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**RECIBIDO**

*UNITED STATES – ATENTO SERVICIOS, S.A. DE C.V.*

(MEX-USA-2024-31A-01)

**REBUTTAL SUBMISSION**  
**OF THE UNITED STATES OF AMERICA**

November 25, 2024

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**TABLE OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Definition</b>
Atento or Covered Facility	Atento Servicios, S.A. de C.V.
BPO	Business Process Outsourcing
CBA	Collective Bargaining Agreement
CRM	Customer Relationship Management
CROC	Confederación Revolucionaria de Obreros y Campesinos
Election Guidelines	General Guidelines for Trade Union Democracy Procedures
Federal Center or CFCRL	Federal Center for Conciliation and Labor Registration
FLL	Federal Labor Law
FOSRM or Benito Juárez union	Sindicato Nacional Presidente Benito Juárez de la Industria de la Comunicación de la República Mexicana, part of the Federación Obrera Sindical de la República Mexicana
HR	Human Resources Department
ILO	International Labour Organization
Mexico	United Mexican States
NGE	Non-Governmental Entity
Progreso y Trabajo union	Sindicato “Progreso y Trabajo” del Transporte y Servicios de la República Mexicana
RRM	Facility-Specific Rapid Response Labor Mechanism
SEC	United States Securities and Exchange Commission
STRM	Sindicato de Telefonistas de la República Mexicana
STPS	Secretaría de Trabajo y Previsión Social
U.S.	United States of America
USMCA or Agreement	United States – Mexico – Canada Agreement
USMCA Implementation Act or the Act	United States – Mexico – Canada Agreement Implementation Act

## **I. INTRODUCTION**

1. The United States offers this rebuttal submission to the Panel pursuant to Article 31-A.7.2 of the United States – Mexico – Canada Agreement (“USMCA” or the “Agreement”). The rebuttal submission is provided consistent with the Panel’s submission schedule issued on November 15, 2024, setting forth the timing and nature of the filings in this proceeding.<sup>1</sup>

2. In this case, as the United States explained in its Reply Submission, both the United States and Mexico determined that a Denial of Rights occurred at the Atento Servicios, S.A. de C.V. (“Atento”) facility. Therefore, the task before the Panel, pursuant to Article 31-A.7.4 of the USMCA, is to determine whether the actions taken by the Government of Mexico and by Atento were sufficient to remediate the Denial of Rights. Mexico claims that the actions were sufficient, and has submitted to the Panel “a document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4.”<sup>2</sup> The United States disagrees.

3. In this rebuttal submission, the United States will briefly summarize the arguments set out in our Reply Submission showing that a Denial of Rights occurred, and why the Denial of Rights persists despite the actions taken already to redress the situation. The facts presented by the *Sindicato de Telefonistas de la República Mexicana* (“STRM”) in its written submission support the U.S. position. We will also address certain aspects of the submissions of the other Non-Governmental Entities (“NGEs”), and explain why the arguments of Atento and the *Sindicato Nacional Presidente Benito Juárez de la Industria de la Comunicación de la República Mexicana*, part of the *Federación Obrera Sindical de la República Mexicana* (“FOSRM” or “Benito Juárez union”) fail to show that the Denial of Rights at the facility has been remediated.

4. However, the Panel need not rely exclusively on the written submissions of either Party or the NGEs to determine the basic facts of this case. The Panel can also take advantage of the verification process set forth in Annex 31-A to speak to the employer and to the workers directly, as well as to union representatives, to decide for itself what it believes occurred. For example, the Panel can ask Atento to provide the “specific responses and evidence” the company alleges are “in [its] possession that refutes each of the allegations raised by the U.S.”<sup>3</sup> The Panel also has the ability to review Mexican law for itself, and to request the assistance of legal experts if needed, to determine whether the actions of Atento complied with Mexican law. And the Panel can rely on its own expertise in the labor field, in addition to the arguments of the Parties, to determine whether the workers’ right to free association and collective bargaining at the facility has been fully restored.

