

Mexico prevails in first USMCA RRM panel decision: What happened and what could happen next?

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May 19, 2024

U.S. loses first RRM case heard by a panel. But how did the panel reach this conclusion? What could happen next in this case? And what does this mean for future cases and for the RRM?

For a refresher on the RRM, check out [my previous post on our Trade and Manufacturing Monitor](#).

What happened?

On May 13, 2024, the United States-Mexico-Canada Agreement (USMCA) Rapid Response Labor Mechanism (RRM) panel decision in the San Martin mine case [was published](#). The panel decision – dated April 26 – confirms previous reports that Mexico prevailed in the first RRM case to reach a panel, concerning events at Grupo Mexico’s lead, zinc, and copper mine in Zacatecas, Mexico.

The case began with a petition filed on May 15, 2023, by the three labor unions: the AFL-CIO, the United Steel Workers (USW), and Los Mineros, a Mexican mining union. The petition alleged that Grupo Mexico committed “denials of rights” (the term of art for a violation of Mexican law actionable under the RRM) by resuming operations at the San Martin mine despite an ongoing strike and by engaging in collective bargaining with a coalition of workers despite Los Mineros holding the right to represent workers at the mine.

The U.S. government agreed. On June 16, the U.S. requested that Mexico review the matter and suspended the final settlement of customs accounts related to entries into the U.S. of goods from the San Martin facility. The Government of Mexico reviewed the matter, but disagreed with the U.S. that there was a denial of rights. The U.S. then requested the establishment of an RRM panel on August 22 to decide the case. The panel was composed on August 30.[\[1\]](#)[\[2\]](#)

What did the panel say?

The panel reached its decision on jurisdictional grounds – determining that denials of rights alleged by the U.S. were outside the scope of the RRM – and did not opine directly on the substantive merits of the case. In reaching this conclusion, the panel centered its analysis on three questions: (1) Is the San Martin mine a Covered Facility?; (2) Is the alleged Denial of Rights “brought under legislation that complies with Annex 23-A?”; and (3) Did the Denial of Rights occur before the USMCA entered into force?

Is the San Martin mine a Covered Facility?

Under the USMCA, the RRM can only be applied with respect to violations of certain Mexican labor laws at a Covered Facility.[3] The Agreement defines a Covered Facility as, “a facility in the territory of a Party[4] that: (i) produces a good or supplies a service traded between the Parties; or (ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party, and is a facility in a Priority Sector.”[5]

For both (i) and (ii), the panel determined that the U.S. government, as the complainant party, had the burden of demonstrating that the relevant goods originated from the specific facility in question. While the U.S. introduced evidence showing that IMMSA – a subsidiary of Grupo Mexico that owns the San Martin mine and other metal ore mines in Mexico – produced goods traded between the Parties and within Mexico, the panel found that the U.S. had not introduced sufficient evidence supporting such a conclusion for the San Martin mine, specifically. However, support for the U.S. argument came from an unexpected place.

In addition to the various filings of the U.S. and Mexican governments, Grupo Mexico/IMMSA also filed a brief with the panel. The panel found that while the U.S. had not established that the specific San Martin mine produced a good that met the requirements of (i) or (ii), the filing submitted by Grupo Mexico/IMMSA provided an admission that goods from the mine were sold within Mexico, satisfying the requirement under (ii).[6] The panel noted that, “IMMSA has provided during the verification process what the United States needed to show to meet its burden.” Finally, the panel concluded that the evidence submitted by the U.S. was sufficient to meet the “that competes” prong of (ii), and that the San Martin mine is thus a Covered Facility.[7]

Is the alleged Denial of Rights “brought under legislation that complies with Annex 23-A?”

For alleged denials of rights occurring in Mexico, the USMCA establishes that, “a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico).”

Annex 23-A of the USMCA describes a variety of labor law provisions that are reflected in the 2019 version of Mexico’s federal labor law (LFT). After a rather robust discussion, the panel concluded – and suggested that both the U.S. and Mexico agree – that the scope of Mexican labor laws that “comply with Annex 23-A” are those contained in the 2019 version of the LFT.[8] In the words of the panel, “it does not apply to prior versions of the 2019 LFT or other laws not currently in force.”

The alleged denials of rights in this case stemmed from a 2007 strike by Los Mineros at the San Martin mine. Throughout the many legal and procedural twists and turns that followed that strike, Los Mineros and Grupo Mexico/IMMSA both sought relief from the Mexican labor administrative entities that existed at the time, including the relevant Conciliation and Arbitration Board (CAB).

