If you are a U.S. manufacturer with operations in Mexico, please pay attention. As we previously reported, the United States-Mexico-Canada Agreement (USMCA) has certain labor union requirements, a key one being that employees are guaranteed the basic rights of freedom of association and collective bargaining (with the nonstated objective of increasing wages in the country). The USMCA requires that existing collective labor contracts be free of “interference” from employers. Contrary to the way that unions have typically been placed under the control of an employer or an employer’s organization in Mexico, labor unions in Mexico shall now have autonomy to bargain for higher wages and benefits.

Also, effective April 24, 2021 (with a number of its provisions delayed until August...
Mexico adopted an outsourcing ban that imposes an immediate need to reassess and restructure a number of labor, corporate, and tax structures, as well as a consideration of short-term, practical strategies. The outsourcing ban now restricts the outsourcing of certain jobs (including, for example, payroll, cleaning and security services) and, but for “specialized services” (those that are not part of the corporate purpose or the preponderant economic activity of the intended beneficiary), all workers will have to be on the payroll of the employer and thus be entitled to profit-sharing provisions. Beginning August 1, 2021, payments for out- or insourced services will no longer be deductible. Here are links to articles that our Mexico City office have drafted: New Labor Bill Poses Corporate and Economic Challenges to Companies Doing Business in Mexico, and Ban to General Outsourcing/Insourcing Is Approved by Mexican Congress.

These new provisions are already being tested. The USMCA contains a “Facility-Specific Rapid Response Labor Mechanism” that provides a request process for a determination of compliance with the USMCA’s freedom of association and collective bargaining rights. Auto parts (as well as autos, aerospace products and components, forgings, etc.) are considered within the priority sectors to enforce such a mechanism. Under that process, a covered facility’s goods or services could face a suspension of preferential tariff treatment, or the imposition of penalties, if there is a violation of the USMCA’s labor provisions. On May 10, 2021, for the first time, the AFL-CIO (American Federation of Labor and Congress of Industrial Organizations) and other groups, including a labor union led by Susana Prieto, the head of the Matamoros 2019 “20/32” movement (a group seeking a 20% wage increase and MXP $32,000 bonus, roughly USD $1,600 for all workers), filed a request with the U.S. government to trigger the Facility-Specific Rapid Response Labor Mechanism. The AFL-CIO contends that local (state of Tamaulipas) labor authorities have denied freedom of association and collective bargaining rights to employees of Philadelphia-based Cardone Industries’ Mexican plant, Tridonex. In particular, they claim that Tridonex workers were denied the right of union representatives to be free from interference from employers.

The U.S. government now has 30 days to decide if there is a good faith basis that a denial of rights occurred at Tridonex’s facility. The U.S. could seek a review by Mexican labor officials and, in the meantime, the U.S. could delay final settlement of customs accounts related to entries of the relevant facility’s goods. The procedures under the USMCA provide for various reviews and panels that could result in a final determination within 40-60 days. Even though the purpose of the rapid response mechanism is to ensure remediation of a denial of rights, and remedies are to be lifted immediately once such a denial is remedied, the complainant party (U.S.) may suspend preferential tariffs or impose penalties on the goods manufactured at the relevant facility as a result of this process. Obviously, this could be costly for U.S. manufacturers subject to this review process.

All U.S. manufacturers with operations in Mexico should immediately (i) review the labor agreements for their local Mexican operations to determine whether there are procedural safeguards for employees to organize and bargain collectively without interference from employers, and (ii) revise their current out- or insourced operations in Mexico, still a very common practice today, to comply with the outsourcing ban. Regarding the former, essentially the same rights afforded under
Section 7 of the National Labor Relations Act (NLRA) that apply in the United States are now applicable in Mexico. Please review all labor contracts with your labor counsel to ensure that steps are taken to mitigate the risks, including the possibility of suspension of preferential tariffs and imposition of penalties, as well as full compliance with the recent outsourcing ban.

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