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<sup>1</sup> All references to the translated copy of the written submissions filed by the Non-Governmental Entities are designated as “[Party’s] Written Submission,” with a corresponding page number in the format in which the translated copy of that document was received. Any references to an exhibit submitted by a Party are designated as “USA” or “MEX,” respectively, followed by their appropriate exhibit number. The abbreviation nomenclature and exhibit numbers listed in the original U.S. Reply Submission are likewise adopted here.

<sup>2</sup> USMCA Annex 31-A.7.4.

<sup>3</sup> Atento’s Written Submission at 2, footnote 5.

## **II. BOTH MEXICO AND THE UNITED STATES FOUND EVIDENCE OF A DENIAL OF RIGHTS**

5. As explained in the U.S. Reply Submission,<sup>4</sup> Atento denied its workers’ right to freedom of association and collective bargaining under laws that comply with Annex 23-A of the USMCA by dismissing them for supporting STRM, and by engaging in threats, promises of benefits, and other acts – including the unlawful dismissals – to coerce workers into selecting the company’s favored union to be the workers’ collective bargaining representative. Both Mexico, in its Report to the United States on the results of its investigation, and the United States, in its own review of the situation at Atento, concluded that a Denial of Rights had occurred.

6. With respect to Mexico’s Report, in reviewing the labor situation at the facility, Mexico found the “alleged existence of actions that constitute transgressions of Mexican labor law and a denial of the rights of freedom of association and collective bargaining by ATENTO” based on acts of employer interference.<sup>5</sup> Specifically, Mexico “determine[d] that ATENTO carried out actions aimed at discouraging the affiliation of workers to STRM”<sup>6</sup> through the following four actions:

- Encouraging and organizing a union committee for FOSRM;
- Organizing elections of union representatives on its intranet;
- Denying access to STRM to carry out union activities within the facility; and
- “Allegedly” offering a bonus to the workers, prior to the voting for the Certificate of Representation, in case FOSRM won the election.<sup>7</sup>

7. Mexico also “determine[d] that there are elements that point to the existence of inferences that generate the reasonable suspicion of presumption that the dismissal of the workers was motivated by their union affiliation and preference to STRM in order to weaken the strength of the union.”<sup>8</sup>

8. Mexico’s findings were consistent with those of the United States. As described in further detail in our Reply Submission,<sup>9</sup> the United States found that Atento dismissed workers for supporting STRM in violation of Articles 133.V, 133.VII, and 357 of the Federal Labor Law of Mexico (“FLL”). During the United States’ investigation in December 2023 and January 2024, workers who were dismissed provided consistent statements with respect to Atento’s conduct leading up to their dismissal. These workers stated that Atento representatives explicitly told them that they were being dismissed because they support STRM. The United States also found that Atento pressured workers to support FOSRM and discouraged workers from supporting STRM in the lead-up to the December 6, 2023, representation vote, in violation of Articles 133.IV, 133.V, 133.VII, 133.XVII, and 357 of the FLL. The evidence shows that Atento acted inconsistently with these articles by actively supporting FOSRM in its organizing

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<sup>4</sup> See U.S. Reply Submission at 18-32.

<sup>5</sup> MEX-03 (Internal Investigation Results) at 45.

<sup>6</sup> MEX-03 (Internal Investigation Results) at 45.

<sup>7</sup> MEX-03 (Internal Investigation Results) at 45.

<sup>8</sup> MEX-03 (Internal Investigation Results) at 46.

<sup>9</sup> See U.S. Reply Submission at 20-30.

efforts; threatening workers with specific and unspecific reprisals if they supported STRM; promising benefits to workers for supporting FOSRM; and interrogating workers about their union sympathies in the year leading up to the December 2023 representation vote.

