export-oriented Mexican *maquiladora* factories is connected to the prevalence of nefarious working conditions and artificially low wages, particularly in the north of Mexico. Mexico's 1960s Border Industrialization Program and then NAFTA's entry into force in 1994, led to staggering growth in the number of factories producing for export along the northern border. The 500 Mexican *maquiladoras* in the late 1960s grew to almost 2000 in 1990, and by 2009 there were more than 3500 such factories employing well over a million

¹¹ Carlos Mendoza, "En trámite seis mil expedientes en la JLCyA," *El Sol de Durango*. October 19, 2020. Available at: https://www.elsoldedurango.com.mx/local/municipios/en-tramite-seis-mil-expedientes-en-la-jlcya-5909367.html?fbclid=IwAR2P4KozMgtSjgkN7FCpveEcy5uBCiGprk5A32NtY4nCROE2IIs_cWomjuU.

¹² Labor and Social Welfare Secretariat, "Los estados donde inicia el nuevo modelo laboral suman 35% de expedientes laborales del país," January 12, 2020. Available at: <https://www.gob.mx/stps/prensa/los-estados-donde-inicia-el-nuevo-modelo-laboral-suman-35-de-expedientes-laborales-del-pais>.

¹³ Council of the Federal Judiciary, "Unidad de Implementación de la Reforma en Materia de Justicia Laboral," extracted on May 17, 2021. Available at: <https://www.cjf.gob.mx/micrositios/uirmjl/>.

workers in auto parts, electronics, textiles, and more.¹⁴ Today, Mexico has over 5000 *maquiladoras* that employ around 2.7 million people.¹⁵ But this factory boom, mainly in Mexico's northern states, has not generated widespread welfare gains for Mexicans working in the plants. Even before NAFTA's entry into force in 1994, the unionist and academic Daniel La Botz identified low wages, sexual harassment, poor workplace conditions, weak environmental protections, and anti-union repression as some of the major issues facing Mexican workers throughout the *maquiladora* zone.¹⁶ These problems have persisted over the past two and a half decades. And, when workers have organized independently to demand better working conditions and wages from the *maquilas* in northern states, the old CABs have been utilized to stonewall their demands, defending protection unions and corporate interests.¹⁷ The entrenchment of these dynamics in the industrial complexes located in Mexico's northern states spotlights why the Mexican government's decision to backload these into the last phase of implementation of the new labor justice system is so problematic.

This concern is well founded. Using data from the Mexican national statistical agency, *Instituto Nacional de Estadística y Geografía* (INEGI), we compiled the most recent state-level information regarding manufacturing output, labor conflicts, number of strikes per year, value of exports and foreign direct investment (FDI) inflows and aggregated it by state groupings, in accordance with the current schedule of implementation.¹⁸ The data indicate that Phase Three states have almost half of the manufacturing activity, more than half of the labor conflicts, the overwhelming majority of strikes per year and are also characterized by high levels of exports and FDI intake.

Under the current phase-in schedule, the states relegated to Phase Three produce nearly half of the gross domestic manufacturing output. The states that are classified as Phase One, which are the only ones in which the new labor institutions are already functioning, represent only 21% of Mexico's manufacturing activity.

¹⁴ Mark Horowitz, *Maquiladora* Production, Rising Expectations, and Alterglobalization Strategy, *Critical Sociology* 35(5) 677-688.

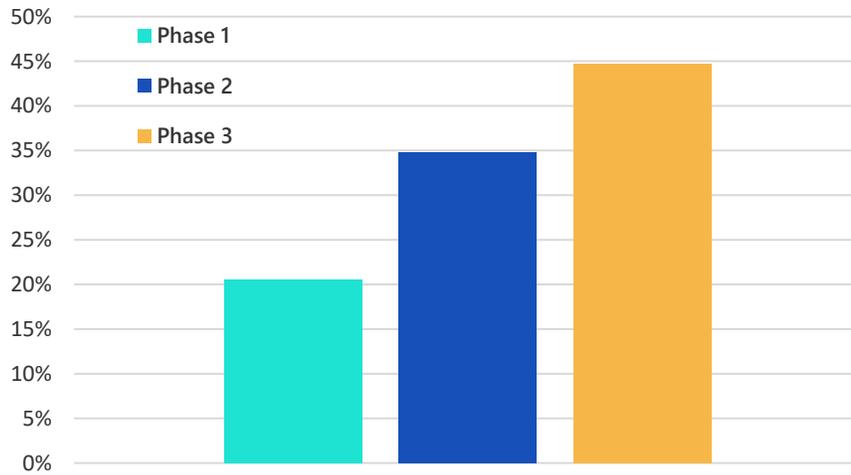
¹⁵ National Institute of Statistics and Geography, "*Programa de la industria manufacturera, maquiladora y de servicios de exportación (IMMEX) - 2007 en adelante*," extracted on May 24, 2021. Available at: <https://www.inegi.org.mx/programas/immex/#Tabulados>.