The 2019 LFT ended the CAB system in Mexico, replacing it with new labor courts and a new Federal Center for Conciliation and Labor Registration. However, the 2019 LFT contains a transitory article providing that cases initiated before the labor law reform – presumably for reasons of judicial and procedural economy – will continue to be heard by the CABs under the pre-2019 labor law.

Given this, the panel concluded that the alleged denial of rights was subject to the pre-2019 LFT law and Mexican labor institutions, and therefore outside the jurisdictional scope of the RRM.[9] This determination was the key issue for the panel in ruling against the U.S. in this case.

Did the Denial of Rights occur before the USMCA entered into force?

The panel, the U.S., and Mexico all agreed that matters occurring exclusively before the USMCA

entered into force on July 1, 2020, are outside the scope of the RRM. However, the U.S. government argued that regardless of when the underlying labor strife at the San Martin mine began, there were specific denials of rights in this case that occurred after the USMCA entered into force, and these denials of rights anchored the dispute within the RRM's temporal jurisdiction. Mexico, to the contrary, argued that the timing of the initiation of this sequence of events is dispositive, and that if activities post-entry into force derive from pre-entry into force events, the entire case is outside the temporal scope of the RRM.

The panel rejected Mexico's argument, but neither did it directly adopt the U.S. argument. Rather, it put forward its own "framework for the Parties and future Panels to consider if a dispute with similar jurisdictional questions should again arise." This framework elucidates three circumstances and their jurisdictional implications for the RRM:

1. Originating events occurring prior to the enactment of the 2019 LFT are subject to the previous law and outside the jurisdiction of the RRM;
2. For originating events occurring after the enactment of the 2019 LFT, but before the USMCA entry into force, the only subsequent actions that are within the jurisdiction of the RRM are those that (a) took place after the entry into force of the USMCA and (b) are subject to the 2019 LFT;[\[10\]](#) and
3. Events occurring since the USMCA entered into force and that are subject to the 2019 LFT are clearly within the jurisdiction of the RRM.

The panel determined that the facts of the San Martin case align with the first circumstance of its framework. As such, it did not opine directly on the USMCA entry into force issue in this case.

And what about the underlying labor issues?

Since the San Martin case was decided on jurisdictional grounds, the panel did not address the merits of the underlying labor-related claims by the U.S. However, a separate, non-dissenting opinion written by one of the (unnamed) San Martin panelists details how events that occurred after entry into force of the USMCA – specifically, the San Martin mine's management engaging in collective bargaining with a coalition of workers despite the fact that Los Mineros holds the right to represent workers there, as mentioned by the U.S. government in its request for review – likely would have constituted violations of the 2019 LFT if they had been subject to that law.

What happens next in this matter?

The panel's decision is final, and no appeal of an RRM case is available. The only question in such cases is whether the losing Party will comply with the panel's decision. In this case, the U.S. has already complied, announcing on May 13 that liquidation of entries from the San Martin mine into the U.S. would resume. However, outside of the RRM, it is not immediately clear whether the U.S. government will walk away from the San Martin mine situation or continue to press the matter under the USMCA via other mechanisms.

First, some context. The political dynamics involved in this case are significant. Grupo Mexico is ranked by [Forbes as the fourth largest company in Mexico](#) and has a significant political presence in the country. Los Mineros are led by a Mexican Senator affiliated with the same political coalition as Mexico's current President and presumptive next President.[\[11\]](#) Los Mineros [are also affiliated with the USW](#) – a major U.S. labor union with a significant voice in U.S. trade policy across the last two U.S. Presidential administrations. [USW published a statement](#) on the San Martin panel decision,

noting, “The fight for workers’ rights, including those at issue in this case, is far from over and we will examine what further actions are necessary and appropriate.” This does not seem like the sort of dynamic the U.S. is likely to just walk away from.

The mining industry is an area of emphasis for U.S. labor enforcement under the USMCA and is specifically designated as a priority sector for the RRM. A second RRM mining case, also filed by Los Mineros – [this one against Peñoles’ Tizapa mine](#) in the State of Mexico – is working its way through the process. The U.S. requested that Mexico review the matter on April 3 and Mexico’s report to the U.S. announcing the results of that review was expected last week.