9. In its NGE Written Submission, Atento describes responses from workers to interviews administered in the course of an “Extraordinary Inspection” by the *Secretaría de Trabajo y Previsión Social* (“STPS”), which was reportedly conducted in February 2024, roughly contemporaneously with Mexico’s review of whether a Denial of Rights had occurred at the Atento facility.<sup>10</sup> The United States was not previously aware of this inspection or the reported interview outcomes; nor were they submitted by Mexico in its own submission to this Panel. However, the responses as reported by Atento appear inconsistent with the findings presented in Mexico’s investigation Report. Therefore, irrespective of alleged findings by STPS in inspections unrelated to the Facility-Specific Rapid Response Labor Mechanism review process, and as made clear in the foregoing paragraphs and U.S. Reply Submission, this information does not change the fact that both the United States and Mexico concluded a Denial of Rights had occurred at the facility.

10. Therefore, as both Parties have found, and as the Panel has the opportunity to independently confirm in its verification process, Atento denied workers’ right to freedom of association and collective bargaining within the meaning of Article 31-A.2 of the USMCA.

### **III. THE ACTIONS TAKEN BY MEXICO AND ATENTO WERE NOT SUFFICIENT TO REMEDIATE THE DENIAL OF RIGHTS**

11. The question before this Panel is to review whether the actions taken by Mexico – whether or not they were consistent with or otherwise restrained by Mexican law – were sufficient to remediate the Denial of Rights perpetrated by Atento. As detailed in our Reply Submission, the United States submits that they were not.<sup>11</sup>

12. As indicated in Mexico’s investigation Report, “The Government of Mexico, through the STPS, on the one hand, and ATENTO, on the other, agreed on the following measures in order to remediate the denial of rights in [sic] *ATENTO*, in accordance with the provisions of Annex 31-A of the USMCA.”<sup>12</sup> Those measures included:

- Publication and dissemination of a neutrality statement by Atento;
- Publication and dissemination of guidelines of conduct by Atento;
- Trainings of workers at the Covered Facility by Atento on the contents of the neutrality statement and guidelines of conduct;
- Training of workers at the Covered Facility by STPS on the right to freedom of association and collective bargaining;
- Training of 12 former workers by STPS on the right to freedom of association and collective bargaining;
- Atento’s written commitment to STPS to reinstate a worker;

<sup>10</sup> Atento’s Written Submission at 5.

<sup>11</sup> See U.S. Reply Submission at 32-44.

<sup>12</sup> MEX-03 (Internal Investigation Results) at 41-42.

- Atento’s settlement payments to five workers;
- Atento’s written commitment to STPS to make settlement payments to two workers;
- Atento’s rehiring of three workers who had settled their cases; and
- Atento’s supplementary settlement payments to two workers.<sup>13</sup>

13. With respect to allegations of irregularities during the December 2023 representation election, the Report concluded that Mexico’s Federal Center for Conciliation and Labor Registration (“Federal Center”) had determined that a complaint that STRM filed with the Federal Center was without merit.<sup>14</sup> Therefore, Mexico did not consider that any remedial action was necessary or appropriate with respect to the representation vote.

14. While the above actions are necessary aspects of remediation of the Denials of Rights at Atento, they are not sufficient to fully resolve the situation. As described in the U.S. Reply Submission, these actions fall far short of full remediation for several reasons.

15. First, the Denials of Rights are not remediated because not all unlawfully dismissed workers have been offered reinstatement with the full benefits and seniority they would have continued to enjoy had they not been fired.<sup>15</sup> In this way, workers continue to be penalized for their union activities. The workers who have not been brought back to work also are unable to access the facility and organize for STRM, which is, of course, the very reason they were fired in the first place.