¹⁶ Daniel La Botz, "Manufacturing Poverty: The Maquiladorization of Mexico," *International Journal of Health Services*, Volume 24, Number 3, Pages 403-408, 1994.

¹⁷ Cirila Quintero Ramírez, "*El sindicalismo en las maquiladoras. La persistencia de lo local en la globalización*," *Desacatos*, Volume 21, May – August 2006, Pages 11-28.

¹⁸ National Institute of Statistics and Geography, "*Banco de Indicadores*," extracted on July 24, 2020. Available at: <https://www.inegi.org.mx/app/indicadores/>.

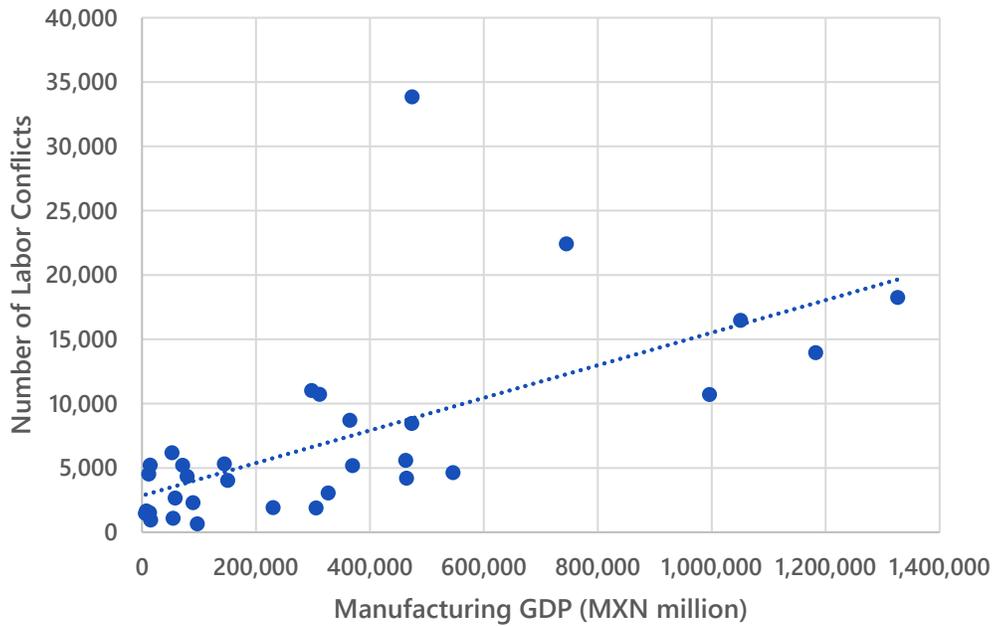
Figure 2. Percentage of Gross Domestic Manufacturing Product in 2018 by States Groupings (MXN million)



Source: INEGI

There is a clear correlation between manufacturing activity and incidence of labor conflicts. The scatter plot below displays the relationship between these variables using 2018 data.

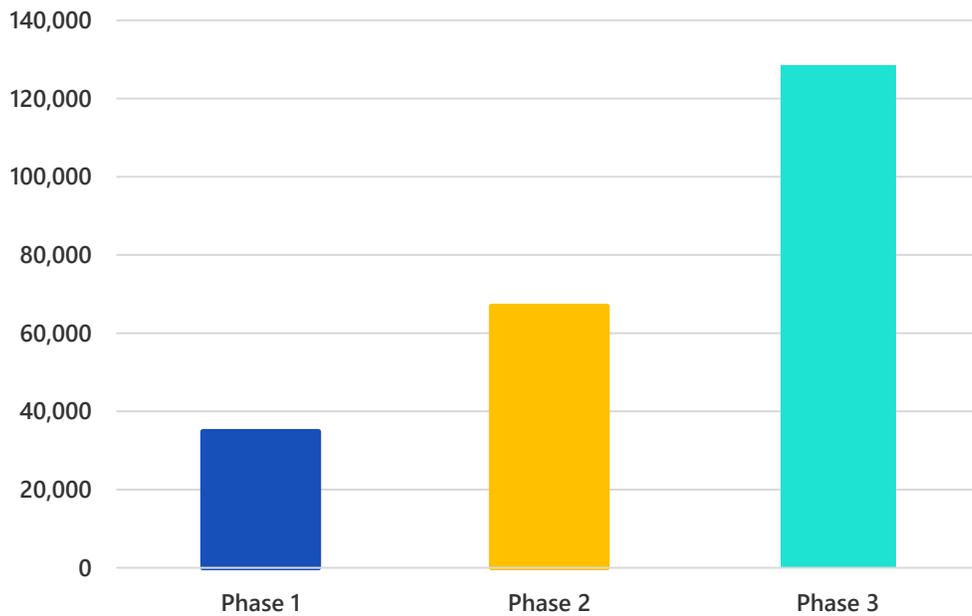
Figure 3. Manufacturing GDP vs. Number of Labor Conflicts by State in 2018