In [her statement regarding the San Martin panel’s decision](#), U.S. Trade Representative Katherine Tai said, “The Biden-Harris Administration remains steadfastly committed to using all the tools available under the USMCA to seek redress for the persistent problems in San Martin, and to continue to deliver real, tangible benefits for workers both at home and abroad.” What other tools under the USMCA might she be contemplating?

One possibility is that the U.S. government will decide to respond to the San Martin panel decision by filing a state-to-state case against Mexico under Article 23.3 or 23.5 of the USMCA. Such a case could focus on: (a) any alleged Mexican government labor law enforcement failures in the Mexican mining industry broadly, including with respect to the San Martin mine; or (b) any alleged insufficiency of Mexican labor laws, including the pre-2019 LFT as it is still being applied. If the U.S. were to prevail in such a case, the remedy it may impose – such as suspension of USMCA preferential tariff benefits – could also impact the entire Mexican mining industry. Notably, a state-to-state USMCA Chapter 23 case would avoid the jurisdictional issues that were decisive in the San Martin RRM case.[\[12\]](#) The likelihood of a state-to-state USMCA Chapter 23 case would seem to increase if the U.S. does not prevail in the current Tizapa mine case.

What does this decision mean for future cases? For the RRM overall?

1. No stare decisis, but RRM panelists are people, too. As a legal matter, RRM panel decisions do not set precedents for future cases. However, RRM panelists will certainly be aware of, and likely will have read, prior RRM panel decisions. And, of course, people are generally likely to agree with themselves. The pool of RRM panelists is relatively small – three pools of five panelists each. So having recurrent panelists in distinct RRM cases is not only likely, it is a certainty: one of the San Martin RRM panelists has already been named as a panelist for the second RRM panel, in the Atento case (for a broader discussion of that case and its implications, see [my previous post](#)).[\[13\]](#)

2. 2019 was five years ago (to be updated in 2025). The facts of the San Martin case are quite distinct. Based on my understanding, only two of the 21 other RRM cases brought by the U.S. to date could have been impacted by application of the San Martin panel’s approach, and both of those cases were among the first handful brought by the U.S. in 2021 and 2022. Put another way, I do not believe that any of the 15 RRM cases brought by the U.S. government in the last year, other than San Martin, would have been impacted by this approach. The San Martin panel acknowledged the rarity of this fact pattern, stating that “[t]he factual and legal history of this dispute is highly unusual and unlikely to repeat itself.” As more time passes between the enactment of the 2019 LFT and the present moment, the more unlikely it becomes that RRM cases will focus on situations subject to pre-2019 law and labor institutions. Nevertheless, both the panel’s analytical approach to evaluating the issues presented in the San Martin case and its decisions on procedural elements of the case may present indicia of how future panels will consider similar circumstances.

3. Will this impact the type of RRM cases the U.S. government brings? To be candid, I think the U.S.

government needs to decide what it wants the RRM to be, and what sorts of cases it wants to bring. The RRM can be (A) primarily a petition-driven process with a low evidentiary bar, resulting in a high quantity of cases, even if some cases are fairly weak and/or the magnitude of some cases (e.g., impact on trade, number of workers directly affected, market signal to other employers in Mexico, etc.) is minimal. Or it can be (B) a process with a balance of petition-driven cases – probably with a higher evidentiary bar for acting on those petitions in order to reserve some staffing resources – and cases self-initiated by the U.S. government that focus on strategically significant situations with greater magnitude. Thus far, 20 of the 22 cases brought by the U.S. government have been driven by petitions. I suspect that petitions will always be an important part of the U.S. view of the RRM, but it also seems possible that the San Martin decision, among other factors, could lead the U.S. to put more resources into building strong, strategically significant RRM cases on its own. Something to watch for.

4. Don't forget about the 2026 USMCA joint review. Under USMCA Article 34.7, the Agreement terminates in 2036, unless each of the three countries decides to continue it. The countries are required to conduct a “joint review” of the operation of the USMCA on the sixth anniversary of the Agreement’s entry into force, which is July 1, 2026. At the joint review meeting, each country must indicate whether it wishes to extend the USMCA for another sixteen years, until 2052. If any country says no, then the countries must continue to meet annually until 2036 to see if they can reach consensus to extend the Agreement. This dynamic creates considerable leverage for a USMCA country that may seek to negotiate changes to the Agreement. Mexico and Canada seem likely to support the USMCA status quo; the U.S. may feel differently, regardless of the outcome of the November election.[\[14\]](#)