16. Second, no actions were taken by Mexico to address the impact of the illegal activity on the representation vote, including the tainted outcome of that vote, whereby Atento’s chosen union, FOSRM, was certified as the workers’ collective bargaining representative. Mexico argues that no remedial action was required with respect to the representation vote, because the Federal Center had determined that a complaint that STRM filed with the Federal Center was without merit, and because the result of the vote indicated that the actions of Atento were not decisive in affecting or modifying the majority decision of the voters.<sup>16</sup> In their NGE Written Submissions, Atento and the Benito Juárez union similarly argue that the Federal Center’s review of the vote is sufficient evidence of the absence of interference.<sup>17</sup> However, the arguments by Mexico, Atento, and the Benito Juárez union do not explain why the complaints filed by workers during the weeks and months preceding the vote were not fully investigated, or why no actions could have been taken to postpone or cancel the vote as a result of Atento’s illegal activity. Nor do they explain why the application of Mexican law in this case was sufficient to remediate the Denial of Rights. Troublingly, Mexico’s findings regarding interference in its Report to the United States, which preceded the December 2023 representation vote, do not appear to have been communicated to the Federal Center or otherwise to have informed the determination by Mexican authorities of whether the election

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<sup>13</sup> MEX-03 (Internal Investigation Results) at 46.

<sup>14</sup> MEX-03 (Internal Investigation Results) at 13-14.

<sup>15</sup> See, e.g., MEX-50 (List of Dismissals, Agreements, Challenges) (Confidential)).

<sup>16</sup> Mexico’s Initial Written Submission at 37.

<sup>17</sup> Atento’s Written Submission at 3, 4; Benito Juárez Union’s Written Submission at 4, 5.

results should be set aside. Contrary to Atento’s arguments,<sup>18</sup> the Federal Center’s General Guidelines for Trade Union Democracy Procedures *were* applicable to this particular vote, and as detailed in the U.S. Reply Submission, those rules contemplate both the possibility of canceling or postponing a vote and the possibility of invalidating the outcome as a result of irregularities.<sup>19</sup>

17. In their NGE Written Submissions, Atento and the Benito Juárez union argued that putting aside the results of the vote, which they argue represents the will of a majority of workers, would itself undermine the workers’ labor rights and constitute interference in union activity.<sup>20</sup> They also emphasize that the workers had the opportunity to express their will in a “personal, free, secret and direct” vote.<sup>21</sup> However, these arguments ignore evidence of interference both *in advance of* and *during* the vote.

18. First, these arguments ignore the findings by Mexico, detailed in its Report to the United States, that workers were not able to participate in that vote without experiencing interference *in the lead-up to* the vote. The findings of the United States in our review of the situation at Atento, as detailed in our Reply Submission, were consistent with Mexico’s findings.<sup>22</sup> Atento and the Benito Juárez union, as well as the Government of Mexico, would have the Panel look in isolation at the report of the Federal Center regarding actions that occurred on the day of the vote only. But both the United States and Mexico found that prohibited acts of interference occurred prior to the vote, with the intent to influence the outcome of the vote. In assessing whether the Denial of Rights at the facility has been remediated, an evaluation that fails to take into consideration the ongoing impact of those acts of interference on the workers’ right to free association and collective bargaining is inherently incomplete.

19. Second, as set forth in the U.S. Reply Submission, the election was also tainted by irregularities *on the day of* the vote that undermined the ability of workers to cast their votes “freely” and “secretly.” This included the reported presence of several FOSRM and Atento officials in the voting area who were not registered as observers and reports of surveillance throughout the voting process.<sup>23</sup>

20. On account of interference and irregularities both leading up to and during the election, the workers were not guaranteed the opportunity to vote in a “personal, free, secret and direct” manner. Accordingly, Mexico’s failure to take any action with respect to the representation vote constitutes a failure to remediate the denial of workers’ right to freedom of association and collective bargaining.

21. Finally, no action was taken by Mexico to sanction or otherwise penalize the employer for its multiple violations of Mexican law. Remediating a Denial of Rights under

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<sup>18</sup> Atento’s Written Submission at 6.

<sup>19</sup> See U.S. Reply Submission at 38-41.

<sup>20</sup> Atento’s Written Submission at 2; Benito Juárez Union’s Written Submission at 6.

<sup>21</sup> Atento’s Written Submission at 4 (emphasis omitted); Benito Juárez Union’s Written Submission at 3, 4, 5, 6.