Source: INEGI

Hence, it should not be a surprise that Phase Three states, which represent nearly half of the manufacturing activity of the country, have had the most labor conflicts and strikes in recent years. Phase Three states experience, on average, almost twice as many labor conflicts as Phase Two states and 3.7 times more conflicts than Phase One states.

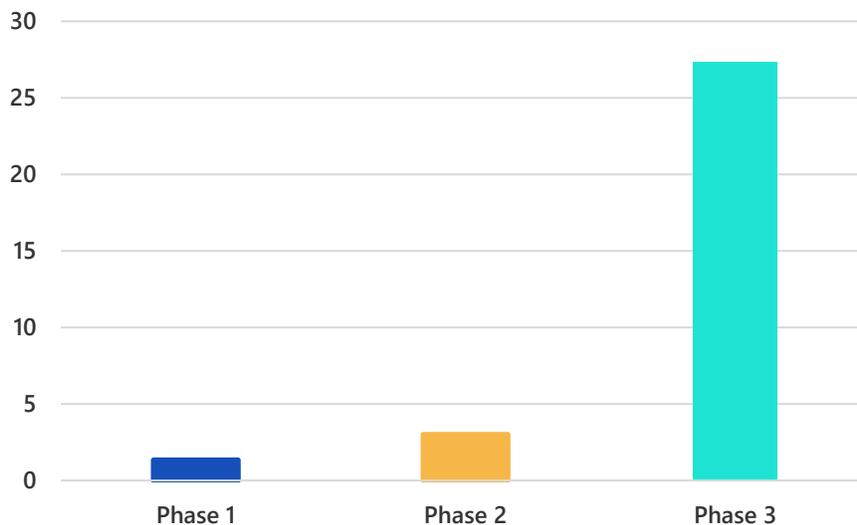
Figure 4. Annual Average Number of Labor Conflicts by State Groupings (2016-2018)



Source: INEGI

Phase Three states host a staggering number of strikes per year compared to the rest of the country. While Phase Three states experiences on average 25.7 new strikes per year, Phase Two states’ average of new strikes per year is 4.3, and Phase One states only face 1.5 new strikes.

Figure 5. Annual Average Number of Strikes by State Groupings (2016-2018)



Source: INEGI

The data reveal that the states where workers most require new, credible, independent and efficient institutions are the last places reform is required to be implemented. This will undermine the prospects for workers in those states to solve their conflicts and enhance their wages and working conditions. This situation is even more worrisome given the lack of clarity and transparency by which the implementation schedule has been established and modified, as will be discussed in the next section.

Finally, Phase Three states are also the main recipients of FDI, and they also are the source of a large portion of Mexico’s exports. The states relegated to Phase Three receive at least half of the foreign investment inflows coming into Mexico and represent at least half of Mexican exports. The figures below illustrate the accumulation of FDI and export activity in these states using the current version of the implementation schedule.