It's worth remembering how important the RRM was in generating U.S. political support for the USMCA. With the RRM, the USMCA was approved by both chambers of the U.S. Congress [with historic margins](#) and, in a first for a free trade agreement, was [supported by the AFL-CIO](#).[\[15\]](#) The RRM is important to many members of the U.S. Congress and stakeholder groups they care about. It's also worth remembering how we got to the RRM. The RRM was developed in response to the 2017 loss by the U.S. in the [CAFTA-DR labor dispute with Guatemala](#). Like San Martin, the Guatemala decision included dicta from the panel noting that the U.S. had proven the existence of the underlying labor concerns, but the panel ruled against the U.S. on jurisdictional grounds. Hearing that the labor concerns were real, but the mechanism wasn't apt to address them led to a rethink on how to develop a more tailored tool in future trade negotiations, landing on the USMCA RRM. Will the U.S. use the 2026 joint review to seek to make further tweaks, jurisdictional or otherwise, to the RRM?

5. Procedural rulings. The San Martin panel's decision included annexes that shed light on various procedural issues that came up during the panel process. Given the uniqueness of the fact pattern in the San Martin case, these procedural rulings may be among the panel's most enduring legacy in future cases. Here are a couple of the rulings in those annexes that are of particular relevance:

A. Assistance of counsel in RRM proceedings. In a ruling dated February 13, 2024, the panel clarified the role of private counsel for a Covered Facility in the RRM process. According to the panel, counsel for a Covered Facility (or its parent company) (a) may submit written views to the panel, (b) may submit additional information to the panel after their original submission, and (c) may participate in the verification process (where the panelists question representatives of the Covered Facility). The panel noted that counsel for IMMSA had been extended all of these opportunities. In fact, its filing was found by the panel to decisively support the U.S. government's jurisdictional argument that the San Martin mine is a Covered Facility. However, the panel ruled that counsel for the Covered Facility may not participate in the hearing before the panel,[\[16\]](#) which is a government-to-government

process where representatives of the Covered Facility are not present.

B. Submission of amicus curiae and filings by the public. In a ruling dated January 18, 2024, the panel clarified that, under the USMCA, a dispute settlement panel may accept written views by non-governmental entities, but any such filing must meet the specific criteria established in the Agreement, including with respect to the timing of the filing. In this case, the panel rejected an amicus curiae brief submitted by the U.S. Chamber of Commerce nearly four months after the relevant filing deadline.

The San Martin panel decision immediately marks a victory for Mexico and for Grupo Mexico, and a loss for the U.S and the petitioning unions. But answers to several of the broader questions referenced above – *Will the U.S. walk away from San Martin or go bigger? What could this mean for the types of RRM cases the U.S. brings? What could this mean for the future of the RRM, particularly in light of the 2026 USMCA joint review?* – could have the most profound implications going forward. Stay tuned.

[1] Under the USMCA Rules of Procedure, the Mexican Section of the USMCA Secretariat composed the panel by selecting one panelist from each of the three lists under the Agreement – a list of Mexican nationals proposed by Mexico, a list of U.S. nationals proposed by the U.S. and a list of third-country nationals agreed upon by the U.S. and Mexico. The three panelists in this dispute were: Kevin Kolben (U.S.), a professor at Rutgers Business School; Lorenzo Roel (Mexico), an employer-side labor lawyer associated with Mexico’s major employers’ confederation; and Gary Cwitco (third-country), the panel’s chair, a Canadian union-side labor advocate.

[2] The USMCA required establishment and composition of the three lists by the date of the USMCA’s entry into force on July 1, 2020. For the U.S., this means that the lists of RRM panelists were developed during the Trump Administration. The USMCA requires that panelists be appointed for a minimum of four years or until the Parties constitute new lists.

[3] The RRM “shall apply whenever a Party (the “complainant Party”) has a good faith basis belief that workers at a Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill the obligations of the other Party (the “respondent Party”) under this Agreement (a “Denial of Rights”).” USMCA, Art. 31-A.3.

[4] The Parties in this case were the relevant USMCA Parties: the U.S. and Mexico. Canada has a separate RRM with Mexico, which it has utilized on one occasion. There is no RRM between Canada and the U.S.

[5] Id., Art. 31-A.15. Priority sectors are defined by the USMCA as “a sector that produces manufactured goods [including, but not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement], supplies services, or involves mining.”