<sup>22</sup> See U.S. Reply Submission at 25-30.

<sup>23</sup> See U.S. Reply Submission at 10-11, 40-41.



Annex 31-A means not only putting workers back in the position they would have been in had the Denial of Rights not occurred, but also sanctioning the offending company so that the company in question, as well as other companies, are deterred from committing Denials of Rights in the future. Put simply, companies need to know that they cannot violate workers' rights to freedom of association and collective bargaining with impunity. Despite Atento's suggestion that the imposition of fines would constitute "excessive sanctions,"<sup>24</sup> both the USMCA and Mexican law reflect the need for appropriate and effective sanctions in response to labor rights violations.<sup>25</sup> Indeed, in its investigation Report, Mexico acknowledged that, according to general principles of the International Labour Organization ("ILO"), "it is important to forbid and *penalize* in practice all acts of anti-union discrimination in respect of employment."<sup>26</sup>

22. Taken together, the Government of Mexico's failure to fully remediate the unlawful dismissals, to address the tainted representation vote, and to penalize Atento for its illegal activity amount to a failure to fully remediate the Denial of Rights at the facility.

23. As noted in the U.S. Reply Submission, the current situation at the Atento facility shows precisely how the lack of effective sanctions can even embolden a company to repeat the same behavior that the parties have found to constitute a Denial of Rights in the first place.<sup>27</sup> Current workers indicate that Atento continues to interfere in union activities, including through reports of interference in the run-up to the August 9, 2024 vote on the collective bargaining agreement ("CBA") negotiated between Atento and FOSRM.<sup>28</sup> In its NGE Written Submission, Atento notes it has not received any complaints through its anonymous tip system regarding pressure to vote in favor of the CBA, implying that the lack

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<sup>24</sup> Atento's Written Submission at 6.

<sup>25</sup> Article 23-A.2(b) of the Agreement requires that Mexico adopt and maintain laws giving it the authority to sanction actors for violating workers' right to freedom of association and collective bargaining:

Mexico shall ... Establish and maintain independent and impartial bodies to register union elections and resolve disputes relating to collective bargaining agreements and the recognition of unions, through legislation establishing (i) an independent entity for conciliation and registration of unions and collective bargaining agreements ... The legislation shall provide for the independent entity for conciliation and registration to have the *authority to issue appropriate sanctions against those who violate its orders.* [emphasis added]

Article 31-A.7.3 of the Agreement also contemplates that Mexico will consider sanctioning the Covered Facility:

In cases in which the timeframe granted to the Covered Facility to eliminate the Denial of Rights has elapsed and the Covered Facility has allegedly not taken the necessary measures to comply with the remediation, the panel shall request the respondent Party to submit, within 10 business days of the petition a document establishing the results of the respondent Party's investigation and conclusions and the actions and *sanctions it took against the Covered Facility* as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission. [emphasis added]

<sup>26</sup> See MEX-03 (Internal Investigation Results) at 40 (citing general principle number 1075 from the Compilation of Decisions by the ILO Committee on Freedom of Association) (emphasis added).

<sup>27</sup> U.S. Reply Submission at 44.

<sup>28</sup> See U.S. Reply Submission at 35-36.

of complaints calls into question the credibility of the worker testimony received by the United States. However, the absence of complaints cannot be taken as evidence of proper behavior or compliance with Mexican law by Atento. On the contrary, the decision by workers not to use Atento’s anonymous tip system could be interpreted as evidence of continued fear of retaliation and reprisals among workers and of the chilling effect that atmosphere of fear can have on workers’ willingness to make use of company-run compliance mechanisms. The United States encourages the Panel to investigate these issues in the course of its verification process.

#### **IV. CONCLUSION**

24. In conclusion, and for the reasons set forth above and in the U.S. Reply Submission, the United States respectfully reiterates its request that the Panel, after conducting its verification, make a determination that a Denial of Rights occurred at the Atento facility and that the Denial of Rights has not been remediated.