Figure 6. Foreign Direct Investment (Excluding Agriculture) 2017-2019 by State Groupings

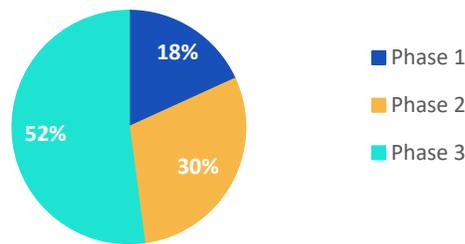
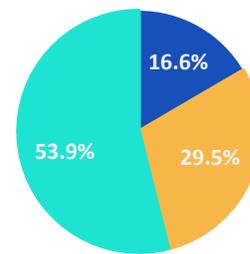


Figure 7. Mexican Exports 2017-2019 by State Groupings



Source: INEGI

As the Schedule and the States Listed in Each Phase-In Group Changed Over Time, Those with the Most Serious Labor Problems, Most FDI and Most Industrial Activity Were Given the Longest to Comply in Each Scenario

The Mexican government has published a series of ever-changing plans for the staged implementation of the new labor courts. Although, as demonstrated above, one consistent feature of each schedule of compliance is that the most industrialized states, which have had the most strikes and the most labor disputes and thus the greatest need for rapid implementation of the new law, have the longest timelines to comply. (These are also the states that receive the highest amounts of FDI and that represent the largest share of exports of the country.) Each of the Mexican government’s proposed schedules allow the states that represent 50% of Mexico’s industrial activities to have at least three years before the independent labor bodies required by the new law must be operational.

Initially, the Council of the Federal Judiciary, the body in charge of the administration of the judicial branch in Mexico, suggested the new system be phased in by Mexican states according to the schedule below. Notably, the Council intended that the states with the least new labor dispute cases per year on average would have the new system operational first, while states with the highest levels of activity were left to the last year.

Table 1. Phased Implementation Order Proposed by the Council of the Federal Judiciary

Phase 1	Phase 2	Phase 3
Aguascalientes	Baja California	Ciudad de México
Baja California Sur	Campeche	Chihuahua
Chiapas	Estado de México	Coahuila
Colima	Guanajuato	Jalisco
Durango	Hidalgo	Nuevo León
Guerrero	Michoacán	Puebla
Nayarit	Morelos	Tabasco
Oaxaca	Querétaro	Tamaulipas
Quintana Roo	San Luís Potosí	Veracruz
Zacatecas	Sinaloa	
	Sonora	
	Tlaxcala	
	Yucatán	

Source: Council of the Federal Judiciary¹⁹

Then, on July 5, 2019, the Labor and Social Welfare Secretary proposed to the Implementation Council a list of 10 states to be part of Phase One: Baja California Sur, Campeche, Colima, Durango, Hidalgo, Guanajuato, Nayarit, Oaxaca, Tlaxcala, and Zacatecas. This list was based on the Council of the Federal Judiciary's proposal, which used as its only criterion the average number of new cases per year in each state, but also included other states that expressed interest and willingness to participate in Phase One of the implementation process.²⁰ At this point, the first stage comprised 10 states where the new labor institutions should have been completely functional in October 2020. In October 2021, the 11 states of Phase Two would have the new labor institutions operational and, finally, in May 2022 the remaining 11 states would be required to have the new system operational.

¹⁹ Council of the Federal Judiciary, *Programa de Implementación de la Reforma en Materia de Justicia Laboral*, at 29-31.

²⁰ Coordination Council for the Implementation of the Labor Justice System Reform, *Minute of the First Ordinary Session of 2019*, July 5 2019. Available at: https://reformalaboral.stps.gob.mx/rl/doc/Acta_de_la_Primer_Sesion_Ordinaria.pdf.

The Phase One list was constantly modified during the past year, and most official documents did not even clarify which states would be included in the other two phases of implementation.²¹ One of the few documents issued by the Implementation Council that laid out the composition of Phase Two and Phase Three states contains the following order:

Table 2. Phased Implementation Order Proposed by the Implementation Council in Late 2019

Phase 1 (October 2020)	Phase 2 (October 2021)	Phase 3 (May 2022)
Baja California Sur	Aguascalientes	Ciudad de México
Chiapas	Baja California	Chihuahua
Durango	Campeche	Coahuila
Estado de México	Colima	Jalisco
Guanajuato	Guerrero	Nayarit
Hidalgo	Michoacán	Nuevo León
San Luís Potosí	Morelos	Puebla
Tabasco	Oaxaca	Querétaro
Tlaxcala	Quintana Roo	Sonora
Zacatecas	Sinaloa	Tamaulipas
	Yucatán	Veracruz

*Source: Coordination Council for the Implementation of the Labor Justice System Reform.*²²

The outbreak of the COVID-19 pandemic, among other issues, led to a major adjustment of the implementation schedule. Most notably, the number of states that had to have the new institutions operational in 2020 was reduced from 10 to eight, and the starting month was pushed back to November.²³ Then in mid- 2020, the Implementation Council announced the following phasing-in schedule:

²¹ On September 27, 2019, the Implementation Council adopted a decision exhorting the 10 Phase One states to coordinate among their institutions to adjust their state laws in order to comply with the new federal labor laws. In this opportunity the 10 states of Phase One were: Baja California Sur, Chiapas, Colima, Durango, Estado de México, Hidalgo, San Luís Potosí, Tlaxcala, Yucatán, and Zacatecas. See: Coordination Council for the Implementation of the Labor Justice System Reform, *Agreement 10-27/09/2019*, September 27, 2019. Available at: https://reforma laboral.stps.gob.mx/rl/doc/Acuerdo_10-27092019.pdf. In a decision issued at the beginning of 2020, the Implementation Council treated the following as Phase One states: Chiapas, Durango, Estado de México, Guanajuato, Hidalgo, Nayarit, San Luís Potosí, Tabasco, Tlaxcala, and Zacatecas. See: Coordination Council for the Implementation of the Labor Justice System Reform, *Agreement 04-17/01/2020*, January 17, 2020. Available at: https://reforma laboral.stps.gob.mx/rl/doc/Acuerdo_04-17012020.pdf. During its second 2020 session, the Implementation Council had a new Phase One list: Campeche, Chiapas, Durango, Estado de México, Guanajuato, Hidalgo, San Luís Potosí, Tabasco, Tlaxcala, and Zacatecas. See Coordination Council for the Implementation of the Labor Justice System Reform, *Minute of the Second Ordinary Session of 2020*, April 17, 2020. Available at: https://reforma laboral.stps.gob.mx/rl/doc/Acta_Segunda_Sesion_Ordinaria_2020_del_CCIRSJL_VF_15072020.pdf.

²² Coordination Council for the Implementation of the Labor Justice System Reform, *Actualización de Planes y Programas de Trabajo: Estudio Línea de Base de la Reforma Laboral (2016-2019)*, at 9.

²³ Procuraduría Federal de la Defensa del Trabajo, “*Celebran Tercera Sesión Ordinaria del Consejo de Coordinación para la Implementación de la Reforma al Sistema de Justicia Laboral*,” July 27, 2020. Available at: <https://www.gob.mx/profedet/articulos/celebra-tercera-sesion-ordinaria-del-consejo-de-coordinacion-para-la-implementacion-de-la-reforma-al-sistema-de-justicia-laboral?idiom=es>.

Table 3. Phased Implementation Order Proposed by the Implementation Council in July 2020

Phase 1 (November 2020)	Phase 2 (October 2021)	Phase 3 (May 2022)
Campeche	Aguascalientes	Ciudad de México
Chiapas	Baja California	Chihuahua
Durango	Baja California Sur	Coahuila
Estado de México	Colima	Jalisco
Hidalgo	Guanajuato	Michoacán
San Luís Potosí	Guerrero	Nayarit
Tabasco	Morelos	Nuevo León
Zacatecas	Oaxaca	Sinaloa
	Puebla	Sonora
	Querétaro	Tamaulipas
	Quintana Roo	Yucatán
	Tlaxcala	
	Veracruz	

*Source: Coordination Council for the Implementation of the Labor Justice System Reform.*²⁴

In September 2020, the Labor and Social Welfare Secretariat declared that Hidalgo, a Phase One state, was not going to have operational state-level labor courts and conciliation centers by November of 2020. Hidalgo remained on the first-stage list, but only with respect to the federal labor courts and the Federal Center for Labor Conciliation and Registration exercising its conciliation functions over the disputes that fall within federal jurisdiction.²⁵

To Mexico's credit, on November 18, 2020, the new federal and state-level labor courts for Phase One states started receiving cases.²⁶ And, in December 2020, the Labor and Social Welfare Secretariat launched the processes to start the implementation in the 14 states that are slated for Phase Two. This entails coordination between the federal and local authorities and between the executive and the judicial branches, legislative harmonization at the state level, recruitment of personnel and setting up the physical infrastructure needed for the new courthouses and conciliation centers.²⁷ Yet, if all these efforts are being carried out for 14 states, it begs the question: Why not do the same for the current Phase Three states that exhibit the most problematic labor relations in the country?

Mexico's Phased Implementation of Independent and Impartial Labor Courts vs. its Labor Obligations Under the Revised NAFTA

Annex 23-A of the revised NAFTA requires Mexico to establish and maintain independent and impartial labor courts for the adjudication of disputes relating to collective bargaining agreements and the recognition

²⁴ *Id.*

²⁵ Zenyazen Flores, "Reforma laboral arrancará en solo 7 estados en la primera etapa," *El Financiero*, September 29, 2020. Available at: <https://www.elfinanciero.com.mx/economia/reforma-laboral-arrancara-en-solo-7-estados-en-la-primera-etapa>.