[6] According to the panel, “[a]s indicated by IMMSA, all the production from the San Martin mine is captively consumed by other IMMSA-affiliated facilities located in Mexico, which shows that the San Martin mine does indeed sell in Mexico and prima facie competes with other suppliers in the Mexican market.” Mexico – Measures Concerning Labor Rights at the San Martin Mine (MEX-USA-2023-31A-01), FN 71.

[7] The panel applied a preponderance of the evidence standard in finding competition, noting, “if it can be shown that like or substitutable goods or services are bought and sold in a market, it is more probable than not that they compete with each other.” *Id.*, paragraph 60.

[8] While the panel did not directly address the issue, it is worth noting that the 2019 LFT revised and replaced portions of the prior LFT, and introduced new substantive and procedural provisions, but did not replace the entirety of the pre-existing LFT. In the panel proceedings, the U.S. argued that the entirety of the 2019 LFT is within scope for the RRM, not just the new provisions added on May 1 of that year. Mexico argued that only the new 2019 additions or revisions to the LFT are within the RRM’s scope. Of the four LFT articles cited by the U.S. as bases for Grupo Mexico’s denial of rights, three were new additions to the LFT in 2019 (Arts. 133 IV, 449, and 935) and one existed in the LFT prior to 2019 and was retained (Art. 133 VII). It is unclear from the panel’s discussion of the issue which scope they adopted in their references to the “2019 LFT.”

[9] As the panel put it, “[t]he litigation, the institutions involved, and the length of time to adjudicate are all specific to the prior system, and thus the Panel does not believe that the [RRM] envisages... that such cases were subject to its jurisdiction.” Mexico – Measures Concerning Labor Rights at the San Martin Mine (MEX-USA-2023-31A-01), paragraph 113.

[10] For example, if the 2007 strike had occurred after the relevant portions of the 2019 LFT entered into force, the subsequent parts of this fact pattern occurring after July 1, 2020, would be within the RRM’s scope.

[11] [If the polling](#) in advance of the country’s June 2 Presidential election is to be believed.

[12] USMCA Articles 23.3 and 23.5 do not require that a labor violation occur at a Covered Facility, but the relative jurisdictional equivalent is that a violation must occur “in a manner affecting trade or investment between the Parties.” However, both Articles contains a footnote that flips the burden of proof on that element, requiring that a panel presume a violation to be in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise. Chapter 23 – unlike Annex 23-A – also clearly pertains to all Mexican labor laws, not just the 2019 LFT. This would seem to bring in any post-entry into force violations of the Chapter, even those still regulated and administered by the pre-2019 law and institutions.

[13] On May 8, [Politico reported](#) that the Atento RRM panel had been composed with the following members: Kevin Kolben (U.S.), a professor at Rutgers Business School; Graciela Bensusan (Mexico), a labor professor at UAM in Mexico City; and Pablo Lazo Grandi (third-country), the panel’s chair, a former Chilean labor official. In addition to Professor Kolben’s participation on both panels, the separate (non-dissenting) opinion written by one of the San Martin panelists cited to the statements of Professor Bensusan to establish the proposition that the 2019 LFT was violated in the San Martin case, notwithstanding the jurisdictional elements.

[14] On March 6, 2024, [U.S. Trade Representative Katherine Tai described the 2026 joint review](#) thus: “[Y]ou do not want that review to happen in a way that all three parties come to the conversation too comfortable. The whole point is to maintain a certain level of discomfort, which may involve a certain level of uncertainty, to keep the parties motivated to do the really hard thing, which is to continue to reevaluate our trade policies and our trade programs to ensure that they’re really responding to the changes that are happening around us.” On May 16, 2024, [U.S. National Economic Advisor Lael Brainard said](#), “To the extent that there are more systemic challenges that arise, we think about [the] 2026 review as being the opportunity to address those, to find areas where perhaps the USMCA was not sufficiently well engineered.”

[15] The AFL-CIO statement specifically referenced what would become the RRM: “For the first time, there truly will be enforceable labor standards—including a process that allows for the inspections of factories and facilities that are not living up to their obligations.”

[16] Verifications occur when the panel conducts its own fact-finding, including by visiting a Covered Facility (in-person or virtually) and speaking with affected workers and employers. USMCA, Rules of Procedure for Chapter 31 (Dispute Settlement), Section C, Arts. 11-12. This is distinct from the hearing before the panel, in which the Parties present their arguments and answer the panel’s questions. *Id.*, Arts. 13-16.