²⁶ José Luis Álvarez, "Adiós a las juntas de conciliación: empiezan a funcionar los tribunales laborales federales," *El Contribuyente*, November 18, 2020. Available at: <https://www.elcontribuyente.mx/2020/11/adios-a-las-juntas-de-conciliacion-empiezan-a-funcionar-los-tribunales-laborales-federales/>.

²⁷ Labor and Social Welfare Secretariat, "Arranca la segunda etapa de implementación de la Reforma Laboral; se sumarán 14 estados en 2021 al nuevo modelo de justicia laboral," December 13, 2020. Available at: <https://www.gob.mx/profedet/es/articulos/arranca-la-segunda-etapa-de-implementacion-de-la-reforma-laboral-se-sumaran-14-estados-en-2021-al-nuevo-modelo-de-justicia-laboral?idiom=es>.

of unions. The phased implementation of Mexico's labor reform is not specified in the text of the revised NAFTA. Rather, it is a schedule that Mexico has established domestically.

Indeed, Mexico was supposed to be in compliance with all of its substantive USMCA obligations regarding labor reform prior to the July 1, 2020 date of entry into force of the agreement, with one exception. That exception is that the Mexican government has four years to ensure that all of the CBAs previously in place must be ratified by workers, in compliance with the union democracy guarantees provided by the new labor law. This Annex 23-A, Section 2(f) obligation means that the failure for an existing CBA to be reviewed between July 1, 2020 and July 1, 2024 does not violate the revised NAFTA's obligations.

However, the fact that the revised NAFTA's labor obligations are now in effect but the Mexican states that are not required to set up the new structures for an additional year are also those with half of the nation's manufacturing activity, more labor conflicts, and the closest links to the international economy, may expose Mexico to more RRM enforcement cases. The absence of labor bodies that facilitate workers' enjoyment of the union democracy rights guaranteed in the pact effectively denies workers' USMCA-guaranteed labor rights now in force.

Yet, the Mexican government could remedy this problem. As shown by this report, the Implementation Council has freely modified the composition of states included in each implementation phase. Consequently, it could advance those states with high industrial activity and a large number of labor disputes, such as Tamaulipas and Chihuahua, to Phase Two. This would mean that the new institutions in these states would have to be functioning in October 2021.

Additionally, the Council of the Federal Judiciary has the authority to and should amend its regulation that determined that the Federal Labor Court for Collective Matters would only handle collective disputes, such as demands over CBA control and strikes, that arise from Phase One states until the next tranche of states have established their new courts.²⁸ This court is already functioning. As of April 27, 2021, the Federal Labor Court for Collective Matters had received already 73 new cases.²⁹ There is nothing in Mexico's revised federal labor law that prevents extending the court's competence to cover disputes that fall under federal jurisdiction and arise from Phase Two and Three states.³⁰ This would give workers in key sectors, such as automotive, auto parts, metals and mining, a more reliable forum to bring their claims.

The effective application of the rights and guarantees enshrined in Mexico's new 2019 labor law and the amended Mexican Constitution are key elements of the USMCA. The new pact and its implementation in Mexican law and in practice are the testing ground for an idea that gains supporters daily: Trade policy is a means to materialize public policy objectives, among them fostering dignified wages and working conditions for workers, not an end by itself. But to achieve this outcome, which it is in the best interest of Mexico and the United States, workers throughout North America must have access to reliable and impartial institutions to materialize their rights.

²⁸ Council of the Federal Judiciary, "*ACUERDO General del Pleno del Consejo de la Judicatura Federal, que reforma y adiciona diversas disposiciones, en relación con la implementación de la Reforma en Materia de Justicia Laboral,*" November 17, 2020. Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5605077&fecha=17/11/2020.

²⁹ Council of the Federal Judiciary, "*Unidad de Implementación de la Reforma en Materia de Justicia Laboral,*" extracted on May 17, 2021. Available at: <https://www.cjf.gob.mx/micrositios/uirmjl/>.

³⁰ Article 700 of the revised Federal Labor Law establishes the territorial competence rules for the new labor courts. Subparagraph III clearly indicates that the Federal Labor Court for Collective Matters has unqualified competence over all collective disputes that fall within federal jurisdiction.